

LOCAL GOVERNMENT COMMITTEE

Tuesday 12 December 2000
(*Afternoon*)

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LOCAL GOVERNMENT COMMITTEE

32nd Meeting 2000, Session 1

CONVENER

*Trish Godman (West Renfrewshire) (Lab)

COMMITTEE MEMBERS

*Colin Campbell (West of Scotland) (SNP)

*Mr Kenneth Gibson (Glasgow) (SNP)

*Donald Gorrie (Central Scotland) (LD)

*Mr Keith Harding (Mid Scotland and Fife) (Con)

*Dr Sylvia Jackson (Stirling) (Lab)

*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

*Bristow Muldoon (Livingston) (Lab)

Mr Gil Paterson (Central Scotland) (SNP)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

WITNESSES

Stephen Bruce (Scottish Executive Constitutional Policy Branch)

Councillor Corrie McChord (Convention of Scottish Local Authorities)

Angus MacKay (Minister for Finance and Local Government)

John O'Hagan (Convention of Scottish Local Authorities)

Andy O'Neill (Convention of Scottish Local Authorities)

Ian Smith (Commissioner for Local Administration in Scotland)

CLERK TO THE COMMITTEE

Eugene Windsor

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Craig Harper

LOCATION

The Chamber

Scottish Parliament

Local Government Committee

Tuesday 12 December 2000

(Afternoon)

[THE CONVENER *opened the meeting at 14:02*]

The Convener (Trish Godman): Good afternoon, comrades. I apologise to Angus MacKay, who has been here for some time.

Since the previous meeting, Kenny Gibson and I have had a frank and open discussion—as they say—and we have agreed that the Procedures Committee will consider the principle of so-called inspired questions. Kenny agrees that that is where the matter should be left; it does not come under the remit of this committee. We will wait to hear what the Procedures Committee says. It is a general principle, rather than a particular one, but in its deliberations that committee may use this committee as an example.

Deputy Convener

The Convener: Before we come to the minister—sorry again, Angus—the first bit of business is the deputy convener. I have had official word from Johann Lamont—who was the deputy convener—that she has left the committee. There is no formal process of nomination, but the suggestion is Sylvia Jackson. If everybody agrees to that, that is how we will proceed. Do you want to say a few words, Sylvia?

Dr Sylvia Jackson (Stirling) (Lab): I am happy to accept the position. When the call comes for me to convene, I hope that I do it effectively and humorously—creating a good atmosphere in the committee—as you always do.

The Convener: Thank you—that was not rehearsed.

Public Sector Ombudsmen

The Convener: “Modernising the complaints system” is the consultation on the public sector ombudsmen. I welcome the Minister for Finance and Local Government, Angus MacKay. I also welcome Stephen Bruce, who I believe has not attended the committee before. He is an official of the constitutional policy branch of the Executive. That sounds very grand and rather frightening. Angus will say a few words, then we will open the discussion up for questioning.

The Minister for Finance and Local Government (Angus MacKay): I have attended committees—usually the Justice and Home Affairs Committee—in the chamber on several occasions, but none of them has ever made me sit in Tommy Sheridan’s seat. I will not hold it against you.

Bristow Muldoon (Livingston) (Lab): We will call you comrade.

Angus MacKay: Absolutely.

I am grateful for the opportunity to give evidence to the committee on the Executive’s consultation paper, “Modernising the complaints system”. I believe that good ombudsman arrangements are a vital element in ensuring the delivery of high-quality, modern public services in Scotland.

It may be helpful to the committee if I give a brief outline of the background to the consultation exercise. Following devolution on 1 July 1999, the previous UK parliamentary ombudsman arrangements ceased to apply in Scotland. Transitional arrangements were put in place, which were based on the existing UK arrangements. Those apply until the Parliament makes its own permanent arrangements, as required by the Scotland Act 1998. The UK parliamentary ombudsman, Michael Buckley, agreed to act as temporary Scottish parliamentary ombudsman until the permanent arrangements are in place.

The Scotland Act 1998 requirement for the Scottish Parliament to make its own arrangements for the investigation of complaints against the Executive is the main trigger for the consultation exercise, but it seemed to the Executive to be an excellent opportunity to consider all the main public sector ombudsmen in Scotland; the local government and health service ombudsmen as well as the parliamentary ombudsman. All three ombudsman schemes are long established—it seemed to us to be worth reviewing them, to consider whether they remain effective in post-devolution Scotland. The consultation is just the first step in that process.

As you will have noticed, the paper does not set

out firm, detailed, final proposals. Instead, its purpose is to stimulate a debate on the work of the ombudsmen in general. It therefore discusses a range of ideas and issues that need to be considered in establishing new, modern ombudsman arrangements. The most substantive new idea set out in the paper is to bring all three ombudsmen into a one-stop shop. It would be easier for the public to gain access to, it would eliminate the confusion over who does what and such an arrangement would have a higher public profile than the existing, separate ombudsman schemes.

Other ideas include addressing whether complaints need to go through local MSPs, the possibility of submitting complaints by e-mail and whether ombudsmen should be able to enforce recommendations. Other points may appear less significant, but are worth considering—for example whether ombudsman is an appropriate title.

To ensure that the new ombudsman arrangements have real credibility, we need to hear the views of as wide a range of interests as possible, especially those who actually use the system. Therefore, in addition to sending the paper out to the broad range of organisations and individuals that are normally approached and publishing it on the Scottish Executive website, we have arranged for the ombudsmen to send copies to a sample of around 650 people who have submitted complaints in the past year.

The committee will have seen that the closing date for comments is 10 January 2001. In the spring of next year, we will conduct a second consultation on detailed proposals based on the responses to the current consultation. We would then aim to introduce an ombudsmen bill—it might have a different title if the term ombudsman changes—in the autumn.

The Executive is committed to modernising government in Scotland—this is part of that—and to promoting high quality public services. The aim of this exercise is to establish for the Scottish public sector a modern complaints system that is open, accountable, easily accessible to all and has the trust of the Scottish public. I conclude my remarks there and am happy to try to answer any questions.

The Convener: Thank you.

The paper from the public sector ombudsmen talks about the type of one-stop shop and says:

“There could also be advantage in establishing an advisory board for the new institution, with non-executive members drawn from a suitable range of backgrounds.”

What do you feel about that?

Angus MacKay: We are trying to ensure that the structure that we put in place has public

confidence, is robust and is capable of being as up to date as necessary in relation to the organisations or complaints that will be investigated. I see no disadvantage in ensuring that the institution is able to draw on a broad range of expert knowledge. That is one way in which it could be structured and I have no intrinsic opposition to that proposal—in fact, there could be substantial merit in taking that approach.

The Convener: In their response to paragraph 3.6.4 of the consultation document, the Scottish public sector ombudsmen say that they

“believe that schools should be included in the jurisdiction of the new institution.”

They go on to say:

“The arguments for an inclusive system ought to mean that the legislation should ensure no relevant public official is outwith jurisdiction”.

While the ombudsmen start with schools, they move on to mention areas such as

“Assessors, Mental Health Officers, Statutory Chief Social Work Officers”

and so on. What are your views on that?

Angus MacKay: My initial response is that the views of one respondent are no stronger than those of any other. However, the fact that one of the ombudsmen makes such a suggestion must carry some weight, given that they, as organisations and as individuals, have operated in the field until now and probably have the most direct experience of trying to make the machinery work. The only individuals who are as informed as the ombudsmen are those who have been through the ombudsman system as appellants. They also have a considerable contribution to make to the consultation exercise. I do not dismiss the ombudsmen’s suggestion out of hand, as it is certainly worth considering.

Mr Kenneth Gibson (Glasgow) (SNP): What was the rationale behind the decision that there should be no right of appeal against ombudsmen’s decisions? Should not appeals be allowed?

