

THE WORK OF THE COMMISSIONER FOR  
LOCAL ADMINISTRATION IN SCOTLAND  
1975 - 1983

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OCCASIONAL PAPER #25

February, 1984

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**INTERNATIONAL OMBUDSMAN INSTITUTE**

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Prior to this he held the post of Head of Management and Business Studies at a Scottish College of Technology, and also spent some years as Course Tutor in Public Administration for the Open University in Scotland.

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## CHAPTER 1

### **INTRODUCTION**

The appointment of a Commissioner for Local Administration in Scotland is authorized by the Local Government (Scotland) Act 1975. The Commissioner's function is to investigate complaints from members of the public of injustice alleged to have arisen from maladministration on the part of any authority to which the Act applies and to express his views on whether or not a complaint is justified.

The first Commissioner, Robert Moore CBE, came to the post following a distinguished career in Local Government and the Health Service. His appointment as Ombudsman was on a part-time basis and he officially took up office on January 1st 1976. However, as his appointment had been announced in the press the previous August, members of the public wrote to him with their complaints almost immediately after this announcement. He found it necessary, therefore, to appoint an Interim Secretary, a former senior civil servant, who, together with a small clerical staff on loan from the Scottish Office, dealt with matters until interviews were held and the Ombudsman's permanent staff took up their posts on or shortly after January 1st 1976.

The Act provides for the appointment of a Secretary to the Commissioner, who is the senior full-time member of the Ombudsman's staff and is his Chief Assistant. The Secretary appointment came from an academic background having formerly held the post of Head of Management and Business Studies at a

College of Technology in Scotland.

A Senior Investigating Officer also took up office, his previous post being that of investigator on the Health Service Commissioner's staff at his Edinburgh Office. An Administrative Officer followed and together with two typists made up the full-time staff of the Office.

One of the difficulties which faced the Ombudsman in these early days was to assess the number of complaints he was likely to receive and the number of investigations he would ultimately carry out. It is understandable therefore that he chose to appoint only a small full-time staff until it was possible to consider the situation, but in the event of a sudden increase in the volume of complaints he also appointed a small panel of part-time investigators on a fee-paying basis whom he could call upon to assist him. These part-time investigators were recruited from the ranks of senior civil servants and senior local government staff who had decided to retire on or about the time of local government reorganization in Scotland in May 1975.

The main problem which faced Robert Moore when he formally took office at the beginning of 1976 was to make himself known to the public of Scotland. The title Commissioner for Local Administration is not helpful, in fact it could scarcely have been better designed to conceal his existence as it gives no indication to the public of the nature of his appointment. Something like Local Government

Commissioner or Commissioner for Complaints in Local Government would have been more useful.

Fortunately the press, television and radio took a great interest in the appointment, proclaiming that an "Ombudsman" had arrived and from the outset scarcely ever referring to him in any other way. It is extraordinary how this Scandanavian word has caught the public imagination in this country as denoting, however, vaguely, someone whose job it is to look into complaints against public authorities. To make explanation of his work more clear to the public a leaflet, "Your Local Authority Ombudsman in Scotland", was prepared by his office early in 1976 and circulated to all local authority offices, libraries, post offices, citizens advice bureau, colleges and universities. This leaflet not only sets out in detail the jurisdiction of the Ombudsman and the procedure to be followed when making a complaint, but also incorporates a detachable complaints form to be used by the complainant. Shortly afterwards a poster was also designed which received similar publicity to the leaflet.

These together with the publicity received when his reports on investigation began to be issued, led to an increase in the number of complaints received by the Ombudsman as shown in Appendix 1.

This increase in the volume of complaints made it necessary to appoint more full-time staff; two full-time investigators and a further typist taking office in 1976/77.

As complaints continued to increase so too did the time taken to complete an investigation and issue a report and, by 1978, it was taking approximately ten months from the receipt of a complaint to the final report being issued. It was found that in each year the decisions to investigate new complaints were exceeding the reports issued and at any one time a year's work was in hand. The bottleneck was found to occur in the screening process, viz the examination of the complaint to decide whether or not it is investigable. It was therefore decided to appoint a number of Junior Investigators/Screeners who would carry out this work and also to take on extra part-time investigators in an attempt to cut down the time taken to investigate and report.

In May 1978 Robert Moore, having established the office of Ombudsman and made it known to the public, decided to resign his post with effect from August 31st. It was necessary therefore for the Secretary of State to consider the appointment of a successor and, as it is a Crown Appointment, recommend a name to the Monarch.

The method of making such an appointment is for the Secretary of State to seek recommendations from a number of sources. Consultation took place with senior civil servants, particularly those in the Scottish Development Department whose Local Government Division liaise with the office of the Ombudsman. The Convention of Scottish Local Authorities (COSLA) was consulted and also the retiring Ombudsman. The

person being sought was someone of status, who had recent knowledge of local government administration and was willing to take the post on a part-time basis. The new Ombudsman was John L. Russell, a solicitor who had spent all his life in local government and, until his retirement a year previously, had held the post of Chief Executive of Grampian Regional Council. He took up office in October 1978 and served until July 1982 when the present Ombudsman, Eric Gillett a former senior civil servant took office.

Since the office opened in 1975 the number of complaints has continued to increase and a re-structuring of staff has allowed more effective procedures to be introduced. As a consequence it has been found possible to reduce the number of part-time investigators considerably and it is hoped that there will also be a considerable reduction in the time taken to carry out investigations. The Annual Report for the year ended 31 March 1981 indicates the beginning of such a trend.

#### **THE DESIGNATED BODY**

Section 22 of the Act states that the Secretary of State shall designate a body to be called "the designated body for Scotland". The body chosen to carry out these duties is the Commission for Local Authority Accounts in Scotland which was formed under the Local Government (Scotland) Act 1973 and is independent of both central and local government. The

members of the Commission are appointed by the Secretary of State, after consultation with the local authority associations and other relevant interests. The major part of the Commission's work is to secure the audit of the accounts of Scottish local authorities and hold hearings on matters reported to them by the Controller of Audit, their Chief Executive.

It is necessary to look at Schedule 4 to discern the relationship that exists between the Accounts Commission and the Ombudsman. Its main function is to act as the Accountants for the Ombudsman, responsible for the payment of his staffs' salaries, pension allowances and the provision of any such benefits as the Secretary of State may determine. The money for the service being provided by Local Authorities. It also may, on the advice of the Secretary of State pay compensation to a retiring Ombudsman if there are considered to be special circumstances which warrant such a payment. The body is also required, under the Schedule, to provide offices and other accommodation for the Ombudsman and his staff and also defray any reasonable expenses which they incur.

By and large then the designated body acts as a provider of finance and services for the Ombudsman and its only element of control, set out in Section 4(i) of the Schedule, is that which requires its approval to the appointment and level of salaries paid to the staff of the Ombudsman. In this respect it can be contrasted with the "Representative Body"

created by the Local Government Act 1974 to function with the English Local Ombudsman. The Representative Body play a much more positive role in their association with the English Commission its main duty being to examine and comment on the Commission's Annual Report. Its comments are published each year in the Commission's Annual Report and whilst it approves and supports some of the proposals made by the Commission the Representative Body has not hesitated to criticise any proposal which it considers either too radical or outside the remit of the English Ombudsman. The Representative Body is made up of members representing councillors, county councils, District Councils, Metropolitan Authorities, the Greater London Council and the National Water Council and therefore possesses the expertise and experience to act as a sounding post for the English Commissions. The relationship between the Scottish Ombudsman and the designated body is a cordial one. They meet, on average, once a year when the Ombudsman gives an outline of his current work and some indication of what is likely to appear in his next annual report. One or two questions may be asked by the Commission but no in-depth discussion takes place on the Ombudsman's work. The reasons for this lack of discussion is not in my view disinterest by the Commission but rather the limits of their association with the Ombudsman, already mentioned, and also the need to move on to its major areas of work.

It was always a matter of concern to both the former

Ombudsmen that there was no local authority viewpoint coming forward on their work, Robert Moore therefore established a link with the Convention of Scottish Local Authorities (COSLA) meeting them each year to discuss his Annual Report. This practice was continued by John Russell who, in addition, instituted a yearly meeting with the Society of Local Authority Chief Executives (SOLACE) where detailed discussion takes place on procedures.

## CHAPTER 2

### **THE REFERRAL OF COMPLAINTS**

Section 24(2) of the Local Government (Scotland) Act 1975 states:-

"A complaint shall not be entertained under this part of this Act unless:-

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

Until a complainant has carried out this procedure the Ombudsman is unable to give consideration to an investigation of the complaint. With three other exceptions complaints are made in all other jurisdictions directly to the Ombudsman. In mainland Britain complaints to the Parliamentary Commissioner for Administration must come through a member of the House of Commons, while in Northern Ireland complaints to the Parliamentary Commissioner for Administration come through Members of the Assembly, and in France complaints to the Mediateur come through members of the National Assembly.

A number of reasons have been put forward for requiring the referral of complaints by councillors. One is that the requirement of Section 24(2) of the Act is based on the Act which establish the Parliamentary Commissioner for Administration and it is therefore logical that the referral

procedure required for complaints against government departments should be followed in the case of complaints against local authorities. If this is so then the argument is not really valid, as the comparison is not a true one. Only about 100 Members of Parliament out of the 630 in the House of Commons play any part in government decisions and the remainder have therefore little or no involvement in the matter which they refer to the Parliamentary Ombudsman. On the other hand every councillor, District or Regional, sits in full council as part of the decision-making body and is therefore closely involved in the decisions made by the authority.

