



House of Commons
Communities and Local
Government Committee

**The work of the Local
Government
Ombudsman**

Third Report of Session 2012–13

*Volume I: Report, together with formal
minutes, oral and written evidence*

*Additional written evidence is contained in
Volume II, available on the Committee website
at www.parliament.uk/clgcom*

*Ordered by the House of Commons
to be printed 4 July 2012*

The Communities and Local Government Committee

The Communities and Local Government Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Communities and Local Government.

Current membership

Mr Clive Betts MP (*Labour, Sheffield South-East*) (Chair)
Heidi Alexander MP (*Labour, Lewisham East*)
Bob Blackman MP (*Conservative, Harrow East*)
Simon Danczuk MP Rochdale (*Labour, Rochdale*)
Bill Esterson MP (*Labour, Sefton Central*)
Stephen Gilbert MP (*Liberal Democrat, St Austell and Newquay*)
David Heyes MP (*Labour, Ashton under Lyne*)
George Hollingbery MP (*Conservative, Meon Valley*)
James Morris MP (*Conservative, Halesowen and Rowley Regis*)
Mark Pawsey MP (*Conservative, Rugby*)
Heather Wheeler MP (*Conservative, South Derbyshire*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliament.uk/clg. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Glenn McKee (Clerk), Edward White (Second Clerk), Kevin Maddison (Committee Specialist), Emily Gregory (Senior Committee Assistant), Mandy Sullivan (Committee Assistant), Stewart McIlvenna, (Committee Support Assistant) and Hannah Pearce (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Communities and Local Government Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 1234; the Committee's email address is clgcom@parliament.uk

Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
Our inquiry	5
Our Report	7
2 The organisation and structure of the Local Government Ombudsman	8
Introduction	8
How the LGO handles enquiries and complaints about services	8
Staff	10
Funding	11
Changing responsibilities	11
Reorganisation and transformation	12
Strategic Business Review	12
The Review's criticism of the current performance	13
Chief Operating Officer	16
Transformation	16
The administrative autonomy of the Commission	17
Conclusions	18
The role of Department for Communities and Local Government	18
Open Public Services White Paper: Choice	19
The Grant Memorandum	19
Commission staff survey	20
3 Handling of complaints	21
Introduction	21
"Customer satisfaction"	21
Handling of cases by the Local Government Ombudsman	22
Delays in handling cases	22
Confusion between "mediation" and quasi-judicial function	24
Processes in cases that are investigated and determined	25
Review and evaluation of the LGO's decisions	27
Conclusions and recommendations	30
Formal Minutes	33
Witnesses	34
List of printed written evidence	34
List of additional written evidence	34
List of Reports from the Committee during the current Parliament	35

Summary

The Local Government Ombudsman (LGO) has become for many the first port of call when faced by maladministration in local government. The LGO's job is to provide an independent means of redress to individuals suffering injustice caused by unfair treatment or service failure by local authorities. The LGO is an independent body funded by the taxpayer through an annual grant paid via the Department for Communities and Local Government. The focus of our inquiry was to consider whether the LGO is providing the service to the public which the legislation requires and the taxpayer expects.

Since the retirement of the former Chairman of the Commission in 2010 the LGO has experienced a "period of uncertainty" caused by a delay in the appointment of a permanent Chairman, the carrying out of a strategic review and, like the rest of the public sector, preparing for savings and reductions in expenditure. That period is now coming to an end with the completion of the strategic review, the appointment of a permanent Chairman in April 2012 and the announcement of budget allocations to 2014-15.

It is clear to us that the LGO now has to carry out a significant number of changes. First, it has to tackle the inefficiencies in its operations identified by the Strategic Business Review. If these are addressed effectively, it should result in savings without affecting the quality of its services. We have, however, concerns about the implementation of the changes and have called for more detail, including timetables, from the LGO when it responds to our report. We expressed particular concern about the length of time the LGO was taking to determine some cases. An organisation, whose primary job is investigating and determining whether maladministration by others has taken place, must itself take care to avoid maladministration by delaying justice. If it does not, it will undermine its own role and credibility. We call for strict deadlines to be applied to the handling of cases by the LGO.

Second, during this period of change it is essential that the LGO keeps a close eye on the effects of the changes on those using its services and on its staff. We call for the LGO to develop and publish a methodology for measuring levels of customer satisfaction, ideally this should be developed in partnership with other Ombudsmen. Once the methodology is agreed, the LGO should carry out a survey in 2013 and triennially thereafter. We also call on the LGO to re-institute an annual, independent staff survey and publish the results.

Finally, we received a number of submissions about the LGO's methods of handling cases. We deliberately did not take evidence on specific cases but the extent and nature of the criticism about the quality of decisions made by the LGO and the arrangements for reviewing the LGO's decisions was such that we call for the LGO to bring forward arrangements to ensure that there is an annual evaluation of the LGO by an external, independent reviewer, to ensure that it meets the criteria of independence, fairness, effectiveness, openness and transparency and accountability. The reviewer should be appointed by the end of this year and complete his or her work and publish the first review no later than Easter 2013.