Angus MacKay: I understand that ombudsmen exist to examine evidence, processes and maladministration. They do not consider conclusions or overturn decisions that have been taken; they examine the processes through which decisions are reached, to establish whether people have been misled or whether processes have operated fairly and properly. I do not think that there is a requirement for an appeals mechanism.

If a mechanism to hear appeals against ombudsmen’s decisions were to be introduced, would the appeal decision be final? Who would run the appeals mechanism? Who would be the ombudsmen’s ombudsman? The ombudsmen are

the mechanism through which people can appeal against what has taken place in other organisations.

Mr Gibson: To what extent has experience in other countries informed the Executive's thinking?

Angus MacKay: Pretty extensively—the list of organisations involved fills a page of my brief.

We researched five ombudsmen schemes in the UK—the Parliamentary Commissioner for Administration in the UK, the Health Service Commissioners in England and Wales, the Commissioner for Local Administration in England, and the Northern Ireland ombudsmen.

We also examined a range of non-UK ombudsmen from exotic places, who have titles that I do not fully understand, such as Control Yuan Taiwan, China; Defensor del Pueblo of the Argentine nation; Alaska State Ombudsman; Office of the Parliamentary Ombudsman, Sweden; European Ombudsman and the Slovene Human Rights Ombudsman.

A fairly extensive trawl of ombudsmen schemes in other countries and jurisdictions was carried out, and I hope that members accept that that trawl was sufficiently broad to give legitimacy to the process.

The Convener: Further to that, the ombudsmen in some of those countries are allowed to initiate investigations. Would it be appropriate for ombudsmen in Scotland to initiate investigations into circumstances that are beyond maladministration?

Angus MacKay: The Executive has not taken a particularly directive line in the consultation document because we want to elicit responses that show how the ombudsmen and others feel about that issue.

I am aware that, from time to time, ombudsmen come across incidents of alleged maladministration that are not central to the investigation that is being undertaken, but must leave those incidents to one side without investigation because they cannot initiate investigations. There is a worthwhile debate to be had around whether that approach is unnecessarily restrictive.

Given the fact that the ombudsmen operate in and around the institutions they examine, they will come across examples of maladministration. The purpose of an ombudsman is, in part, to hear appeals, but it is also, in part, to ensure that better government is a product of their work. There is a strong argument to be made that ombudsmen should be allowed to act on examples of maladministration, if they come across them, and to initiate investigations. However, the case for that approach must be made during the

consultation exercise.

14:15

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): Will the definition of maladministration be available to the ombudsmen? Will the Executive set guidelines or guidance on what is, or is not, maladministration? Will that involve an expansion of the jurisdiction of any of the ombudsmen?

Angus MacKay: That may be one of the more difficult debates to settle. As with the legislation that has been considered in the chamber and committees of the Scottish Parliament, there are two sides to the argument.

Defining maladministration may allow us to point to the specific circumstances in which people feel they should have redress. They should know that the ombudsmen are working to defined guidance. However, there is a downside to that approach. In our attempts to define maladministration, we might not define sufficiently those areas in which maladministration takes place from time to time, which might lead to the exclusion of certain activities, procedures or processes.

It is simple to understand why people want a tight definition of maladministration, but it is more difficult to define all the circumstances in which maladministration could be said to take place. A close debate on that issue must take place. If we decide to define maladministration, we must satisfy ourselves that our definition does not rule out certain circumstances in which maladministration may have taken place and which would have been investigated had we not drawn the definition too narrowly. That issue must be considered more closely.

Mr McMahon: Will there be resource implications if the definition of maladministration is broadened and made more flexible? Would the depth to which an ombudsman could investigate an incident be restricted?

Angus MacKay: I do not think that we should use resource implications as an argument against defining maladministration. We should have an objective debate on whether we should define maladministration, based on what would enable the system to work best and what would act in the best interests of all those who require to use the ombudsman system.

There will be resource implications at some stage, whether we adopt the one-stop shop approach and unite the ombudsmen or not. We will have to take account of the resource consequences, but they should not materially affect whether we define maladministration.

Bristow Muldoon: An approach that is referred

to in the consultation document is that of giving examples of maladministration. While I recognise that the list should not be regarded as definitive, perhaps we could take that approach. I make that suggestion because it seems to me that when people wish to pursue a complaint to an ombudsman, their decision to do so is often based on a misunderstanding: what they really object to is policy, and it is not the role of the ombudsmen to overrule policy.

If we gave people clearer examples of maladministration, complainers might recognise that their complaint does not fall within the ombudsman's remit. As you can see from some of the reports from the ombudsmen—or ombudspeople or whatever—they find no substantive evidence of maladministration in a large number of complaints. To my mind, that leads to the conclusion that the complaints may be based on policy.

Angus MacKay: The ombudspersons play an important role, but Bristow Muldoon is right: in many circumstances they are seen as the last chance saloon for addressing a perceived wrong in policy or other matters. However, they are intended to be a mechanism for examining how government is delivered and decisions are taken.

The two key points of the consultation exercise are access and clarity. We need to consider how we can define the role of ombudspersons over the next few years to allow greater and easier access and to create greater clarity in the purpose and operation of the system. Illustrative examples take us some way down that road, but we need a more substantive debate. Anything that takes us near the realm of the law will contain substantive bear traps. If we use illustrations, we have to be absolutely clear that they are not definitive and do not amount to an exhaustive list of circumstances in which maladministration can be said to have taken place. Under the law, there is always the possibility of things being inferred from examples. That is why we must be careful.

Colin Campbell (West of Scotland) (SNP): What should be the relationship between the ombudsman and other regulatory bodies, such as Audit Scotland, the standards commission and the UK ombudsman?

Angus MacKay: I am not entirely sure what lies behind Colin Campbell's question. However we constitute the ombudsmen, ombudswomen or ombudspersons—I am coming to the conclusion that the name has to change—they will have to be independent. Above all, they must be a repository of public confidence. However, in statutory terms, I am not sure what Colin wants to know about the relationship with Audit Scotland or the UK ombudspersons.

Colin Campbell: We are trying to establish what the day-to-day working relationship between those organisations—which overlap to some extent—would be.

Angus MacKay: We must set out and define their roles and responsibilities—and the circumstances in which they can intervene—clearly. It might be that they should intervene only at the request of a member of the public or that they should have a right to investigate, as we discussed earlier. There will be circumstances, at the margins of the organisations, where there will have to be understandings about the way in which they co-operate, overlap and dovetail. That is for the organisations to define. If we are changing the structure, we must ensure that we specify clearly the role and remit of every organisation, the circumstances in which we would expect them to intervene, the process of dealing with an individual's complaint and the consequences of that process.

Colin Campbell: Can I help the minister out of his difficulty with "ombudsman"? It is clear that he is trying to be terribly politically correct. What about ombuddie? That would take care of male and female ombuds and pay tribute to the two of us—Kenny Gibson and I—who were born in Paisley.

The Convener: There are some questions that you can ignore, minister—it is Colin's age and something to do with senility.

Bristow Muldoon: Can I ask for clarification, convener? I remember Kenny Gibson fraudulently claiming to be Glaswegian earlier.

The Convener: That is right.

Mr Gibson: I have always said that I am a Paisley buddie.

Dr Jackson: Anyway, to return to the agenda. The submission from the Scottish public sector ombudsmen includes a section on appointments. It says that although they have no strong views either way, they think that

"it is essential to employ a method which is seen to safeguard independence from the Executive."

What are your views on that? Should there be changes to the current arrangements for local government ombudsmen?

Angus MacKay: You are right to suggest that in reorganising the function of the ombuddies—or whatever we end up calling them—it is critical that they have and are seen to have independence from the Executive. I would have thought that that was our first port of call in terms of public trust. I support that position.

The consultation paper suggests a variety of possible approaches, including that ombudsmen

should be elected or recommended by the Parliament before being formally appointed by the Queen. There are several ways in which to skin that cat. As a point of principle, whatever we do must not only safeguard independence but be seen to safeguard independence. If we do not do that, we undermine the whole enterprise before we have begun.