A second argument is that the requirements allow the councillor to fulfil his role as the representative of his electorate and also to act as a filter by distinguishing and dealing with these matters which are outside the Ombudsman's jurisdiction and also by remedying some of the complaints put to him without the need to refer them to the Ombudsman for investigation. In his report for the year ended 31 March 1978 Robert Moore states that sometimes the procedure works very well. There are the cases in which the councillor who is asked to refer a complaint to the Ombudsman makes some enquiries on his own account in the first instance in order to see whether the matter can be resolved locally. In a number of cases where this initiative has been taken it has met with success and as a result the complainant has agreed that there is no need for the case to be put to the Ombudsman. In other cases the problems

have not been solved but at least the councillor has usually been able to pass on some useful information when referring the complaint to the Ombudsman.

However in many cases referral through a councillor has only caused delay and resulting frustration for the complainant. This in some instances is due to the reluctance of the councillor to refer the complaint. The reluctance of councillors to refer complaints to the Ombudsman may be for the following reasons:-

Firstly, the councillor may consider that the complaint is of a trivial nature and no time should be given to it.

Secondly, the councillor having looked into the complaint and taken it up with the authority and consider that all that can be done for the complainant has been done.

Finally, the complaint may be one which concerns the councillor in his elected capacity; for example, in the case of a complaint alleging maladministration by the Housing Committee in the allocation of houses it may be that the councillor approached by the complainant with a request to refer is the Chairman of the Housing Committee. In referring such a complaint the councillor most likely is aware that he is asking the Ombudsman to inquire into his own

actions, although it is open to councillors when referring complaints to the Ombudsman to indicate whether or not they support them and to give reasons for that view.

#### **DIRECT COMPLAINTS**

Despite the publicity given to the Ombudsman's work by leaflets, posters, lectures, and talks on both radio and television, where the referral procedure is explained in some detail, the Ombudsman continues to receive a high percentage of what are known as direct complaints (i.e. not referred by a councillor). Where such complaints are received, they are screened to determine whether or not they are matters which concern the Ombudsman. Quite obviously if the matter complained of is clearly outside the Ombudsman's jurisdiction there is little point in advising the complainant to have it referred by a councillor.

If there appears to be some substance in the complaint then the complainant is requested to seek referral of it through his councillor and to assist him in this respect his letter of complaint together with any documents sent in support of the complaint, are returned to him after photocopies have been taken for retention in a file in the Ombudsman's office. Advice is also given to the complainant on the type of councillor needed for the referral, viz, a district councillor for a complaint against district authorities and a regional

councillor for complaints concerning regional councils.

A month is allowed to elapse and should no further communication be received from the complainant a follow-up letter is usually sent to him asking if his complaint has been resolved or whether he wishes to proceed with it.

On those occasions where the complainant is unable to find a councillor willing to refer his complaint the Ombudsman has the authority to accept it direct. However before taking this step it is usual practice for the Ombudsman firstly to require proof from the complainant that a councillor has been approached but has refused to refer the complaint to him. He may even follow this up by writing to the councillor to verify that a refusal to refer has been indicated.

When a complainant writes to a councillor with a request that he refers a complaint to the Ombudsman it is usually his local councillor that he contacts. This is understandable because in most cases the complaint involves a local or ward matter and as the elected representative, the local councillor with his intimate knowledge of the area and the people who live in it is in the best position both to understand and deal with it. However cases have been observed where complainants have deliberately avoided their local councillor when seeking a referral to the Ombudsman and a number of reasons have been suggested for this.

The first case is where the complaint concerns some action of the authority which has involved the local

councillor; for instance as mentioned earlier, the complaint may concern housing and the local councillor serves on the housing committee. In such a situation the complainant may feel, rightly or wrongly, that the local councillor may either delay any referral or refuse to refer at all.

In another case the complainant's political views may be diametrically opposed to these of the local councillor and for that reason he may feel that the councillor would be reluctant to refer a complaint. The other side of the coin is that the complainant may deliberately seek out an opposition councillor to refer his complaint to the Ombudsman on the grounds that the opposition will seize on any chance to discredit the ruling party.

## CHAPTER 3

### THE SCREENING PROCESS

When a properly referred complaint has been received by the Ombudsman, or when he has decided to exercise the discretion given to him by Section 24(3) of the Local Government (Scotland) Act 1975 which allows him to accept complaints direct from a member of the public, the next step is for the complaint to be screened.

Screening entails a careful examination of the complaint together with any accompanying documents to enable the Ombudsman to determine whether or not he can conduct an investigation into it.

The rules which govern this procedure are found in the Act, particularly Section 24 which lays down certain conditions which have to be met and also sets out a number of restrictions on the power of the Ombudsman to investigate.

#### (i) Injustice and Maladministration

These are the two magic words in Section 24(1) which states:-

"... where a written complaint is made by or on behalf of a member of the public who claims to have sustained injustice in consequence of maladministration in connection with any action taken by or on behalf of the authority ... the Commissioner may investigate that complaint."

In fact hardly anyone who complains to the Ombudsman actually uses terms like "injustice" and "maladministration" - they are not part of every day speech - but nevertheless they

must constitute the basic elements of the complaint. The words are not defined in the Act and it is the responsibility of the Ombudsman to judge whether the complainant is in his complaint:-

- (a) adequately indicating that he has suffered injustice, and
- (b) clearly specifying the maladministration which caused this injustice.

Injustice may range from a quantifiable financial loss to hurt feelings. Maladministration may arise from annoyance or unfair discrimination, but more commonly from more ordinary human failings like incompetence, muddle and delay.

The injustice alleged must be a particular injustice related to the complainer; the grievance must have been suffered by the person or the group of persons who have complained. The complainant need not be an individual; it may be a group (perhaps of tenants) or a limited company. But Section 24(7) of the Act prevents the Ombudsman from dealing with matters which affect all or most of the inhabitants of a local authority area. An individual cannot complain to him out of a sense of grievance at a decision of the local authority which does not affect him to any greater extent than it affects his fellow inhabitants. The classic example here is; the question of rates. But the restrictions would apply equally where one ratepayer or a number of ratepayers felt aggrieved by what they thought was extravagance on the part of the

authority.

Maladministration refers to the way in which a decision is taken, not to the merits of the decision itself. The Ombudsman is not permitted to question the merits of a decision which has been taken without maladministration. Local authorities have their statutory powers and duties and there could be no question of putting a single individual in a position to overturn any decision with which he happened to disagree. What the Ombudsman is basically concerned with are the administrative processes surrounding a decision or the failure to take a decision - whether all the relevant facts and considerations have been taken into account before the decision was made; whether something that wasn't done should have been done; whether the time taken to do something adds up to unjustifiable delay; whether the local authority has acted fairly or responsibly. Finally it should be made quite clear that nothing the Ombudsman can do can alter any decision itself or any action following on a decision. Even after screening if he decides to investigate, the local authority can still proceed to implement their decision: they are not bound to suspend action pending the outcome of an investigation.

(ii) The Twelve Month Rule

Section 24(4) of the Act lays down that a complaint shall not be entertained unless it is made to a member of the authority within twelve months from the day on which the person

aggrieved first had notice of the matter alleged in the complaint.

The reasoning behind this clause is that this period is considered to be long enough to give a member of the public a reasonable opportunity to decide whether he ought to make a complaint, and at the same time to protect authorities from being subject to investigation of matters which occurred some time in the past.

However it may happen that the complainant is blameless in failing to bring the matter to the attention of a member within twelve months. He could be negotiating with the authority for that period of time and so long as he considers that a remedy may be found through negotiations, may not consider it necessary to call upon the services of the Ombudsman. Indeed it is most unlikely that the Ombudsman would consider intervening in the matter whilst negotiations were still being undertaken. Furthermore the complainant may consider that to attempt to bring in the Ombudsman at that stage could prejudice his dealings with the authority.

Where the Ombudsman feels that special circumstances exist for the failure of the complainant to bring the matter to the attention of a member within the prescribed time this section of the Act allows him to waive the twelve month rule and conduct an investigation into the complaint.

(iii) Investigation by the Authority

Before the Ombudsman proceeds to investigate a complaint he must, under Section 24(5) of the Act, satisfy himself that the complaint has been brought by or on behalf of the complainant to the notice of the authority concerned and that the authority have been afforded a reasonable opportunity to carry out their own investigation of the complaint and reply to the complainant. Whilst many complaints come to the Ombudsman without the referral procedure being observed, there are very few indeed which are brought to his attention properly referred, without having been placed before the authority first to allow that body to carry out its own investigation. Nevertheless a small number do slip through the net, due mainly to one or more of the following reasons:-

Firstly, a councillor may consider himself to be the authority in terms of this section of the Act and feel that any enquiries he makes in the offices of the authority, possibly without disclosing to the officials the reasons for such enquiries, are sufficient to qualify as a preliminary investigation.

Secondly, the councillor when being approached to refer may be assured by the complainant that the complaint has been brought to the attention of the authority and an investigation has been carried out without

satisfying the complainant. What in fact may have happened is that the complainant may have made an enquiry, say on housing at the counter of the local authority's housing department, and on receiving an unsatisfactory reply, feel that sufficient time has been spent on the matter to justify the aid of the councillor.

Thirdly, there is the case of the councillor who simply acts, as a post box, accepting the complaint without enquiring as to whether or not it has been put to the authority, sometimes even without considering it himself, before sending it to the Ombudsman. I once again emphasize that such situations are rare.

A more common practice is for the complainant to put to the Ombudsman for investigation more complaints than those that have been put to the authority for their consideration. This usually arises because new matters affect the complainant after, or sometimes as a result of, the council's investigation. Where such a situation arises the authority, after receiving the Summary of Complaint, will write back to the Ombudsman pointing out that it has not had the opportunity to investigate internally certain aspects of the Summary of Complaint. The usual procedure then is for the Ombudsman to allow the authority extra time to look into, and answer, these new issues before proceeding with the investigation.