Donald Gorrie (Central Scotland) (LD): I apologise for being late. In my limited experience, ombudspeople are a dead loss. The rules always seem to preclude them from doing what people want them to do. As Bristow Muldoon said, the issues are often a matter of policy rather than procedure. We should give ombudspeople as wide a scope as possible for investigating. Other colleagues may have had different experiences, but I have found that some of the worst examples of bad decisions tend to be in the reserved areas—I do not mean that in the devolutionary sense—of bodies that look after charities or patents and on decisions about whether to prosecute. Almost all those bodies are outwith the control of the ombudsmen. I hope that the minister will try to make the system as all-embracing as possible.

Angus MacKay: We have to be careful to draw a clear distinction between the current functions of the various ombudsmen and how they may be concentrated under a new system, and the functions of other bodies, particularly the courts. Some of the circumstances that Donald Gorrie has in mind are governed by other agencies and practices that go beyond the role and function of the ombudsmen. We have to think that through in the consultation and beyond, when we would expect the functions of the ombudsman to expand in the context of the regulatory structures that are already in place. It may well be that individuals feel that those regulatory functions do not work sufficiently well or that they need to be more open and accessible. It is a larger step to decide that the ombudsmen should take on those responsibilities. On balance, I would be against that in general, although there may be specific examples and circumstances that should be considered.

There is a debate to be had about the exact scope and remit of the ombudsmen and how far they should be able to go into particular areas of public activity. Some of those areas come close to the law and governance by other bodies.

Donald Gorrie: I would not propose that the ombudsman could suggest that a judge had made a duff decision—that would be out of bounds—but I do not see why an ombudsman should not say that a decision not to prosecute was duff. The procurator fiscal system is open to serious criticism.

On the basis of the old Latin tag, “Who guards the guards” what about having an ombudsman looking after the ombudsmen? I have heard of some extraordinarily bad decisions by ombudsmen—and there is no comeback.

Angus MacKay: The procurators fiscal are governed by a different mechanism. That is the point that I was trying to make. Perhaps it is a fault of the current system that there is a deal of confusion about the extent to which the ombudsmen have powers to intervene in given areas of the public sector. We need to seek more clarity on that in the process of the reorganisation.

“Who guards the guards” is a never-ending question. Who guards the guards who guard the guards—and on and on. If the ombudsmen are a form of appeal above all else, it is essential that there is the greatest possible transparency about how, where, when and why they perform their functions and the conclusions that they reach in specific circumstances.

Such a move will generate confidence in and continue to deliver what has been successful about the ombudsman system: when a conclusion is reached that something has not been done properly or that there has been maladministration, there is, in most circumstances, a positive response from the organisations and agencies involved, which are generally willing to recognise that mistakes have been made and to change practice. That, above all else, is what guarantees that the appeals mechanism works and perhaps does not require a higher appeal.

14:30

Mr Keith Harding (Mid Scotland and Fife) (Con): Should the powers of enforcement be a substantial part of the ombudsman’s role?

Angus MacKay: I would not say that I have closed my mind to enforcement, but the central argument against giving ombudsmen enforcement powers is the fact that they are seen to be independent in their investigatory role—that is their biggest asset. If we start to ally that role to an enforcement role, all sorts of questions arise, particularly about the participation of the various organisations that they oversee and the openness and enthusiasm with which those organisations will participate in and submit evidence to any inquiry. Genuine questions need to be asked about whether an enforcement role, if one is required, should be attached to the ombudsman—it might change the nature and shape of the body, so that it ceases to be an ombudsman and becomes something else. I am happy to hear arguments about enforcement through the consultation process, but I remain to be convinced.

Mr Harding: There have been cases in which councils have not carried out ombudsmen's recommendations. There is nowhere to go at the moment if that happens.

Angus MacKay: That is the exception rather than the rule, but I accept what Keith Harding says—there have been circumstances in which an ombudsman has reached a conclusion and people have not been happy about the consequences. Councils may not advance from an ombudsman's conclusion to saying, "This must now change." That relates to what I said to Donald Gorrie about the fact that the openness and transparency of the process, and its visibility to the public and to the institutions involved, have the potential to continue, in the vast majority of cases, to deliver some consequence to the ombudsman's conclusions. It is more difficult to see how we would create and describe an enforcement power for the ombudsman. I do not rule it out altogether, but I remain to be persuaded.

The Convener: The response to the paper from the housing association ombudsmen points out that public sector one-stop shops will have to recognise the kind of experience that ombudsmen for housing associations have built up. I guess that the same could be said about other ombudsmen as well. The housing association ombudsmen suggest that they should have their own ombudsman, or depute, which would seem to take the situation back to what it was, but perhaps they would both be housed in the same building—I am not quite sure what you meant, minister. If the principle of one-stop shops is established, we must examine how we use the expertise of the various ombudsmen. That is a detailed point and I do not expect you to be able to answer it now.

The deadline for submissions on the consultation paper is 10 January 2001. What is the proposed time scale for the next step?

Angus MacKay: I will defer to Stephen Bruce on the time scale, but I will respond briefly to your comment about the housing association ombudsman and to the wider issue about other areas where representation is properly required.

If we move to a one-stop shop model, we will have to consider carefully, as you suggest, the possibility of having deputy ombudsmen and the role that they would perform. We will also need to consider the specialist staff who will be employed in the one-stop shop and whether there is a physical one-stop shop in one building or more of a virtual one-stop shop. However we structure the mechanism, we will have to ensure that, if ombudsmen such as the housing association ombudsmen become part of a one-stop approach, their specialism and experience is properly housed within the agency and that there is still the capacity to perform that distinctive role.

I defer to Stephen Bruce to respond on the dates.

Stephen Bruce (Scottish Executive Constitutional Policy Branch): As you pointed out, convener, the closing date for comments is 10 January 2001. We aim to analyse the responses and put together detailed proposals for our consultation in spring next year—perhaps round Easter.

The Convener: There are no more questions, so I thank the minister and his official for coming along. The session has been helpful and we will now be able to write our report. Thank you.

Our next witness has arrived. I introduce Mr Ian Fraser Smith, who is the commissioner for local administration in Scotland, otherwise known as the local government ombudsman. He will speak for a couple of minutes and we will then ask questions. Welcome and over to you.

Ian Smith (Commissioner for Local Administration in Scotland): I am happy to drop the Fraser.

The Convener: We will call you Ian in any case.

Ian Smith: Absolutely. Thank you.

I thank the committee for the opportunity to comment. The parliamentary commissioner for administration, who is also the health service commissioner, and I have put together a joint written submission, which members will have received. I am here in the spirit of co-operation between our two offices.

All I want to say by way of preliminary remarks is that we are looking forward to an informed debate about the future of complaining in Scotland. We want to consider complaints management as a way of making the Scottish public sector better. I am happy to answer questions.

The Convener: I will start. Are you committed to one-stop shops? Which ombudsmen—or ombudspersons or whatever we are calling them today—should they include?

Ian Smith: It is fair to say that Scotland has been pretty well served for the past 25 years by the current institutions, but the arrangements are appropriate to 1975, not to the present day. In particular, a number of activities take place that involve different parts of the public sector. It would seem sensible to avoid the distinctions that currently exist and to move towards having one organisation that can examine the management of complaints right the way through—we should aim to put in place the most inclusive system that we can muster. I mean inclusive in terms of the organisations that are within the jurisdiction of the proposed institution and in terms of the requirements of people in Scotland. Until now, the

system has been reactive. A new institution must aim to elicit complaints and to understand the handicaps that people have in complaining. It must find ways to make the complaining system easier for people.

The Convener: Who should be involved in one-stop shops?

Ian Smith: I used the word “inclusive”. One-stop shops should be as inclusive as possible. If we are moving towards a new organisation, it would not be prudent to make exclusions. The draftsman should use his skills to come up with a format in which as many organisations as possible can be included. I make no apology for that.