The methods adopted by authorities in Scotland for investigating complaints made against them vary from council to council. Some authorities have set up complaints departments where members of the public can go, without any prior appointment, and put their complaints to members of the staff specially appointed to deal with them. There is no doubt that many complaints can be satisfactorily resolved by this approach but these are usually limited to complaints of a minor nature. Whilst major complaints may not often be resolved by a visit to the complaints departments, it does allow such complaints to be made and passed on to senior officers of the department involved. One criticism of this set up, made by a former member of a Regional Council's complaints department, was that the staff did not have either the seniority or authority to make realistic approaches about complaints to senior officers of the departments concerned.

Some other authorities have established a formal complaints procedure which requires all complaints, no matter how trivial, to be brought to the attention of the Chief Executive. More often than not however most complaints are made by the complainant to an officer of the department involved and the amount of attention it receives is determined by the procedures laid down by the Head of that department. In a number of cases it has been abundantly clear that the first intimation to the Chief Executive of a complaint against this authority has been the receipt of the Summary of Complaint from

the Ombudsman.

Finally, it may arise that, as a result of the internal investigations carried out by the authority some fault is discovered in their handling of the matter which is rectified by that authority. When this occurs the complainant usually does not proceed with his complaint. Despite receiving a remedy cases have occurred where the complainant has insisted on putting his complaint to the Ombudsman, either with or without the support of a councillor. Almost without exception the Ombudsman has refused to entertain the complaint for investigation.

#### **OTHER REMEDIAL MEASURES**

Another aspect of the screener's duties is to examine the complaint to discover if there are other bodies which can be approached to remedy the complaint against an authority. Section 24(6) of the Act sets out the guidelines by stating:-

"The Commissioner shall not conduct an investigation under this part of the Act in respect of any of the following matters, that is to say -

- (a) any action in respect of which the person aggrieved has or had a right of appeal reference or review to or before a tribunal constituted by or under any enactment;
- (b) any action in respect of which the person aggrieved has or had a right of appeal to a Minister of the Crown; or
- (c) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law.

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

The introduction into the Act of clauses (a), (b) and (c) is intended to limit, so far as possible, any overlap between the jurisdiction of the Ombudsman and that of other persons and bodies to whom aggrieved citizens may have recourse. It is not possible however to draw an absolutely hard-and-fast dividing line between the Ombudsman and other bodies of an appellate character, and the intention of the Act appears to suggest that an area of double jurisdiction is to be preferred to a state of affairs in which some aggrieved person may have no remedy at all.

(a) Appeals to Tribunals

This paragraph corresponds to Section 5(2)(c) of the Parliamentary Commissioner Act 1967, and the definition of "tribunal" given in Section 32 of the Local Government (Scotland) Act 1975 makes it clear that a one-man tribunal is included, but no closer definition of the term is attempted. Experience has shown that one of the main areas of complaint which come to the Ombudsman's attention relate to an authority's decision to acquire land belonging to the complainant for some purpose such as road widening. In such a case the Ombudsman has decided that the complainant's remedy is

to put his case before the Lands Tribunal for Scotland for a decision.

(b) Appeals to Ministers of the Crown

There are a number of cases where statutes give what is effectively a right of appeal but use other words to do so. However, there does not seem to be a satisfactory general formula to encompass all these cases; thus while it would be possible to exclude from jurisdiction "any action which is ineffective unless confirmed or otherwise approved by a Minister of the Crown" this would go too wide excluding among other things compulsory purchase cases - which are explicitly brought within the Ombudsman's remit by Schedule 5, paragraph 3(3)(a). It would also leave large areas of local authority activity free from investigation by the Ombudsman because of the existence of a Ministerial power of approval at some stage in the proceedings. Paragraph (b) therefore excludes only rights of appeal strictly so described - although this may mean that in certain cases a complainant will have a choice of remedies.

Complaints rejected by the Ombudsman under this heading are usually made by complainants who find that a local authority has refused to grant to them planning permission for some development which they wish to carry out. However Section 33 of the Town and Country Planning (Scotland) Act 1972 lays down that when planning permission is refused by the local

planning authority, the applicant may appeal within 28 days to the Secretary of State for Scotland.

(c) Legal remedies

The principle behind this section is that, if there is a clear-out legal remedy, that avenue should be used in preference to a complaint to the Ombudsman. Under this heading the most common area for rejection by the Ombudsman is that where a complainant is clearly seeking compensation for some alleged maladministration by an authority. It is considered that such a matter is best settled by the courts or possibly arbitration, unless of course it can be settled by negotiation between the parties.

**THE OMBUDSMAN'S DECISION ON REASONABLENESS**

As has been mentioned the whole of sub-section 6 is subject to the proviso that the Ombudsman may conduct an investigation despite the existence of an alternative remedy if he is satisfied that in the circumstances of the particular case it is not reasonable to expect the complainant to have sought that remedy. (A discretion also enjoyed by the Parliamentary Commissioner.) The principle is that in the ordinary way the local complaints machinery should not be regarded as superceding other institutions providing protection for the citizen; but in certain cases there may be exceptional circumstances to justify taking a complaint before him.

Experience has shown that the occasions when the Ombudsman has exercised his discretion are rare. Up to the time of writing no case exists under (a) or (b) when the Ombudsman has decided to investigate matters which could be put before either a tribunal or a Minister of the Crown. He has however in a handful of cases exercised this discretion where the complainant has a remedy in a court of law but the Ombudsman feels it is unreasonable to expect a complainant to take this step. The difficulty, of course is in deciding what constitutes unreasonableness. It may be argued that if the matter is of a trivial nature then the complainant should not be expected to trouble the courts. By the same argument should the Ombudsman concern himself with trivia? He has been known to refuse to investigate cases of a trivial nature. Another point of view is that, if a court action would clearly be costly to the complainant then discretion should be exercised, whilst a further argument is that the Ombudsman should intervene if it appears to him that the complainant has little chance of succeeding in a court action. I am not convinced about the ethics of such arguments and my own view is that the discretion is best exercised when it is clear to the Ombudsman that the complainant would be at a serious disadvantage in resorting to a legal remedy. I am thinking here of the complainant who is old or of poor education and has little or no knowledge of legal matters, so that the thought of appearing in courts may well fill him with apprehension. Such a

complainant would be more likely to abandon his complaint than take such steps.

#### **AREA OUTWITH JURISDICTION**

Section 24(8) of the Act states clearly that there are certain actions by local authorities, and areas of local authority work which cannot be investigated by the Ombudsman. These are to be found in Schedule 5 of the Act and are:-

- (1) the commencement or conduct of civil or criminal proceedings before any court of law. This sub-section may be regarded as the logical continuation of Section 24(6)(c) which prevents the Ombudsman from examining matters when the complainant has a legal remedy. It follows that matters already in court must be outside his jurisdiction also. The main reason for this is that the courts themselves have ample power to ensure correct behaviour in relation to their own proceedings. However it is interesting to note that administrative tribunals are not similarly excluded. Accordingly, if it was alleged that a local authority had been guilty of maladministration connected with proceedings before such a tribunal, the

Ombudsman might look into it, though he would, if course, be precluded from considering the substantive issue which went before the tribunal for decision.

- (2) Action taken by an authority in connection with the investigation on prevention of crime.

The Ombudsman is empowered under Section 23(2)(b) to look into the actions of any joint police committee constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967. This means he can investigate administrative actions by police authorities, but he is precluded from matters concerning the investigation or prevention of crime, as complaints against the police are subject to investigation separately.

The usual type of complaint made to the Ombudsman against the police is of their failure to control adequately certain areas of crime. Perhaps the most common of these relates to vandalism on local authority housing estates which causes distress and inconvenience to the tenant involved. In all cases the complainant is advised of the inability to accept complaints of this nature but attention is also drawn to the complaints procedure available to the citizen, i.e., a complaint being forwarded to the Chief Constable of the area concerned. This is rarely seen as a reasonable remedy by the complainant who feels, in many cases, that it is unlikely that

an impartial investigation can be carried out by the senior member of a body which is the subject of the complaint, and in some cases complainants have pointed out that the complaint lies against the Chief Constable. Whilst it is possible, in the case of an unsatisfactory reply being received from the Chief Constable, to appeal to the Secretary of State, many complainants are unwilling to take this further step. It would seem, therefore, that some independent body is required to consider and investigate complaints concerning the investigation and prevention of crime. Whether this is an area suitable for the local government Ombudsman to involve himself is questionable. The English Ombudsmen, who carry a number of former senior police officers on their staff, may feel that they possess the necessary expertise to carry out investigations of this nature. In Scotland there is no one on the full-time staff with experience of police procedures concerning the investigation or prevention of crime, but of course it should be remembered that under Section 27(6) of the Act the Ombudsman may obtain advice from any person who in his opinion is qualified to give it and ask the designated body to pay any fees or allowances to that person which the Ombudsman considers appropriate. It follows therefore that the Ombudsman could employ, in an advisory capacity, experienced former police officers, should he be permitted to investigate such complaints.

## CHAPTER FOUR

### **THE INVESTIGATION**

This begins with the issue to both the authority and the complainant of a Summary of Complaint, which is in effect a precis of the complaints made by the complainant against that authority. The authority is allowed up to 21 days to provide its comments on the Summary, and it is also open to the complainant to draw the Ombudsman's attention to any inaccuracy in, or omission from, the Summary.

Once comments are received an investigating officer is appointed to handle the case and he makes arrangements to carry out interviews, visit locations, and inspect documents concerning the complaint. On completion of this work he then prepares a report for consideration by the senior officer directing the investigation. The report is then reviewed and submitted to the Ombudsman together with some indication by the investigator as to whether he considers there has been maladministration and also injustice to the complainant.

When the Ombudsman is satisfied with the content and style of the report a draft, without conclusions, is sent to the Chief Executive of the authority with a request that he consider it and then write to the Ombudsman commenting on its factual accuracy and also making any other observations on its content for the Ombudsman's consideration. A copy of the draft is also sent to the complainant with a similar request. A time limit of three weeks is imposed. When comments have been received from both the Chief Executive and the complainant

these are considered, and if relevant and acceptable to the Ombudsman the report is amended. The Ombudsman then writes in his conclusions indicating whether or not he considers that there has been maladministration causing personal injustice, and copies are sent to the authority and the complainant, and also to the councillor who referred the complaint.

On receipt of the final report the authority concerned must take steps to advertise in the press that the report has been received and also to make copies available to the general public.

This, then, is a brief outline of the procedure, but for a more intensive examination it is necessary to divide it into a number of components.

(1) The Summary of Complaint

This is prepared by a member of the Ombudsman's screening staff after the documents submitted have been carefully examined. It is, as explained earlier, a precis of the complaint, bringing out what are considered to be the main areas of alleged maladministration, and also the personal injustice which the complainant considers that he has suffered.

The general practice has been for a lengthy summary to be sent to the authority on the grounds that they should be given as much information as possible about the complaint so that a full answer can be prepared by them. It is also argued that a long answer will make the task of the investigator much

easier, cutting down the number of questions he may consider should be asked when he visits the complainant and the authority.

One of the main disadvantages of the long summary is that it can lead to a great deal of repetition when the report is written, as the summary usually goes into detail as to how the complaint originated, a stage which the investigator feels he must describe again, as a method of confirmation, when setting out his report. Not only can this be regarded as a time wasting exercise, but it also makes the report rather more dull to read than need be.

Another disadvantage is that, if the summary itemizes in some detail the complaint, then the authority will confine themselves to answering the points on it. On the other hand a short summary - a few lines rather than a few pages - is easier to prepare, thus cutting the time on commencing the investigation: it may also elicit more information when answered by the authority and avoid this repetition.

One or two of the Scottish authorities, however, feel that they should see what they would regard as the complete picture. In other words they would wish to have sent to them the complaint in its original form, i.e., as it was put to the Ombudsman.

One can understand their misgivings on receiving a summary which they consider has been "doctored" or "tampered with" in the office of the Ombudsman but there are a number of

difficulties associated with their request.

First of these is that the complaint does not always arrive in the Ombudsman's office in an easily distinguishable form. Some complainants have great difficulty in expressing themselves on paper and this in turn makes the screeners' task difficult as they have to put together the elements which make up the complaint. On the other hand complainants, on occasions, send in bulky files of papers from which the complaint must be unravelled.

Secondly there is the danger that, in making what may be a genuine complaint of maladministration, the complainant may defame others, either accidentally or intentionally. It would, in my opinion, be injudicious of the Ombudsman to pass on what may be defamatory matter to those who could take action on it, without first writing to the complainant to draw his attention to the serious charges he is making and giving him the opportunity to withdraw them.

The authority's comments on the summary of complaint are usually submitted by the Chief Executive after consultation with the various departments concerned although there have been occasions when the head of the department where the alleged maladministration occurred has been given the responsibility of replying to the Ombudsman. The comments are usually sent in the form of a number of documents which set out the manner in which the authority dealt with the matter, memoranda from heads of departments giving their views on the summary of complaint,

and a covering letter from the Chief Executive drawing all these different strands together and usually indicating at the end whether or not he considers the authority have acted correctly in the matter. In some cases the Chief Executive may challenge the Ombudsman's competence to carry out an investigation on the grounds that the complaint is outwith his jurisdiction. The most common argument put forward when such a challenge is made is that the complainant has a remedy in law or that the decision which is the cause of the complaint is one which the authority are entitled to make.

(2) The Interviews

Once the comments on the Summary of Complaint have been received the investigating officer can begin his preparation for interviewing the people who are associated with the complaint.

Although there is no hard and fast rule, it is usual for the complainant to be interviewed first, and this is normally carried out at his home. The reason for seeing the complainant first is that it is usually found that gaps exist in the complainant's version of the complaint when it is sent to the Ombudsman and it is necessary to obtain a complete and clear story so that the investigator can determine which officials he wishes to interview in the authority's offices. There are certain advantages in interviewing at the home of the complainant rather than in the office of the Ombudsman. The

first is that the complainant may have some difficulty in travelling to Edinburgh, for example his work may prevent him being interviewed during certain hours, and on a number of occasions the investigating officers of the Ombudsman have been required to carry out evening interviews. Secondly the complainant will feel a greater degree of security in being interviewed in his own home: he will be more relaxed and therefore most likely to answer freely the questions put to him. Finally, and perhaps most important of all, many of the complaints which are investigated concern the area, or even the house, in which the complainant lives, and a visit allows the investigating officer the opportunity to examine for himself some of the points being made by the complainant and decide whether or not the complaints are being exaggerated.

In some instances the complainant may be a group of people, e.g., a parents' action group in an educational complaint, and it has been found necessary to hold the interviews in a hall with extra investigating officers allocated to the case to conduct them.

Interviews with complainants can vary tremendously. An attempt is always made to conduct them in an informal manner, usually over a cup of coffee or tea and with some preliminary discussion away from the complaint to set the complainant at ease. In most cases the interview proceeds without any problems and at the end both the complainant and the investigating officer are satisfied that the complaint has

been given a thorough airing. However, situations have arisen where interviews with complainants have had less than satisfactory endings. This can occur where the complainant is emotionally disturbed or when the complainant attempts to browbeat the investigating officer by refusing to answer the questions put to him or attempting to dominate the interview, sometimes by reading out a long prepared statement. Care must be taken when interviewing a group to ensure that one member of the group does not exert an influence over the other members to such an extent that his will prevails.

Usually the complainant is alone when interviewed by the investigating officer but on occasion a wife may be accompanied by her husband or vice versa and other relatives such as brothers, sisters or parents have attended interviews. Generally speaking the investigating officer raises no objection to their presence, particularly if such a presence visibly supports a nervous complainant. However there have been times when the accompanying relative or friend has intruded into the interview to such an extent that the complainant's answers become blurred. It is then open to the investigating officer either to tactfully request that the complainant be allowed to answer the questions being put to him or, if the position becomes impossible, to withdraw and attempt to arrange an interview with the complainant alone at another date.

The local authority interview is usually a much more

protracted matter as it is rare indeed for only one interview to conclude the practical side of the investigation. More often it is necessary to interview a number of officers to obtain a full and clear picture of events and on a number of occasions it has also been found necessary to interview councillors. Files and other documents may have to be consulted to verify statements made during interview and copies taken of relevant papers.

When answering the Summary of Complaint the authority nominate a liaison officer, usually a senior member of staff, who is responsible for making the arrangements for the visit of the Ombudsman's investigating officer. The liaison officer is responsible before the visit for arranging and agreeing upon the timetable of interviews, ensuring that a room is available, that files and documents are on hand and that the investigator has access to photocopying facilities. On arrival at the authority's offices it is usual for the investigating officer first to meet the Chief Executive, mainly as a matter of courtesy, but also to give him some indication of the scope and length of the investigation. Interviews are then usually carried out in order of seniority, e.g., in a housing complaint the Director of Housing would be seen to establish general policy and procedures in the department and to gain some insight into the responsibilities of those members of staff to be interviewed. Interviews then follow with members of the department who have been involved in the complaint. Again, as

with the complainant, the interviews are conducted in an informal manner and to this end are usually held in the room set aside for the investigation rather than in the room of the officer being interviewed. Experience has shown that if an interview is held in an officer's room, particularly a senior officer, the feeling of informality can be lost, the person behind the desk tending to adopt a dominant role.

Before interviews take place it is made clear to the person being interviewed that he may, if he wishes, be accompanied by "a friend". The reasoning here is that a nervous person may feel more confident about the interview if he is accompanied by someone to whom he can turn to for advice and encouragement. Generally speaking, on the few occasions when an officer has requested that a friend be present, this has been either a lawyer employed by the authority or his trade union representative. In almost every case the officer being interviewed has found that it is not the intention of the investigating officer to trick him into incriminating answers and that the services of the friend are not really necessary. Whilst the investigating officer has no objection to such friends being present and indeed welcomes their presence if they succeed in putting the complainant at his ease, he would not be happy if the officer being interviewed was accompanied by his senior officer. Quite clearly there would be the danger that the officer would be inhibited in the answering of questions whilst in the presence of his superior.

The production of documents and files for examination has never proved to be a problem in Scotland and most authorities willingly make these available. In an isolated instance an authority was reluctant to allow an investigating officer access to application forms in respect of council housing, arguing that such forms contained confidential information about the health and material situation of applicants. However, after it was explained that the Ombudsman's report would respect that confidentiality, the documents were made available.

The power of the Ombudsman to obtain information and inspect documents is found in Section 27(1) of the Act which states:-

"For the purpose of an investigation ... the Commissioner may require any member or officer of the authority concerned, or any other person who in his opinion is able to furnish information or produce any such documents".

Sub-section 92) appears to strengthen the Ombudsman's power outlined in sub-section (1) by giving him the same powers as the court of Session in respect of attendance and examination of witnesses and the production of documents. This allows citations to be issued and witnesses to be examined on oath or affirmation.

Should any person, without lawful reason, refuse to give information, it is possible for the Ombudsman to certify the offence to the Court of Session. It is then open to the

Court to consider, by normal judicial procedure, whether the person named in the certificate is guilty of an offence equivalent to contempt of court. If so, the Court may impose the same punishment, by imprisonment or fine, as if the offence had been committed in relation to the Courts.