Mr Gibson: Is any guidance required to clarify the meaning of maladministration?

Ian Smith: That is a bit like the Schleswig-Holstein question.

Mr Gibson: Which is?

Ian Smith: Unanswerable. People have tried to define maladministration. The consultation paper outlines some past attempts, starting with the Crossman definition, and the list runs through to what I think is the helpful definition offered by William Reid when he was parliamentary commissioner for administration.

The legislation on Scottish local government within which I operate is constraining. My jurisdiction is made very clear. Much of what I do is not formal; much of it is about mediation and conciliation—trying to facilitate positive outcomes for people who have been hurt by systems. A definition of maladministration that was too precise might make it difficult to carry out that desirable mediation and conciliation role. The statistics from the parliamentary commissioner’s office and from my office—although I speak for my office alone—show that we spend a great deal of time trying to get outcomes for people who feel that they have been wronged by the system. That should be the priority for the future. I regard it as something of a failure if we have to go as far as having a formal investigation and report. We find it motivating to try to get outcomes for people who are distressed.

Mr Gibson: You mentioned the constraints of jurisdiction; I take it that you believe that it should be extended. How would you extend it? Would there be resource implications?

Ian Smith: It would be difficult to extend the jurisdiction. In any drafting, there would be real problems over whether we should say that everything is included bar some specific exclusions. None the less, if there is to be a new institution, it will be desirable to include as many public sector organisations as possible.

There could be resource implications, not so

much from a change in the jurisdiction as from the role that we would expect the new complaints system to fulfil. Formal investigation of administrative errors will have an impact on resources, but a more conciliatory approach will be very demanding on resources, because a key element will be to go to people who are annoyed and to explain to them, in person, the limitations of jurisdiction and how the system has worked, so that they do not go away with a heavy heart.

Bristow Muldoon: I note that, in 1999-2000, you received slightly under 1,000 new cases, of which only 17 resulted in formal investigations. I also note what you say about your conciliation work. Are a significant number of those 1,000 cases simply examples of people disagreeing with a local council’s decision? The council may have followed the correct procedures but reached a conclusion that the complainant disagreed with. How do we deal with that kind of complaint and perhaps explain more clearly to people the role of the ombudsman?

Ian Smith: We have to define the roles of the ombudsman and the complaints system. At the moment in my office, we look for failures in the administrative process. A number of people will therefore go away dissatisfied. My postbag tells me that some people do not regard me as a terribly useful article. Because of the limits on my powers, it is fair for people to say that.

When we consider the merits of decisions, I feel that there is scope to take a slightly more liberal approach than has been the case. I do not mean that we should depart from the principle of investigating the administrative process; I mean that we should also consider whether decisions have been well made. We should be able to ask whether a decision has been taken, or a process put together, in such a perverse way that the outcome is injustice. I do not think it beyond the wit of man to consider such an extension of jurisdiction. However, that should be properly supported. The most important thing is to be able to give reasons for decisions. I make it my business to give even the most dissatisfied people such reasons. When they complain about the outcome of an investigation, or a failure to investigate, I try to explain the reasons as thoroughly as I can.

Colin Campbell: What should be the ombudsman’s relationship with other regulatory bodies, such as Audit Scotland, the Standards Commission for Scotland and UK ombudsmen?

Ian Smith: That is a fascinating question and one that has been exercising my mind. At an informal level, we have to ensure good links between all the different organisations. The organisations that you mention exist for a common purpose—to improve the quality of public services.

Therefore, at a second level, there is a need for Audit Scotland, the Standards Commission, the statutory regulators of some services, and the statutory inspectorates—of which there are many—to share with the proposed ombudsman institution a common view on improving public service. We need a dialogue about the practicalities of how questions are routed and we need to have a common approach. This Parliament can be very useful in encouraging that.

14:45

Colin Campbell: We had a little levity with the minister about the word “ombudsman”—he obviously has difficulty with it. From what you said, it seemed that much of your function was as a conciliator. Would that be an embracing enough title? Would it cover what you do?

Ian Smith: Conciliation is an important dimension of what my office and a number of ombudsman services do. As for the title, within the ombudsman world, ombudsman is the word. It comes from Swedish and is neuter.

Colin Campbell: That is what we needed to know.

Ian Smith: I hope that that is a helpful contribution to the debate.

Mr McMahon: In your submission, you say that you have no difficulty with the idea of a one-stop shop in principle. However, in paragraph 12, you say that

“there could be problems relating to the confidentiality of information”

between staff. You also talk about the problems of staff sharing facilities with other bodies. Does that not negate the possibility of a one-stop shop?

Ian Smith: No. If there is a genuine one-stop shop, with everyone working in the one organisation, that excludes any worries over confidentiality and transfer of information. However, if separate organisations simply shared accommodation, it would be difficult to keep the common thread running through them.

Mr McMahon: So a one-stop shop would break down barriers.

Ian Smith: The one-stop shop would be the barrier-free way of working.

Mr Harding: Would you welcome powers of enforcement and an ability to impose sanctions on authorities that do not act on your recommendations?

Ian Smith: The history of local government in Scotland has been interesting in that regard. It is some six years since a second report had to be issued. Scottish local government is more than

compliant: it considers formal investigations and formal reports as a basis for making improvements in local government. The addition of an enforcement role could detract from the nature of an ombudsman, as it would lead to things being much more judicial and legalistic. It is much easier to settle things locally if there is a system that encourages conciliation and mediation. We go that extra mile with councils, which respond by coming up with solutions.

Unhappily, on some occasions, people will take a different view. Early this year, UK proposals were discussed on Radio 4; one of the highlights of the programme was when the leader of a council in the south of England complained bitterly about the dreadful views that the ombudsman held of his council. When that kind of breakdown occurs, there has to be some form of sanction. However, the sanction that has existed in Scottish local government since 1976 has been very effective. When a second report comes out and local newspapers cover the issue in more depth than they have done before, that is an effective form of naming and shaming.

Mr Harding: In recent years, how often have local authorities not followed your recommendations?

Ian Smith: That has not happened in the past six years.

Dr Sylvia Jackson: I was pleased with what you said about how the new approach would work. It seems to be very person intensive, which will have resource implications.

In response to Kenny Gibson's question, you said that you want as many public sector organisations involved as possible. Does that mean that you want to extend the areas that you cover or does it mean that you think that some of the areas overlap and that that would be useful in dealing with complaints? If it is the latter, how does that tie up with your report, which indicates the importance of specialisms and of keeping areas separate in the interests of confidentiality?

Ian Smith: That is an enormous question. I will deal first with the resource implications. It would be naive to take away the MSP filter, thereby giving profile to the issue of complaining, and not expect an increase in the number of complaints. Based on experience, we can predict that that would happen, which I think would be a good development. It is important that we balance the way in which public services are delivered with a thorough system of investigation of complaints. However, we should not imagine that that would come without a significant increase in cost, particularly if the Parliament decides to emphasise the importance to outcomes of mediation and conciliation. We must remember that local

government has pioneered that system, partly through my office. On national Government, however, there are many appeals mechanisms and only the extremely disaffected make it to the final stage. Local settlement is not easy in that case.

What was the second part of your question?

Dr Jackson: Do you think that the areas overlap and that that would be useful if a one-stop shop is to be created? If so, how does that square with the ideas in your document about keeping specialisms separate in the interests of confidentiality?

Ian Smith: The emphasis on the issues that you raise in the latter part of your question was not intended. We are saying that it is important that the staff of any new institution have a good blend of skills and experience. That is the starting point.

On the inclusiveness of the organisation, it occurs to me that it would be useful to include people such as the independent housing association ombudsman. One of the reasons for wanting to include that ombudsman is that, although Scottish housing association tenants who use the housing association ombudsman are well served, the scheme is not statutory and so is not vulnerable to criticism and attack through judicial review. Currently, the scheme is much more like a sophisticated trade association complaints system, as are some of the ombudsmen services in financial services, for example. It is important that tenants of socially rented housing in Scotland should have a consistent national scheme, because to have two systems running could be disadvantageous.