Although the Ombudsman therefore has a right to obtain information from authorities, he does not have absolute right of disclosure of that information. Section 30(3) of the Act provides that a Minister of the Crown or any authority open to investigation by him may prohibit the Ombudsman from disclosing any document or information when it is considered contrary to the public interest. The purpose of this provision is to maintain the constitutional responsibility of Ministers and local authorities for the public interest, but as mentioned earlier it in no way affects their obligation to give the Ombudsman such information as he requires to carry out his duties.

## CHAPTER FIVE

### **THE REPORT**

When the interviewing of the complainants, officers and members of the authority has finished, with all documents inspected and copies taken where appropriate, the investigating officer will then write out the first draft report of the investigation. In it he will put all the information he has obtained from the interviews and after this has been typed he will discuss it with a senior member of the Ombudsman's staff. The purpose of this discussion is to evaluate the report; to see if gaps exist in the narrative or, on the other hand, if information is being needlessly repeated; to ensure that full and satisfactory responses have been made by the authority to each area of complaint; to check if the information in the documents obtained has been accurately and logically incorporated into the report; and finally to ensure that the report is presented in a form which can be easily read and understood by the general public. On this last point it is interesting to observe the different methods of presentation which have been adopted by the Ombudsman's investigating officers. Perhaps the most common form of presentation is to write the narrative in chronological order and this is certainly to be recommended when the issue is fairly straightforward or one complaint only is being considered. However when a number of complaints are being investigated it is often found more convenient to keep them in watertight compartments dealing with each under a sub-heading in the

report. This makes it convenient for the public to read and easier for the Ombudsman when he comes to write his conclusions at the end of the report as he tends to adopt the same procedure giving a conclusion on each issue and then a summing up of all of these in the final paragraph.

When the investigator and his senior are satisfied that the report gives a full and fair picture of the investigation the investigating officer will attach to it a rough draft of the conclusions as he sees them - in other words, whether or not he considers that there has been maladministration by the authority and the complainant has suffered injustice as a result of such maladministration. It is then submitted to the Ombudsman for his consideration. He scrutinizes the report for both content and presentation and will add, alter or erase items where necessary. He will do no more than glance at the investigating officer's conclusions at this stage in order to obtain some guide to his feelings about the outcome but will not attempt any revision of them until after the comments are received. The report is then sent to the Chief Executive of the authority together with a covering letter asking him to agree to the factual accuracy of it and also asking him to make any general comments on it. A copy is also sent to the complainant with a similar letter.

In some instances the Ombudsman may decide that a little more information is required from either the authority or the complainant, or both, and rather than hold up the report

he will send it out and ask the relevant questions in the covering letter. If the replies to these questions result in radical changes being made to the draft, a further draft is prepared and sent out to both the authority and the complainant for their observations.

When the report is sent out both the Chief Executive and the complainant are reminded that the information in it is confidential and must not be disclosed to anyone except those officers and members who need to be consulted to verify its accuracy.

Both the authority and the complainant are given about two weeks to send in their comments on the draft but in the case of a complex investigation or one in which many individuals were interviewed the Ombudsman is always willing to extend this period to allow full consultation to be carried out between the Chief Executive and the officers and members concerned.

In occasional cases other bodies apart from the authority and the complainant have been interviewed and have provided necessary information to assist the Ombudsman. For example where complaints have occurred concerning settlement of property which it is alleged could have been caused by mine workings, the views of the National Coal Board have been sought. Use has also been made of experts in the various departments of government. Where third parties are in some way involved it is usual to send them the relevant excerpts from

the draft report for their observations.

Once the comments from the authority, the complainant, and any other person or body involved have been received by the Ombudsman these are carefully considered by the investigating officer and senior staff and a decision is reached as to whether any or all of these should be in some way incorporated into the report. In quite a number of cases the authority will write back to say that they are satisfied with the report as it stands which usually indicates that they have 'read between the lines' and are convinced that the Ombudsman is not going to find maladministration. They are usually correct. Complainants, on the other hand usually write back in some detail, but many of the points they make are not taken into account as they simply consist of a repetition of the complaint or dwell on facts which are quite irrelevant to the investigation. The draft conclusions prepared before the report was sent out are then reconsidered by the investigation officer and if necessary rewritten before being reviewed by the senior staff and then by the Ombudsman. Each Ombudsman appears to have a different technique for dealing with conclusions, which are obviously the most important part of his work. They represent his decision and can seriously affect the outlook of an authority if the verdict is one of maladministration. Some Ombudsman will study the conclusions put before them in order to obtain the feeling of the investigating officer but will write out the conclusions in their own style. Others will

amend those put in front of them before accepting them and signing the report.

Once the conclusions have been agreed and incorporated into the report, copies are sent to the authority, the complainant and the councillor who referred the complaint to the Ombudsman, as required under Section 28 of the Act. Copies may also be sent to other interested parties or bodies although there is no requirement in the Act to do so. Generally speaking such copies are sent out a few days afterwards to prevent any release of the contents before the authority and complainant have had the opportunity to study the report.

Section 28(4)-(6) of the Act requires the authority to advertise in a newspaper within seven days of the receipt of the report the fact that a report has been received and to make copies of that report available to the general public. Usually an authority will place the advertisement in a local newspaper for a number of reasons. Firstly, it will be brought to the attention of the people who are either affected by or interested in the Ombudsman's report. A report of an investigation in the Borders will be of little interest in the Shetland Isles unless it is on a matter of mutual concern. Secondly it is much cheaper to advertise locally than in the national press. Thirdly, if there is a finding of maladministration then the local authority would not wish to receive national coverage of such a finding.

One of the areas of criticism by authorities is the

almost non-existent publicity given by the press to reports from the Ombudsman which clear the authority of maladministration, whilst findings of maladministration almost invariably result in publicity in the local press and on some occasions in the national press also. Whilst one can sympathize with the authority over this situation, the words of American broadcaster Ed Murrow are relevant "Newspapers are not interested in the cats that don't get lost up trees"; but it is fair to say that a newspaper will give coverage to a 'no maladministration' finding if it is on a matter of public interest.

If there is a finding of no maladministration then, as far as the Ombudsman is concerned, that is the end of the matter. In a few instances a complainant may write to him expressing dissatisfaction with the finding and pointing out that the investigation was deficient in some respect. If the Ombudsman is of the opinion that this could be the case then it is his prerogative to inspire a fresh complaint from the complainant in order to re-open the issue. However if the complainant writes in clearly with the intention of debating the finding then the Ombudsman quickly points out to him that the matter is closed.

Having made these remarks, I should state that up to now no case has been re-opened after the Ombudsman has given his verdict, and in only a few cases have the complainants sought to disagree with the Ombudsman's finding. In most cases

nothing further is heard from the complainant, but it must also be recorded that in a number of investigations where no maladministration is found complainants nevertheless have written to the Ombudsman expressing their satisfaction that the matter has been thoroughly examined.

#### **DISCONTINUED INVESTIGATIONS**

It sometimes happens that whilst an investigation is in progress the complaint is remedied. This may occur due to the natural course of events, e.g., a complainant's name reaches the top of a housing list and a house is offered and accepted. It may also become evident to an authority when examining the summary of complaint that a mistake has been made and they may then take immediate steps to rectify it. In such cases it is open to the Ombudsman to consider whether or not to continue with his investigation.

Such a decision will be determined in the main by two issues: firstly, the stage reached in the investigation, and secondly, the issue being investigated. If the investigation is in the early stages, and is a straightforward matter and if no evidence of maladministration has at that time been uncovered, then it is most likely that the Ombudsman will discontinue on the grounds that the complainant is satisfied. Further enquiries would probably only be a post-mortem; continuation would cost money and might be regarded as misuse of public funds, and there are always other urgent cases

awaiting investigation.

If on the other hand his investigation has been running for some time, most interviews have taken place and a draft report is taking shape the Ombudsman may feel justified in continuing to the end. He may do this if the evidence uncovered so far points to maladministration by the authority or if it concerns a point of principle. A normal investigation report would then be issued, and if a finding of maladministration is made the blow may be softened by some commendation being made of the authority for rectifying the fault before the end of the investigation.

Should discontinuation take place, the Act still requires the Ombudsman to issue a report which the authority must make available to the public.

On the face of things discontinuation should be a simple matter, leaving the complainant satisfied with the remedy and the authority happy that the Ombudsman's investigating officer is no longer on the premises and there is to be no finding of maladministration with all its attendant publicity. However in some cases the picture can be quite different: whilst the complainant may have obtained a satisfactory remedy, he may still be of the opinion that the authority is not blameless and therefore feel that the investigation should proceed to expose the faults of the authority. Conversely some authorities are unhappy because discontinuation does not allow the whole picture to be shown,

which they feel confident would have cleared them of maladministration. They have complained on occasion to the Ombudsman, not only that a discontinued report may suggest to the public that they have something to hide and that the remedy was conjured up to get the Ombudsman "off their backs", but also that the brief report which is published tends to suggest to the public that by complaining to the Ombudsman there is the possibility of "jumping the queue", be it for houses, repairs or monetary awards. It has therefore been found necessary by the Ombudsman in his discontinued reports to set out clearly both the complaint and the authority's response and to end it in such a style as to prevent any suggestion that the authority has made a special case of the complaint.

## CHAPTER 6

### **THE FINDING**

Where maladministration has been found which has caused injustice to the complainant then under Section 29(1) of the Act:-

"...the report shall be laid before the authority concerned, and it shall be the duty of that authority to consider the report, and to notify the Commissioner of the action which the authority have taken, or propose to take."

It would seem from experience that the normal procedure adopted by an authority is for the report to be discussed first by the appropriate committee, e.g., a report on Housing would be considered by the Housing Committee. At such a meeting not only would the Ombudsman's report be before the committee but also reports from those authority officers who were involved in the investigation setting out their views on the Ombudsman's findings and also indicating the action that should be taken by the authority. From this meeting a recommendation will evolve which will then be put to a meeting of the full council for endorsement and the Chief Executive will then be instructed to write to the Ombudsman informing him of the authority's decision. It is then up to the Ombudsman to indicate whether or not he is satisfied with the action taken.