For levity, the committee should note that, south of the border, the independent housing association ombudsman refers to his role as palm-tree justice, which—before you think of pith helmets and long shorts—is about pragmatism. It is about resolving problems quickly and not going into the careful and patient investigation that my office would undertake. I think that there is a place for palm-tree justice, but the citizen must have safeguards. We must bear that in mind as we move towards a statutory framework. I advocate the establishment of a statutory framework that would apply to all housing complaints for people who are tenants of socially rented housing.

Donald Gorrie: Paragraph 15 of your paper says that the health service ombudsman has a wide remit that covers

“failure in service or failure to provide a service.”

Should the new, all-purpose ombudsman have such a remit in relation to local government, for example? What sort of areas would that ombudsman be able to review in local government that you are unable to review at the moment?

Ian Smith: In the health service, the ombudsman, with specialist assistance, has the opportunity to examine the clinical merits of decisions. Such an arrangement does not exist elsewhere in the ombudsman service in the public sector. It would be possible to maintain that function and for the health service to continue to have a different system, but it would be desirable to learn lessons from how the health service ombudsman operates.

There is scope for the examination not of the political or policy merits of decisions, but of the degree to which decisions have been reasonable. I will give you an example. A local authority has a modernisation scheme, which includes a block of houses in which one house has been sold. The person in the house found the cost of the modernisation scheme to be excessive. There was a protracted period in which the council considered modernising the private house. The council had to balance its requirements not to subsidise a private house owner with its requirements to improve houses for its tenants. By a strict application of the law, the council would have to produce a perverse outcome for its tenants, who would suffer if it opted for a low-grade scheme. The council came around to the view that that was not a good way of proceeding and is trying to rectify the situation. My point is that, although the procedure could be followed correctly, the outcome could be appalling for the citizen. There has to be some scope for considering the reasonableness of decisions. However, I would be unable to define the matter further.

Donald Gorrie: Presumably, if a parent found that the council did not have a service to deal with the drink problem of their teenage child, that would constitute a failure to provide a service; the parent could claim that the council should do something about the drink problems of teenagers.

Ian Smith: Issues such as that arise, particularly relating to people with special educational needs, dyslexia and autism, for whom there are different approaches. Such issues are not easily resolved by an ombudsman investigation; they are issues for the Executive and relate to equity of provision across the country. However, there is probably a role for the highlighting of perverse decision making—the Executive could consider that in formulating its ideas.

The Convener: Paragraph 13 of your paper suggests that there could be an advantage in establishing some kind of advisory board for the new institution. The minister did not seem to say anything about that. Could you expand on your rationale for that? Could you also explain why you think that there should be a system of appeal?

Ian Smith: On the advisory board, I would point

out that it is unusual to have no line management. In any organisation, the senior executive is managed in some way by a non-executive group—in a local authority, that group is the council; in the Government, there are different systems.

However, to whom is someone who holds a commission from the Queen accountable? There are two forms of accounting: the best use of public money and the discharge of the office. Our recommendation is that that connection should be with the Parliament. However, when one runs any kind of organisation—particularly one with a substantial and intellectually demanding work load in relation to the management of human resources in the office—some form of business plan and some way of measuring performance against that business plan are desirable. I cannot think of a better way of achieving that than through some form of non-executive intervention.

The question of appeals is difficult. The statutory framework means that there is a form of appeal, because there can be judicial review. However, we all know that judicial review is expensive. If the only form of appeal is judicial review, that is the opposite of inclusive. The only form of review that I can envisage would be to oblige the ombudsman to give full reasons for decisions and for the general thrust of the office's activity to be subject to overview. If the Executive, a branch of the Executive or a specialist appeals body were to review decisions, that would cut against the basic idea that an ombudsman should operate, with discretion, as the final line of appeal. In many cases, the ombudsman is very much the last chance saloon. It would be difficult to envisage circumstances for review of what is, in effect, the review.

There are two ways of protecting society, safeguarding integrity and ensuring that the ombudsman does a good job. The first is to ensure accountability through the Parliament for value for money and probity. That is what happens with the Auditor General and Audit Scotland. The second is to copy Audit Scotland and have a management board, which should have some non-executive involvement.

15:00

The Convener: In other countries, the ombudsman can initiate investigations. Would you like to have that power?

Ian Smith: I have read as much as I can about the opportunities that such a power would provide. We must approach the issue with caution, as the constitutional position in the other countries to which you refer is different from that in ours. In a number of other jurisdictions, the ombudsman has

a much clearer central role in the constitution. I believe that the combination of the Standards Commission for Scotland, Audit Scotland, the different inspectorates and regulators, and the institution of the ombudsman—in a new office or in its current role—exercise a similar function. I would like us to consider adopting aspects of ombudsman regimes elsewhere before we consider giving our ombudsman the power to initiate investigations, including vigorous promotion of what the ombudsman can do. The Irish ombudsman, for example, goes walkabout—he visits communities to encourage complaints. We should consider that. In my submission, I suggest that we consider the introduction of advocacy services alongside the ombudsman service. We must take positive steps to make the institution as inclusive as possible.

The Convener: As there are no further questions, I thank Ian Smith for his evidence, which was informative and helpful.

We are losing some members who have other business to attend to. We will also lose Michael McMahon in a minute. I welcome Councillor Corrie McChord, who is the social inclusion spokesperson for the Convention of Scottish Local Authorities, Andy O'Neill, who is the policy officer for COSLA and attends meetings of this committee as often as some members, and John O'Hagan, who is COSLA's legal adviser. After the witnesses have made a brief statement, members will have an opportunity to ask questions.

Councillor Corrie McChord (Convention of Scottish Local Authorities): I thank the committee for the invitation to give evidence. COSLA has a view on public sector ombudsmen, but it is not yet perfectly formed. Major consideration of the issue has been referred to the leaders meeting in January, at which a position will be agreed. I apologise for the fact that Pat Watters, the vice-president of COSLA, is unable to attend today's meeting. He is tied up in negotiations with the trade unions. I am sure that members know what is on the agenda there.

We welcome the consultation paper. As I said, we have not taken a formal position on it. Before I comment specifically on the paper, I want to make some general comments.

In the introduction to the paper, Jack McConnell states:

"The Scottish Executive is committed . . . to the promotion of modern government and high quality services which are open, efficient, accountable and responsive to public need . . . The Executive would like to establish a modern complaints system for the Scottish public sector".

The new system should reflect those aims. COSLA supports the sentiments and the values that inform the minister's statement.

The concept of local solutions for local problems, which is an important facet of the ombudsman system in its current form, should not be lost from the process. Any widening of the system should take account of that and people should be encouraged to find local solutions wherever possible. It is often better to sort out problems lower down the line, because when people take fixed positions in a quasi or fully public situation, difficulties can be exacerbated and the substance of a case lost. Sorting out problems at a local level saves the ombudsman a great deal of time that would otherwise be spent investigating complaints and offers members of the public who are aggrieved a quicker solution to their problems. We believe that the current system works well.

We believe that the current local government model works and that the existing systems and jurisdictions are broadly right. One of the strengths of the present system is that it is not enforceable. Local government is often uncomfortable when cases become public and are reported in the media. The naming of an authority and services can easily become naming and shaming. Making the ombudsman system enforceable would create a lot more work for lawyers, but would not help the public to get meaningful and quick solutions.

We believe that the ombudsman system is and should remain a last resort for the public. The resources are not available for it to function as a first resort. We hope that, where necessary and appropriate, local solutions will continue to be found for problems. There will be situations in which local solutions to problems cannot be found; those problems should be dealt with by the ombudsman.

Andy O'Neill will now outline COSLA's initial views on the paper. John O'Hagan will then provide a practitioner's view on it. He will also deal with possible concerns about reserved matters, which the paper does not address.

Andy O'Neill (Convention of Scottish Local Authorities): I will make a number of additional specific comments that the committee may find of interest. Before I do that, I point out that we have circulated a paper that sets out COSLA's initial answers to the questions in chapter 11 of the consultation paper. As Corrie McChord said, we have not yet reached an official position on the paper, but we will have done so by the end of January. Once that position has been arrived at, we will share it with the committee.

First, should a one-stop shop be established? COSLA accepts that there is considerable merit in the one-stop-shop approach, the case for which is well argued in the consultation paper. The move is likely to minimise public confusion, improve accessibility and reduce costs by establishing economies of scale. The question of how to

establish a one-stop shop is more complex and needs further and full discussion. In the short term, a one-stop shop could be established and integration could occur once the various working methods of the constituent parts had been analysed.

On the scope of the one-stop shop, all ombudsmen who operate in the public sector and who are the ultimate point of contact in complaints processes should be included. On the type of one-stop shop that would be best for Scotland, members will know that the consultation paper suggests either a college of ombudsmen—where the separate ombudsmen appointments are retained but they share the same office building, support staff and so on—or the appointment of one all-encompassing public sector ombudsman supported by deputy ombudsmen. The latter is the Executive's preference. COSLA has received a number of views from its member councils and, although we have yet to take a firm view, on balance we think that the favoured course of action would be to appoint an all-encompassing public sector ombudsman. In its favour, that approach would retain expertise, give more scope for staff to broaden their experience and allow greater resource flexibility.

We have no firm view on the remit of the new body, but we think that the authorities that are currently covered by the Scottish parliamentary commissioner for administration should be subject to investigation by the new ombudsman. Some councils have expressed the view that all public authorities should be included in the new arrangements, while others are particularly keen for individual bodies, such as Scottish Enterprise, Highlands and Islands Enterprise and the water authorities to be included. Whichever organisations are included in the ombudsman's remit, COSLA suggests that it would be preferable for the authorities that are not within the ombudsman's jurisdiction to be specified in the legislation, thereby creating the presumption that a public authority is within the ombudsman's jurisdiction unless specifically excluded. That would be clearer for the public.

Complaints are currently submitted in different ways. Complaints to the SPCA must be made via a member of the Scottish Parliament. There is no such requirement to approach the local government ombudsman via a councillor, although people had to do so a number of years ago. For health service complaints, the aggrieved person simply goes to the health service ombudsman. We strongly support the removal of the requirement for complaints to the SPCA to be channelled through an MSP. The arrangements that pertain in local government should be expanded to the public sector ombudsman when that role is established.

Currently, only minimal provision is made in legislation for investigation procedures. The system operates well. Further legislation would restrict the ombudsman's flexibility and would not allow innovation. We believe that the local government ombudsman's current powers to collect evidence are sufficient. As members will know, the local government ombudsman requires investigation reports to be advertised and made available to the public. That is not the case for the SPCA and for the health service ombudsman. The local government ombudsman's practice should be extended to other bodies.

We do not believe that the ombudsman should be given a power of enforcement. We believe fundamentally that decisions made in local government and in the Scottish Parliament are part of the democratic process and that it would be wrong to install an individual with a power of veto.

We do not have a firm view on whether the ombudsman should be appointed or elected, although we support public advertisement of the post and the use of the Nolan selection processes. Whether the candidate should be voted on by the Parliament and/or recommended to the Queen is something on which we have no comment.

The formal legal title should be "ombudsman" instead of "commissioner". We have no view on what the organisation should be called, although we offer suggestions, such as the Scottish public sector ombudsman, complaints Scotland, or the Scottish public complaints office. However, that is for others to decide. We cannot come up with an alternative gender-neutral title to "ombudsman", and we accept the current word.

Finally, on finance and staffing, we would be happy, when the new body is established, for a charge to be made on the Scottish block to ensure that the ombudsman maintains his or her independence.

15:15

John O'Hagan (Convention of Scottish Local Authorities): The starting point for COSLA's consideration of the matter, from both a policy perspective and a practitioner's perspective—I am a local government lawyer—is that the current system for local government works well. The current constraints on the local government ombudsman's jurisdiction are fairly well understood and are respected by people who come into contact with the system.

The current statutory exclusions relate to issues where there is a legal process to go through, for example appeals to a sheriff against the refusal of a licence or in relation to how an application was dealt with, or appeals to Scottish ministers against planning decisions. Those routes are generally

well understood and work well. We suggest that the other statutory ombudsmen's offices could learn something from the local government ombudsman.

As has been indicated, we support the one-stop-shop approach, which would bring together the statutory ombudsmen and the housing association ombudsman, because there is a clear overlap.

I will concentrate on one or two areas that require further attention. Our first comment—which is offered not in respect of local government, but as a helpful suggestion—is that we are not clear what the arrangement would be for what might be described as Scottish reserved matters. The consultation paper explains that a policy decision has been taken in England to establish a one-stop shop for English issues, if I may refer to them as that. The consultation paper suggests that a similar approach be taken for Scottish issues. That idea has merit, but we are not sure what the approach would be to a public sector complaint in Scotland about a reserved matter. That requires some attention, because it cuts across the idea of having a Scottish one-stop shop or an English one-stop shop. We could get into having a Westminster one-stop shop or a Holyrood one-stop shop.

Secondly, our view on enforceability comes from a policy and practitioner's perspective. Since the local government ombudsman's office came into being in 1975, the attitude of local government has been, as a rule—and I know of one authority in which this was in the council's standing orders—to accept the ombudsman's adjudgment on a complaint even if the authority does not agree with it. Occasionally, authorities have had to swallow hard. We may have had difficulty with one or two past judgments, but we have always accepted that the ombudsman's view has been arrived at by examining the processes and adjudging the merits of the individual case.

To change that system to one that is enforceable would create a different situation. From local government's perspective, the nature of the process would change, because it would become somewhat adversarial. The lawyers would get hold of an issue—I speak as a local government lawyer—and it would become a matter of people advancing their council's case. There would have to be a clear and specific statutory review process. The position of local government has traditionally been—and continues to be—to respect the outcome of a decision irrespective of whether the merits of a case are agreed. That approach has served the public and local government well and we strongly endorse it.

If committee members have any questions, we will be happy to try to answer them.

The Convener: Thank you. Andy, did you say that you do not think that MSPs should be used as a filter for complaints?

Andy O'Neill: Yes I did.

The Convener: Did you comment on the issue of initiating investigations and, if not, do you think that you should be able to initiate an ombudsman's investigation?

John O'Hagan: I am not sure that we covered that in our comments. The position of an ombudsman is traditionally reactive. He is there to provide an investigation resource and to come to a judgment on issues in response to a complaint. The complaint can be informal—it can be oral or electronic—but its submission to the ombudsman currently requires a simple letter of complaint. That is our preferred approach. To change that process would be to change the nature of the beast entirely.

Bristow Muldoon: I thank the witnesses for their presentation, which was surprisingly comprehensive given the fact that COSLA does not yet have a fully formed policy on the issue.

The Convener: Perhaps Andy O'Neill has.

Bristow Muldoon: I welcome many of Andy O'Neill's suggestions and especially like his ideas on trying to make the ombudsman and the complaints procedure more attractive. He mentioned the possibility of establishing an organisation called complaints Scotland. I was trying to think of other names for the service. I thought of "Complaints 'Я' Us", but that might be copyrighted elsewhere.

A lot of the complaints that are referred to the ombudsman do not result in formal investigations. We questioned the local government ombudsman and learned that a significant number of complaints relate to policy, when a member of the public is unhappy with a decision that the local authority has made although there has been no procedural flaw. Does that suggest that local government needs to examine its procedures for explaining to the public the way in which its decisions are made and the way in which people can influence those decisions? Does local government need to review its internal complaints procedures, so that people can feel that they have had adequate opportunity to make their voice heard without having to approach an ombudsman?