If he is satisfied then that is the end of the matter and both the authority and the complainant are notified of his decision. Of course it does not follow that the action taken by the authority which satisfies the Ombudsman also satisfies the complainant. In some instances the complainant reads far

more into the Ombudsman's findings of maladministration than is warranted and considers that a finding of maladministration on one of a number of complaints will result in the authority remedying all the issues complained about. An example of this occurred in an investigation undertaken on an educational topic. Briefly, the complainants were the parents of a small number of children who, through an alteration in the catchment area boundary, found that their children would not be attending School A as anticipated, where some of their elder brothers and sisters attended, but would be required to attend School B. Nevertheless they presented their children at School A for enrolment some months before the start of the first term and through a mistake the children were enrolled. Although the mistake was soon discovered and the parents notified that their children must attend School B they still persisted in presenting their children School A for the first week of the new term where they were duly refused admission; after a few days of rejection they enrolled them at School B. The Ombudsman found that the mistake which was made in the enrolment procedure amounted to maladministration causing injustice and the Regional Council wrote to the parents apologizing for this, a move which completely satisfied the Ombudsman, who regarded the investigation at an end. However the parents were far from satisfied, expecting that the finding of maladministration would result in their children being admitted to School A. This sort of remedy was never in the

mind of the Ombudsman as it was clearly the Council's policy that the children should attend School B, due to the overcrowded condition at School A a fact brought out in the investigation report. What this points to is for a clear division to be made in the conclusions of a report showing the finding on each complaint and then, at the end, a summing up by the Ombudsman of those areas of complaint where maladministration has been found.

The final weapon in the Ombudsman's armoury is the power given to him by Section 29(2) of the Act to issue a further report. This may be done if the Ombudsman:-

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

What constitutes 'reasonable time' in (a) and (c) is determined by the complexity of the investigation and the extent of the findings of maladministration by the Ombudsman, but no Ombudsman will rush to issue a further report for a number of reasons. In the first place he will wish to give an

authority every chance to consider the seriousness of their action in rejecting an Ombudsman's report. It is in effect disputing the decision of a referee, someone who has been brought into the matter to look at the complaint with fresh eyes, an open mind, and therefore in a completely unbiased way. Secondly an authority may be under some misconception over the nature of the action to be taken. As the Act stands it is up to them to inform the Ombudsman what action they have taken or intend to take but apart from that no guidance is provided. The authority may therefore wonder if the action they propose is satisfactory, and if not, whether they will get an opportunity to make a second bid. At the same time they do not want to go to the extent of offering some extraordinary generous remedy which they feel certain will satisfy the Ombudsman but may also create a precedent for future complainants to look forward to. There is no doubt in my mind that the Act is weak in this issue and therefore the Ombudsman must proceed with caution. When he makes a finding of maladministration he must be clear in his own mind of the action by the authority which will satisfy him. If it appears to him that the authority are in some difficulty on this question he should be willing to discuss the matter with them and should an authority propose action which he does not consider to be satisfactory, he should be prepared to enter into dialogue with that authority to reach a satisfactory solution. In some instance when setting out his conclusions

the Ombudsman may give some indication of a satisfactory action, usually when he considers that something insubstantial is required, such as an apology. An argument can be made for the Ombudsman always to indicate in his report the action to be taken by an authority which would not only leave the authority in no doubt of the steps to be taken but would also prevent what could turn out to be a protracted guessing game played by the authority with the Ombudsman. Further advantage would be that the complainant would know at the outset the remedy which he would expect the authority to offer. On the other hand it may also be argued that an authority under the finding of maladministration would resent being told what action to take to satisfy the Ombudsman considering that such a step made serious inroads into a decision which should be made by an elected body.

The Ombudsman will not hasten to issue his further report because he is aware of the attendant publicity which is given to such an event. A finding of maladministration will probably receive publicity at local level but only occasionally in the national press. A second report intimating that an authority has snubbed the Ombudsman has a rarity about it which demands attention by the media. Such publicity is of little value to the authority who are looked upon as stubborn, undemocratic and unwilling to play the game in a fair manner. Equally the publicity value to the Ombudsman must be questioned. Although national publicity of a second report may

bring the activities of the Ombudsman to the attention of more people resulting in an increase in the number of complaints, it may on the other hand simply show to the population that the Ombudsman when put to the final test has no teeth and discourage them from approaching him with their complaint. Finally a further report is only published after a great deal of consideration as the Ombudsman realizes that this is the end of the matter as far as he is concerned. It represents failure to achieve a satisfactory solution and is a disappointment both to him and the complainant. Fortunately the number of further reports issued by the Ombudsman only represents 4% of the investigations carried out. If however more authorities consider that they should risk the adverse publicity which will invariably follow their decision to take action on a finding of maladministration by the Ombudsman then it may become necessary to provide the Ombudsman with teeth to effect suitable remedies.

## CHAPTER 7

### AREAS OF INVESTIGATION

#### INTRODUCTION

A study of the statistics for the last five years shows that the highest number of investigations concerned Housing matters with Planning coming a close second. Other areas which have been the subject of a number of investigations include Education, Social Work and Land and Property. In this chapter I have examined some of these areas of investigation highlighting certain points in their make-up.

#### HOUSING

Housing has, each year since the Ombudsman took up office, been the biggest single topic of complaint and therefore resulted in the greatest number of investigations carried out. Under this general heading the complaints and investigations have concerned the allocation of council houses; defects in council houses; claims for improvement or other grants; redecoration allowances; eviction action; rent arrears and the rights of tenants.

#### ALLOCATION OF HOUSES

The allocation of council houses is a complex and difficult matter for which each District Council has its own Rules and Regulations. Some authorities have drawn up very detailed point schemes which take account of most circumstances

and allocations under these schemes can be readily examined. Other authorities do not consider it necessary to have such detailed schemes and prefer to retain a greater degree of discretion in their allocation procedures. When a complaint is received about the allocation of a council house, or more frequently the alleged failure to allocate a house to the complainant, the Ombudsman is bound to consider the complaint in the light of the particular District Council's housing regulations, which he takes to be the policy of that authority. Where it is clear to the Ombudsman that the Council have a deliberate policy it is not for him to question the merits of that policy decision unless he is of the view that the policy is perverse. In practice, the Ombudsman is only prepared to investigate complaints relating to the allocation of council houses if the complainant is able to give some reasonable indication of the actions of the authority which in his view amounts to maladministration leading to injustice, e.g., unfair discrimination or an allegation of failure to adhere to the housing regulations. In this context it is not sufficient for a complainant to imply that a neighbour has been allocated a house before him or that he feels that he should be further up the list than he is. He must demonstrate that the neighbour is less well qualified for housing or that people with lesser priority have been placed higher on the list than himself.

### **HOUSING DEFECTS**

These can range from the simple defect such as a badly fitted door or window causing an annoying draught, to serious condensation problems which make rooms uninhabitable and damage and destroy clothes and furniture. In some cases it appears that condensation results from poor house design and construction, in others because tenants are unwilling to provide sufficient ventilation for their houses and may also be using forms of heating such as oil burning stoves which do encourage condensation. However whilst, in the course of an investigation, the Ombudsman may discuss the problems with the authority it is not part of his function to bring pressure to bear on an authority to carry out repairs. Before he can consider an investigation under this heading he must be satisfied that there exists some prima facie indication of maladministration connected with an alleged failure to effect necessary repairs.

### **IMPROVEMENT GRANTS AND REDECORATION ALLOWANCES**

A substantial number of housing complaints are about the refusal of authorities to make improvement grants or to make good damage to decorations caused during the re-wiring or other modernization of council houses. It is important to remember that payment of improvement grants (apart from standard grants which are mandatory providing certain conditions are satisfied), and redecoration allowances, are at

the discretion of the Council. However, once a council has agreed in principle to make such a grant or allowance, subject to the satisfaction of certain conditions, the Ombudsman is in no doubt that payment should be made when the conditions are met.

#### **PLANNING AND BUILDING CONTROL**

From the high proportion of complaints which relate to the allied functions of planning and building control it is evident that these matters are of considerable concern to the public. Taken together they come next to housing complaints in volume. The main difference is that housing complaints usually concern only the authority whereas the grievances underlying complaints against planning and building control departments are often directed against developers as well as authorities.

#### **PLANNING**

Planning complaints are in the main concerned with delays in dealing with applications for planning permission and/or established use certificates, the failure to notify adjoining proprietors, the granting or refusal of planning permission, the failure to take enforcement action and the failure to keep open rights of way. Two of these areas are examined:-

(i) Failure to notify adjoining proprietors

Prior to August 1981 many of the planning complaints which were received by the Local Ombudsman had at their heart the simple fact that the man next door, whose privacy and whose purse could be hit by neighbouring development, never had a chance to state his point of view. There was no general duty in law upon planning authorities to alert a neighbour to a development which might affect the future quality of his life. However many councils had a policy of informing neighbours either by writing to them individually, or by calling upon them, or by use of a local newspaper, but even so there was scope for disagreement in determining what properties were affected by any particular development. Commissioner Pat Cook of England suggested two ways which could remove some of the sense of grievance of the man next door and which would put the onus of notification upon the developer rather than the local authority. The developer could be asked to certify that neighbours had been consulted and did not object to the proposed development. Alternatively and perhaps more in accord with the balance of responsibility between the right of the developer to develop his own land and that of his neighbour to find out what is going on, the developer could be required to fly on site a prominent pennant signifying that an application had been made to the Council. This would serve to alert neighbours and the public that plans were afoot which, if interested, they could examine and criticise. The pennant

would need to be visually striking and more significant than the Statutory Notice which was required for a few types of development and which at times could not easily be discerned.