Councillor McChord: In every such case that I have been involved in—and I am happy to say that there have been few in Stirling—the authority has had to review its procedures, sometimes regarding the mailing of communications, which can be a problem. We undertake such a review when individual complaints are received. The local

situation can be sorted out quickly.

John O'Hagan: I endorse those comments. Councils have got better at pursuing complaints. Every council now has a formal complaints system with a built-in review mechanism. The view of COSLA, and probably of the Society of Local Authority Chief Executives and General Managers, is that when a statutory jurisdiction has been created that encroaches on policy areas, that is the top of a slippery slope. It becomes difficult to stop the process in which the ombudsman's office reviews the merits of a decision that has been arrived at, in terms of whether a council can resource a facility and how it should allocate its resources. If the suggestion is that there should be a jurisdiction to consider whether a specific service—as long as it is non-statutory—ought to be provided by a council, we would be nervous about that approach.

Bristow Muldoon: I do not want local authorities to be required to implement policy changes as a result of such complaints. I am suggesting that some of the complaints that are referred to the ombudsman are a sign of citizens' frustration about the way in which their complaints are dealt with. If local government examined its complaints procedure and made it more accessible to citizens, that may reduce the frustration that drives people to approach the ombudsman.

Andy O'Neill: Bristow Muldoon is right. The Kerley report is about trying to involve people in the local government system. We are trying to do that, and COSLA is trying to implement some of the recommendations of the Kerley report, both internally and through the councils. If the way in which local government works is explained to people, the number of complaints will be reduced.

Councillor McChord: There is a big debate about electronic technology and one-stop shops for local government, the funding for which will soon be announced by the Scottish Executive. That is an important development.

A robust system exists—which MSPs and MPs will be familiar with—whereby local councillors hold surgeries during which they can be approached as the first point of contact for complaints against their authorities' officers, or whatever. Sometimes, if the grievance is agitated, it is brought to the attention of the leader of a council, MSPs or even MPs who have no role in Scottish matters. The whole system is roundly tested. When MSPs and MPs become involved, the chief executive of the council becomes aware of the situation as well. There is a robust system for complaints within local authorities, which someone can use before they approach the ombudsman. If that fails—if the complaint cannot be addressed by the chief executive of the council,

MSPs or MPs—there is a problem in the local authority, which should be taken beyond the council in question.

Mr McMahon: Section 3 of the submission says that schools administration, local government appointments and the tendering process should fall within the ombudsman's remit. Why should local government appointments and the administration of schools be included in that remit? I am also concerned by your assertion that the tendering process should not be extended because those who complain would have access to the courts. Is not that drawing a distinction between those who can and cannot complain to an ombudsman on the basis of whether they have the wherewithal? Would not that send us down the road of saying that if someone can go to a court, they should go to a court, but if they cannot, they should go to an ombudsman?

John O'Hagan: The exclusions in the legislation, which we mention in our submission, are the mechanisms whereby certain categories of complaint have traditionally been taken outwith the ombudsman's jurisdiction. Those exclusions have worked quite well. In the early 1970s, it was thought that extending the ombudsman's remit to the administration of schools would create difficulties regarding teaching quality and curriculum issues. It was felt that opening up those areas to the jurisdiction of the ombudsman would be too radical—that feeling probably still exists.

Matters of confidentiality arise in the case of staffing issues. When we considered the matter, we found it difficult to determine how to address the issue of disappointed applicants—whether internal or external—for local government posts. An internal applicant who disagreed with the decision would have recourse to some sort of grievance procedure within the authority—although realistically he may not want to pursue the complaint.

An external applicant might have readier access to the ombudsman, which would put that person on a different footing from an internal applicant. Difficulties will also arise over how the ombudsman adjudges whether the best applicant has been appointed, because that involves difficult matters of assessment and judgment. Because of the subject and the practicalities of handling matters, we think that there is merit in maintaining the current jurisdiction arrangements.

15:30

It was felt likely that a complainant who was concerned about commercial contracts, such as a disappointed tenderer, would have recourse elsewhere. Such issues involve commercial judgment. Our feeling is that, as local government

begins to move away from the strictures of compulsory competitive tendering, lowest cost and a written specification, towards partnership arrangements and dealings that may result in outsourcing and different service delivery mechanisms, there will be difficulty in extending the ombudsman's jurisdiction to new areas.

Mr McMahon: Do time limits on complaints also take us into a minefield? Would a complaint from a contractor automatically fall at a different time from a complaint from someone who approached their local housing department?

John O'Hagan: Such issues are involved. The current indication is that the time limit would be 12 months. We support that proposal.

Dr Jackson: The debate about the change in devolved management in schools—and about how far investigations can go without getting into the teaching practice of one teacher—is interesting. I am sure that we have not reached the end of that debate, but perhaps we will leave it for today.

I was intrigued by what the witnesses said about reserved matters. Will you give some relevant examples? Do you think that those examples are extensive? Could such issues be handled, even though they would involve difficulties?

Councillor McChord: The example that I gave involved somebody who was aggrieved about service in a benefits agency in Stirling. How would an ombudsman in Scotland take up such a complaint? Would it be an English affair? How would the problem be solved?

Mr Gibson: How well do you think the public understand the ombudsman system? I think that the public may have an exaggerated view of the possible outcome of a complaint to the ombudsman. When I was a councillor and dealt with such issues, I tried at an early stage to dampen down people's enthusiasm for the process. There is often concern that the time taken is long and that the outcome is not the desired one. Even if the outcome is along the lines that were desired, the ombudsman appears to be fairly toothless.

Councillor McChord: As I said, I have not had much experience of the ombudsman, apart from a couple of cases that were solved down the line. When we feel that a situation has gone beyond the control of the local authority, we try to give the public the name and address of the commissioner. I do that and I encourage people to approach the commissioner if they feel aggrieved. That part of the process helps most people, because someone—the honest broker from the outside, if you like—examines their case. People are often aggrieved because the local authority has clammed up on them—there is no doubt that people feel that way. To have their case heard is

as much of a solution as many people need at that point. I have not come across any cases of members of the public looking for a financial solution to quash problems. Has John O'Hagan encountered such cases?

John O'Hagan: The short answer is, "Yes." Some complainants look for financial recompense and that, no doubt, will remain the case. The ombudsman's annual report last year re-emphasised the point that most people want somebody to hear their side of the case, as Councillor McChord said. Mr Gibson's point is well made. People do not often draw the fine distinctions between the mechanism by which a decision in local government is arrived at—and whether that is flawed—and its outcome. A complainant sees a wrong decision. At least initially, they will not understand where the ombudsman's jurisdiction lies.

Councils' complaints systems can help to create that understanding. Most authorities have complaints systems that will undertake an internal review and offer recourse to the ombudsman, by giving the complainant literature, the name and address of the ombudsman's office and other information. That will allow the complainant to pursue their complaint. The literature makes it clear that the ombudsman's jurisdiction does not always cover the merits of the outcome, but the process by which it was arrived at.

The Convener: As there are no more questions, I thank the witnesses for their informative evidence. Some of their comments will be included in our report.

Local Authorities (Goods and Service) (Public Bodies) (No 2) (Scotland) Order 2000 (SSI 2000/403)

The Convener: We have a negative instrument to consider. It was sent to us some time ago, and no comments have been received on it so far. The order has been considered by the Subordinate Legislation Committee, whose report is included in our papers. That committee did not think that we needed to draw the order to Parliament's attention, and no motions have been lodged to annul it, so no other action can be taken on the instrument. Do members agree that they do not wish to make any recommendation on the order?

Members *indicated agreement.*

Petition

The Convener: We move now to agenda item 4. Members will recall that we considered the petition on allotments from Judy Wilkinson last week. We decided to take that further, so we have proposals for an inquiry. The terms of reference are on the second page of the committee paper. They are:

- To examine the current legislative framework governing allotments and its effectiveness.

- To investigate current local authority practice in providing and maintaining allotments.

- To examine the extent of interest in allotment cultivation.

- To determine the need for reviewing legislative, or other arrangements, for the protection, provision and promotion of allotments."

I propose that they should be the terms of reference. As members have no comments on them, we will move on.

There are suggestions that we take evidence on the legislative framework from Scottish Executive officials, and that we hear from appropriate officials from some of the larger city councils that operate allotments. We could also hear from the Convention of Scottish Local Authorities, the Local Government Association and the Food Trust of Scotland, which conducted a survey in 1999 on the state of Scotland's allotments and future options and prospects. It might be interesting to hear what that group has to say. We could also invite representatives from a sample of allotment federations, such as the Federation of Edinburgh and District Allotments and Gardens Association and the Scottish Allotments and Gardens Society. Does anyone wish to remove names from that list or add to it?

Bristow Muldoon: It would be sensible to invite users' organisations and the petitioner.

The Convener: Yes, of course. Eugene Windsor suggested that members might go to look at allotments in the summer, but I do not know whether they would like to. We can think about that. We are agreed about the terms of reference and about the people we will invite to the committee. I think that we shall use just one meeting for that—it is the first time that we have considered a petition and it will be difficult to add anything else on to that agenda.

Northern Ireland Assembly (Visit)

The Convener: Kenny Gibson, Keith Harding and I went to Northern Ireland with Morag Brown and Irene Fleming from the support staff. There is a full report on our visit, so I shall talk only briefly about it. I found the visit interesting and informative and, as members would expect from the Irish, we were made extremely welcome. However, at times Kenny and I felt that we were experiencing what it is like to be a witness at a committee. In some ways, the tables were turned, because local government in Northern Ireland is not quite what it is here, so people were interested in hearing about our set-up. It made me aware of how good our system of local government is at providing services.

We visited Stormont and I am sure I speak for Kenny and Keith when I say that what came over to us was the fragility of Stormont. Things are still proceeding on a day-to-day basis, although there is an absolute commitment to making the peace process work and to making the governance of Northern Ireland work. It seemed that, at the end of every working day, everybody was relieved to have got through another day without things collapsing. In some ways, that was worrying, but we could feel that in the atmosphere.

Belfast City Council feels strong frustration that it cannot get its hands on the sort of services that local government delivers here in Scotland. We gave its representatives some suggestions about how they might manage to do that.

We also visited the Association of Local Authorities of Northern Ireland, which is the equivalent of the Convention of Scottish Local Authorities. There are 26 councils in Northern Ireland, 15 of which are in ALANI. I felt quite sorry for ALANI in some ways—it seems not to have the power it might have, because not all 26 councils are committed to it. Even councils that are members of ALANI seemed to feel that it was better to contact the minister directly. The minister has quite a large remit, part of which is local government. It was not deemed necessary to have a minister for local government, as we have.

All in all, it was a fascinating visit. I certainly enjoyed it and got a lot out of it. Would you like to add anything, Kenny?

Mr Gibson: I would like to say a couple of things, but I will not take up too much time. I found it an absolutely fascinating and, indeed, exhausting visit. We went there to learn, but we found when we got there that they all wanted to learn from us. They seemed almost sponge-like in their need for information and were very enthusiastic about finding out what is happening in

Scotland.

During the past 25 to 30 years, there have been great difficulties in local government in Northern Ireland, which the people there are desperate to resolve. Because of the security situation, local government has been greatly neglected. However, it was emphasised on a number of occasions that local government was one of the few democratic institutions to survive throughout that era, even though local authorities were responsible only for such things as refuse collection, public conveniences, cemeteries and crematoriums.

One of the most interesting meetings we attended was a stratagem meeting, where we got information about how things work on the ground from a non-party political point of view. We can learn from the way in which Executive programme funds are dealt with in Northern Ireland. For example, the new targeting social needs programmes—TSNs—have been set up to target need at local level. Their focus appears to be much more local than is the case in Scotland. That is something that we could take on board.

ALANI seemed almost to be on a life-support machine. Who knows? After what has happened with Glasgow City Council's response to the local government settlement, perhaps COSLA is heading in the same direction.

The Convener: That is nothing to do with our report on Northern Ireland, Kenny.

15:45

Mr Gibson: Moving swiftly on, I found it interesting that, as Trish Godman said, there is a lack of a relationship between ALANI and the minister. I think that that is due to the distraction that the security situation has imposed on most people. However, everybody seems to agree on one thing at least: there are too many councils in Northern Ireland and that situation must be addressed swiftly.

We talked about proportional representation. The only critique of PR appeared to be from Alderman Brown of ALANI, who thought that PR might lead to weak government. However, given the fact that councils have few powers, I do not know how relevant that is. He emphasised that there would be no impact on the relationship between councillors and constituents. In fact, he said that the ward-member link was as solid under the single transferable vote system as it was under the first-past-the-post system.

We met people from all political parties, from the Democratic Unionist party to Sinn Féin and all points in between. They were all fairly reluctant to accept PR, but they have accepted it and believe that it is a positive step. It is no longer a political

issue—all parties appear to support it unanimously. In fact, they have gone beyond PR for their electoral system. They also use the d'Hondt system in Belfast City Council to elect committee chairs, for example. There are also plans to introduce that system to outside bodies.

It was a highly productive meeting and I recommend that members read the report of our visit thoroughly, if they have not already done so. We should thank Morag Brown and Irene Fleming, who did a lot of work while we were in Ireland and helped to produce a first-class report on the visit.

The Convener: There are currently 60 councillors in Stormont. We found it fascinating that they did not see that the role of local government needed to be enhanced. That proved to us that once something gets into the centre it can never come back out again. There was no commitment to moving service delivery to local government control.

Mr Gibson: Of the 51 councillors in Belfast, 12 are assembly members and three are members of the Westminster Parliament. However, they appear to have gone completely native as far as the Northern Ireland Assembly and Westminster are concerned. They seem to be less keen on relating to local government than those in the assembly who have never been councillors. That is rather bizarre.

The Convener: For me, one of the memorable moments was when we went to Stormont and sat round the cabinet table. It is an amazing building and one gets an incredible sense of history when one stands outside it. The people who we met were quite keen to come to Scotland, so I think that we should consider inviting them over here next year.

Kenny is right to thank Morag Brown and Irene Fleming—I also record my thanks to them for producing the report and for being very helpful during our extremely busy visit. I was exhausted by the end of it.

Mr Gibson: All the politicians pretend to hate each other but, according to the officials we met, they all get on pretty well, although they have to take certain public stances. Apparently, we were the first MSPs to visit Stormont.

The Convener: That is right.

Dr Jackson: I cannot quite follow all the names, but I think that I am correct in saying that most of the ministers are male. Am I correct? Were there any female representatives?

The Convener: Yes. The vice-convener of the Environment Committee, which covers local government, is a woman. I cannot remember her name.

Mr Gibson: She is called Carmel Hanna.

The Convener: Bairbre de Brún is the Minister of Health, Social Services and Public Safety.

Dr Jackson: My only other comment is about waste management. I am going off on my sustainable development tack again. I see that Alderman Brown noted concern about recycling. I know that you had a busy schedule, but did you pick up whether the Environment Committee was pursuing that?

The Convener: Yes. It is very much on the agenda. In fact, sustainable development is probably much more important to that committee than local government is. There are massive problems with sustainable development, so the committee is very interested in that issue.

Mr Gibson: It might be that the waste management situation will encourage some cross-border co-operation. There is also concern about the Sellafield plant, which was mentioned while we were there.

The Convener: We no longer need the official reporters. The meeting will continue in public, but the next part does not need to be reported.

15:50

Meeting continued in public.

15:58

Meeting continued in private until 16:10.

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