However on 3rd August 1981 the Town and Country Planning (General Development) (Scotland) Order 1981 came into force. Generally speaking this requires an applicant for planning permission to serve on any party who holds a notifiable interest in neighbouring land a copy of the application together with a notice stating:-

- (a) that the plans or drawings relating to the application may be inspected in the register kept by the planning authority and
- (b) the address at which the plans may be so inspected if different from the address of the planning authority shown on the application.

Should the applicant have difficulty in determining the names and addresses of these parties he is then required to give this information by publishing it in a local newspaper.

(ii) Failure to take enforcement action

Perhaps the most common complaint received by the Local Ombudsman is that stemming from both the individual and groups about what they consider to be illegal development of neighbouring land. They approach the Ombudsman alleging that there has been failure by the planning authorities to take the

necessary enforcement action. As Christopher Himsworth said when writing on this topic in a recent edition of Planning Law:-

"What starts as primarily a quarrel between neighbours is cast in terms of a quarrel between the complaining neighbour and the local authority when, failing a statutory remedy compelling the authority to intervene the neighbours then call upon the Ombudsman's assistance."

However statistics show that very few investigations into this area of complaint have brought decisions in favour of the complainant. It has been made clear in reports issued by the Commissioner that a complainant who is a neighbouring proprietor has no statutory right under Planning Legislation to require a planning authority to take a particular action to remedy what is considered to be a breach of planning control. The serving of Enforcement notices lies within the discretion of the Council and Himsworth makes the point that the Ombudsman has indicated that he will not go far and strengthen the weak statutory position of the complainant. One can understand his concern but it should be made clear that before the Ombudsman decides to exercise Section 21(4)(b) of the Local Government (Scotland) Act 1975 he has to be satisfied that there exists a sufficiently strong case for a change in statutory procedures. It is not felt on the evidence of seven years and around a dozen investigations that such a situation has been reached. In a talk to the Society of Directors of Planning, John Russell confirmed this viewpoint stating:-

"I have already postulated the principle that a great deal of planning lies in the exercise of the discretion vested in the planning authority. There are of course various statutory rules which limit the exercise of discretion but provided the rules have been observed and maladministration has been avoided, I will generally avoid interference with the judgement of the authority. It is their judgement, not mine, which counts."

However, as Himsworth points out, it is rare for a complainant merely to bring to the Ombudsman the sole complaint of lack of enforcement, but rather attempt to strengthen his position by supporting it with accompanying complaints. He may also complain about lack of attention to his complaint, or failure by a planning authority to impose certain conditions or to impose conditions at all.

Again it should be made clear that in planning matters, like others exercised by a local authority, if his investigation does not reveal any maladministration the Ombudsman is not permitted to question the merits of an authority's decision. Nor will he use his office to settle disputes between neighbours, when for example a complainant has suffered worry, inconvenience and expense due to the action of a developer rather than an authority. The correct remedy for the complaint would appear to be an action in the courts, particularly as the Ombudsman has no jurisdiction over the actions of a developer.

It should be emphasized that there have been cases where the Ombudsman has found maladministration by a local

authority on a planning complaint and one of these is now examined. Maladministration was found in a case in which the Council were dealing with an application to change the use of garage buildings to premises for the execution of mechanical and electrical repairs to motor vehicles. The proposed use was in the "bad neighbour" category and both the Director of Planning and Director of Roads recommended refusal. The Committee, by a casting vote, accepted these recommendations but at a subsequent meeting the Council decided, by 9 votes to 2, to grant permission unconditionally. The Ombudsman found maladministration because (1) the proposed development was much more harmful than an earlier development proposal which has been given conditional consent; (2) the applicant himself had offered certain restrictions on the use of the premises which could have been incorporated in conditions; and (3) the possibility of attaching conditions had not even been considered by the Council. Incidentally this particular case proved difficult at the next stage when it was necessary to consider what was an appropriate remedy. There was no difficulty on the part of the Council in accepting that they should have considered the attachment of conditions, and that they would normally do so if a comparable situation arose in the future. The possibility of varying the conditions of the planning permission was also discussed but the Ombudsman eventually conceded that this would impose a heavy burden on the ratepayers of the area and that the compensation would fall

to be paid to a new owner who had recently acquired the premises, so he decided to be satisfied in terms of the Act with the assurance that greater care would be exercised before granting planning permission for similar developments in future and that in appropriate cases consideration would be given to the attachment of conditions.

There is a feeling in some quarters that any remedy must necessarily bring greater benefit to the complainant. This would be the result in most cases, but I do not think it need always be that way. For example, a complaint was received that a certain housing authority had determined the order of improvement of their housing schemes on a party political basis, and the investigation found that their officials had put forward two alternative bases for ordering their priorities, viz (1) chronological (according to date of completion of schemes) and (2) assessment of needs (including factors like areas of deprivation, design faults, ease of letting, etc). The Council took neither suggestion but opted for a scheme of their own in which housing schemes situated in areas represented by the majority group were (with one exception) given priority over schemes situated in less fortunate areas! The Ombudsman found maladministration, but in saying later that he was satisfied with a system based on the officials' assessment of needs was conscious of the fact that the complainant was slightly worse off (in the time he would have to wait) than if he had not complained to him. But he had to

try to be fair to the area as a whole. This curious outcome, by some miracle, seemed to leave everyone satisfied - but for different reasons.

#### **BUILDING CONTROL**

Complaints under this heading are varied and relate to such matters as the failure of a developer to submit an application for a building warrant; the processing of objections to warrants; the issue of statutory orders to carry out repairs or to make buildings safe together with the subsequent apportionment of costs for repair; and the issue of certificates of completion.

In many of the cases received no investigation was possible because of insufficient evidence of maladministration or because remedial action had already been taken by the authority; in one case to serve a "dangerous building" notice under Section 13 of the Building (Scotland) Act 1959 (as amended) on the owner of an adjacent farm steading and in another case to grant building warrant to a complainant who complained that warrant had been denied him.

In some cases the investigation may be looking into complaints concerning matters of both planning and building control. One example of this was a complaint made by the owner-occupier of a house situated overlooking a loch. He claimed that he was deprived of an opportunity to object to an application for planning permission in detail despite the

Council being aware that he wished to object; and that the grant of building warrant was involved since as an adjoining proprietor he had not been served with a copy of the application and was denied the opportunity to make representations, and because the new building did not, in his view, comply with the Building Standards Regulations. The Ombudsman found that through administrative shortcomings the complainant was denied an opportunity, which he had reasonable cause to expect, to object to the application for detailed planning permission. However responsibility for the failure to comply with the statutory duty to serve a copy of the application for building warrant clearly rested with the developer. In the event an amended application was submitted to which the complainant had the opportunity to object, but the District Council decided in the light of professional advice that the developer's proposals (as amended) conformed to the Building Standard Regulations and that the building warrant was valid. Accordingly the Ombudsman found maladministration only in the planning aspects of this complaint.

## **EDUCATION**

Although Education is perhaps the most emotive of subjects and at some time or other is of concern to almost all households in Scotland, the number of complaints received and consequently the number of investigations conducted is remarkably small. There is no doubt in my mind why this should

be the case. The answer lies in the restrictions placed upon the local Ombudsman by paragraph 5 Schedule 5 of the Local Government (Scotland) Act 1975 which prohibits him from investigating the internal management of schools and Colleges and matters concerning curriculum development. This restriction coupled with the general prohibition in paragraph 4 Schedule 5 of the Act which prevents him from examining personnel matters including appointments means that among other things any complaint from members of staff concerning promotion cannot be entertained.

In this field therefore the Ombudsman's powers have, in practice, been restricted to an examination of allegations of maladministration directed against the administrative actions of those who administer education on the office staff of the Directors of Education of a Regional and Islands Council and the committees which they service. Complaints investigated include the failure to take relevant considerations into account when altering the catchment area boundaries for schools and when considering appeals by parents for early admission of their children to primary schools. In a recent investigation in a case concerning an appeal for early admission it is interesting to note that in reaching a decision that Committee had given serious consideration to an appeal the Ombudsman was able to listen to a tape recording of that committee's meeting - the practice of that authority being to tape record all meetings of the committee. Although the recording itself was

not particularly good it was sufficiently clear to allow an opinion to be reached.

Only on one occasion to my knowledge has the Ombudsman moved into an area where he could be said to be examining the internal running of a school. This case concerned a complaint from a parent that his teenage daughter had not been presented by the authority for an SCE 'Higher' level examination in Biology although her mid-term grading in that subject suggested that she would have a reasonable chance of success. A great deal of thought and discussion took place between the Ombudsman and his senior staff before it was decided to investigate the complaint and the decision to do so was taken on what could be regarded as a technical point. Whilst the recommendations for candidature were made by the school, an internal matter, the final decision on who should enter the examination lay with the Education Authority a body subject to investigation under the Act. Nevertheless the investigation was conducted with some trepidation as it was necessary to question the Rector and other members of staff of the school and also examine records and we were very conscious of treading into that very delicate area of 'professional judgement'. However I am pleased to report that we received full support from all those involved, school and administrative staff and also the girl and her parents. The decision reached at the end of the day was that there was no evidence of maladministration by the authorities. The decision I am

pleased to say was accepted, without rancour by the complainant.

### **SOCIAL WORK**

Along with Educational complaints those concerning Social Work matters are perhaps the most emotive of all received by the Ombudsman. This is naturally to be expected as in most cases they usually relate to personal problems experienced by people whereas complaints about Planning or Road Improvement are concerned with inanimate objects.

Social work complaints are wide ranging and have covered such matters as the adoption of a child, difficulties experienced by a prisoner in obtaining visits from his son and the loss of an old age pensioner's personal effects.

A number of the complainants who approached the Ombudsman are physically handicapped and in a few cases complaints are received on behalf of complainants who because of old age or some mental disability are unable to complain themselves. Section 24(1) of the Act permits complaints to be received from persons other than the complainant in such circumstances.

It is therefore necessary for an investigator, when dealing with complaints on Social Work matters to exercise tact when interviewing complainants. Difficulties have been experienced when carrying out interviews and usually take the form of verbal abuse, usually directed against the authority,

but occasionally against the investigating officer, or the complainant breaking down and unable to continue the interview. It is equally important for the Ombudsman to bear in mind that Social Workers and associated staff have also been subject to such difficulties usually over a long period of time and he may feel that this must be taken into account when considering his conclusions on the investigation.

The statistics show that the number of complaints on Social Work matters are usually no more than half a dozen per year. This has always been a matter of some surprise as experience has shown that Social Work Departments in authorities are quite large and appear to be overworked - factors which usually result in a good number of complaints to the Ombudsman. Two reasons may be advanced for the lack of complaints, first that Social Work Departments are carrying out their work with a high degree of administrative skill or on the other hand many of those members of the public who approach Social Work are unaware of or unable to comprehend the work of the Ombudsman.

## CHAPTER 8

### **REVIEW**

The first five years of operation of the Ombudsman's office has shown a marked increase in all aspects of his work. Formal complaints made to him have risen each year from 23 (1975/76) to 468 (1982/83) and it is anticipated that they should exceed 500 by the end of March 1984. Coupled with this is the fact that complaints are more meaningful and very few frivolous ones are now received. This is probably due to complainants having a better understanding of the Ombudsman's jurisdiction. Hand in hand with the rise in complaints has been the rise in the number of investigations carried out - 43 (1976/77) to 98 (1982/83). The percentage of investigations where maladministration has been found against an authority has not altered greatly remaining between 30%-40%.

No real study has been carried out amongst the population of Scotland to determine their views on the work of the Ombudsman. In only a handful of cases do we receive any response from complainants to his findings. These usually consist of letters of appreciation where a finding of maladministration has been followed up with a suitable remedy, or letters expressing dissatisfaction when the Ombudsman's decision has been in favour of the authority. Generally though, complainants accept the decision, be it for them or against them, without any comment whatsoever.

Local authorities' reaction to the Ombudsman's findings are more pronounced. Usually a finding of no

maladministration brings little response although there have been one or two occasions when an authority has taken exception to some small criticism or suggestion made by the Ombudsman in such a report. However in a number of cases where there has been a finding of maladministration authorities have sought to challenge this finding and endeavoured to open up a dialogue on the case with the Ombudsman in an attempt to have his decision reversed. Whilst he has made it clear that once a report has been issued he is only prepared to enter into discussion over what constitutes an adequate remedy the Ombudsman is aware that certain decisions do cause some concern to authorities. He therefore holds an annual meeting with the Society of Local Authority Chief Executives (SOLACE) where issues which are of concern can be raised with him. At such meetings it is the principle behind a decision which is discussed rather than the decision itself. At the same meeting the Ombudsman, in turn, raises issues of a general nature which he feels should be brought to the attention of local authorities. In addition the Ombudsman each year, meets with the Convention of Scottish Local Authorities. SOLACE discussion is restricted to principles behind decisions. Finally, the Ombudsman holds a similar meeting with the Local Authority Accounts Commission, the designated body responsible for providing services to the Ombudsman's office and who, until recently, had the duty of publishing his Annual Report.

It may be felt, after reading these procedures, that

a certain advantage lies with local authorities who appear to have a number of ways by which they can make their feelings known about the manner in which the Ombudsman operates, an opportunity not shared by the general public, particularly complainants. There is no doubt in my mind that this is the case but at the present time there does not exist any body representing complainants who can put forward their case. The reason for this is quite straight-forward; although almost every complain received by the Ombudsman falls into a general category viz: Housing, Planning, Education, etc., it differs in some way from other complaints in that category and to a large extent is personal to the complainant. It would be difficult therefore to enlist the interest of a large group of people in support of such complaints. This is contrasted with the support aroused on a matter of general interest, i.e., the high level of rates in a local authority area which concerns everybody equally and creates Pressure Groups such as RAGE. Such complaints are of course outwith the Ombudsman's jurisdiction under Section 24(7) of the Act which prohibits him from conducting an investigation into any action which in his opinion affects all or most of the inhabitants of the area of the authority concerned.

Whilst it is therefore regrettable that no formal body exists on behalf of complainants the Ombudsman always tries to anticipate problems which they may experience. It is significant that in his last two Annual Reports he has stressed

the need for complainants to have direct access to him rather than have to observe the referral procedure which obtains at the moment.

#### **POSSIBLE PROCEDURAL CHANGES**

Whilst the procedures which I have explained in earlier chapters are at present being observed, consideration is always given to ways by which the work of the Ombudsman can operate more efficiently without diluting in any way the quality of the service which he offers. I have explained in some detail the referral procedure and its limitations and it is sufficient to say that the Ombudsmen have advocated in recent Annual Reports that direct access be permitted to complainants. Such an alteration will require amendments being made to the Local Government (Scotland) Act 1975 and it is hoped that these will be forthcoming in the not too distant future.

In England the manner which they deal with referred complaints and classify an investigation is somewhat different. Every complaint which involves telephoning or visiting the complainant to obtain further information or clarification, or which involves visiting the authority and speaking to people or seeing the files informally (as they sometimes do) is called an investigation. Alternatively the Chief Executive may be asked for comments on the complaint or for specific information at this stage. It is interesting to

note that what is sent to the Chief Executive is a photocopy of the actual complaint form or complainant's letter although they might expand this by including in the covering letter to the Chief Executive other points which the Screener has identified from the total information supplied by the complainant but which he may not specifically have put to the Councillor in his complaint. Chief Executives are informed that their comments may be sent to the complainant and are forewarned that any comment which he does not want to be passed onto the complainant should be sent in a separate letter.

After receipt these comments are studied. The Local Ombudsmen appear to be keen to achieve "local settlement" of complaints and if the complaint lends itself to this they promote such settlements at this stage.

However, if the reply sent by the Chief Executive provides a reasonable explanation of the Council's view/actions, the local Ombudsman will send a copy of the Chief Executive's letter to the complainant informing him that he does not intend to investigate further, i.e., the investigation is 'terminated' by letter. Whether the complaint is continued further depends on whether there still remains some conflict between the complainant's version of the matter and what the authority has said; another reason may be where the Council's reply acknowledges or implies that there has been maladministration or if the matter is one which is considered to be of public interest.

Not all complaints go through this process; some are taken straight into the final stage (the formal investigation) if the matter complained of and the information provided seem to warrant it. Even where a complaint has been taken into the final stage it may be discontinued if a local settlement is achieved or there is no evidence of maladministration. This may be done either by letter or by a formal discontinuation report. Whatever action is taken at any of these foregoing stages depends on the nature of or circumstances pertaining to the individual complaint; sometimes it is merely a subjective view which is taken. A similar system was introduced into this office in April 1983.

#### **OMBUDSMAN - PART-TIME OR FULL-TIME?**

Surprise has been shown in some quarters that the local Ombudsman for Scotland is only appointed on a part-time basis; his commitment to the post is 2-1/2 days per week. This contrasts sharply with the position in England where there are three full-time local Ombudsmen although it may be argued that they each have a much larger population to cater for and each therefore receive a greater number of complaints to handle. Statistics show that on average each English Ombudsman receives well over twice the number received in Scotland and issues just under twice as many reports. Each, of course, has a bigger support staff than the Scottish Ombudsman.

However the same argument cannot be sustained when

examining the Welsh position. There is a full-time Ombudsman in Wales catering not only for a smaller population than Scotland but also a small land area. In fairness, it should be added, that his support staff is smaller than Scotland.

Because of the part-time nature of his appointment it has been necessary for the Scottish Local Ombudsman to delegate some of the functions which are personally carried out by his English and Welsh colleagues. Particular examples of these are the decisions to investigate and reject complaints which are taken by the writer, although it should be clearly stressed that complaints that raise particular problems are brought to the attention of the Ombudsman and discussed with him. I do not consider that any further comment is needed on this issue except to point out that provision is made in Schedule 4 Paragraph 4(5) for delegation of duties viz:-

"Any function of the Commissioner, other than that of making any report, may be performed by any one of his officers who is authorized for the purpose by the Commissioner."

PERIOD 1 SEPTEMBER 1975 TO 31 MARCH 1983  
ANALYSIS OF COMPLAINTS BY TYPE OF AUTHORITY

AUTHORITY COMPLAINED AGAINST	YEAR								TOTAL	WITHDRAWN: FOR	NOT ACCEPTED FOR INVESTIGATION:	ACCEPTED FOR INVESTIGATION:	CARRIED FORWARD TO 1983-84
	1975-76	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83					
District Council	16	97	107	167	195	241	280	402	1505	36	871	526	72
Regional Council	4	34	24	58	56	47	73	60	356	7	250	90	9
Islands Councils	-	-	4	5	4	6	2	4	25	-	18	6	1
Other 23(1) Bodies	-	2	-	-	-	-	-	2	4	-	4	-	-
Former Authorities	2	6	5	3	-	1	2	-	19	-	19	-	-
Other Bodies//	1	1	-	5	-	2	-	-	9	-	9	-	-
<b>TOTAL</b>	<b>23</b>	<b>140</b>	<b>140</b>	<b>238</b>	<b>255</b>	<b>297</b>	<b>357</b>	<b>468</b>	<b>1918</b>	<b>43</b>	<b>1171</b>	<b>622</b>	<b>82</b>

// Bodies excluded from jurisdiction by Section 23(1) of 1975 Act