1 Introduction

1. The Local Government Ombudsman (LGO) or, to use its statutory title, the Commission for Local Administration in England was established under the Local Government Act 1974.¹ Since then it has grown as an institution to become widely known to the public and has become for many the first port of call when faced by maladministration in local government. It is an independent body funded by the taxpayer through an annual grant paid via the Department for Communities and Local Government (DCLG). The Commission itself comprises the Local Commissioners (Local Government Ombudsmen) and the Parliamentary Commissioner for Administration (Parliamentary Ombudsman)² and its statutory functions are to:

- a) enable the Ombudsmen to investigate complaints, in particular by allocating them staff, offices and facilities; and
- b) provide bodies within jurisdiction with advice and guidance on good administrative practice.³

The Local Government Ombudsmen have, like other ombudsmen, a wide discretion to initiate investigation and decide complaints.⁴

Our inquiry

2. Independence is critical to the operation of any ombudsman. The Commission is detached from central and local government, and it is answerable to neither DCLG nor to the local authorities the Ombudsmen investigate. This has to be right, in order to ensure that it can function as Parliament intended it should. Similarly, although not exempt from scrutiny by Parliament, we consider there should be constraints on how we approach our job of scrutinising the work of the Ombudsmen. As we made clear when we issued our call for evidence and at the first oral evidence session, we were not reviewing the Ombudsmen's decisions, acting as a court of appeal or considering cases currently before the Ombudsmen.⁵ In this inquiry we therefore conceive of our job as "lighter touch" scrutiny than we would normally apply to a public body funded by the tax-payer. Nevertheless the Commission and the Ombudsmen have to be subject to examination to ensure that they are providing the service to the public which the legislation requires and the taxpayer expects.

3. We invited written submissions from interested parties, including academics with an interest in the scrutiny and operation of local government, on the work and activities of the LGO. To assist those submitting memoranda, we suggested that respondents might cover the following:

¹ Section 23

² Section 23(1) and (2)

³ Ev 39 [Local Government Ombudsman], para 2.1

⁴ Ev 39 [Local Government Ombudsman], para 2.2

⁵ "MPs to question the Local Government Ombudsman", Communities and Local Government Committee press notice, 21 February 2012; see also Q 2.

- the function, purpose and remit of the LGO, including the proposed restructuring of the Commission;
- the volume and nature of complaints made to the LGO and expected trends;
- the arrangements for handling complaints;
- the adequacy of redress when maladministration is found;
- the impact of the extension of jurisdiction to include complaints from those who arrange or fund their own adult social care;
- the impact of the LGO's work on local authorities, particularly whether it leads to better administration and improved quality of service;
- LGO's Strategic Corporate Plan and business plan; and
- the LGO's management of staff, resources and budgets.⁶

4. We published over 30 written submissions, including supplementary submissions. Although we made it clear that we did not intend to investigate, review or reopen individual cases considered the Ombudsmen, a number of the written submissions focussed on the merits of individual cases with tangential reference to the broader matters in the call for evidence, which were anyway covered by other respondents. We have not published these submissions.

5. We held two oral evidence sessions. The first on 23 April with interested parties: two complainants and an academic. The second was on 30 April at which we took evidence from Dr Jane Martin and Anne Seex, the Local Government Ombudsmen. We would like to thank all those who gave written and oral evidence.

Appointment of Chair and Vice-Chair of the Commission

6. There was one significant development during our inquiry. The 1974 Act requires the Secretary of State for Communities and Local Government to appoint one Local Commissioner as Chair and one as Vice-Chair of the Commission. The post of Chair of the Commission had been vacant since the retirement of Local Government Ombudsman, Sir Tony Redmond, in November 2010.⁷ On 16 April the Secretary of State, Rt Hon Eric Pickles MP, appointed the then Vice-Chairman, Dr Martin, who had been acting Chair, as permanent Chair and Ms Seex as Vice-Chairman.⁸

7. While the Secretary of State had previously indicated to us that he considered reducing the number of Ombudsmen from three to two,⁹ we must register surprise that we were

⁶ "MPs to question the Local Government Ombudsman", Communities and Local Government Committee press notice, 21 February 2012

⁷ Ev 40 [Local Government Ombudsman], para 2.3

⁸ Ev w29 [Department for Communities and Local Government]

⁹ Oral evidence taken before the Communities and Local Government Committee on 14 December 2011, *The Performance of the Department for Communities and Local Government in 2010–11*, HC (2010–12) 1668-ii, Q 156 [Mr Pickles]

only informed of the appointments after they were made and announced. Although we had carried out a pre-appointment hearing of Dr Martin for the post of Vice-Chair,¹⁰ the position of Chair has, at least in the past, carried additional responsibilities; Ms Seex's appointment pre-dated pre-appointment hearings. In the event we took the opportunity of the evidence session on 30 April to widen the areas we covered beyond those we had intended to cover.

Our Report

8. Having carefully considered the evidence we decided to make a report to the House as we have a number of concerns. While a few of our conclusions and recommendations are directed at the Government, the majority are for the Commission. In line with practice in respect of Government replies, we invite the latter to respond within two months. In view of our concerns and given that the LGO looks set to embark on a substantial programme of reorganisation we intend to hold a further hearing in 2013. This Report will provide a starting point for the follow-up session and it therefore has a focus on the Commission's operations.

¹⁰ Communities and Local Government Committee, Twelfth Report of the Session 2008–09, *Appointment of the Local Government Ombudsman and Vice-Chair of the Commission for Local Administration in England*, HC 1012

2 The organisation and structure of the Local Government Ombudsman

Introduction

9. The Commission for Local Administration in England is an independent body funded by annual grant from the Government to support the activities of the Local Government Ombudsmen (LGO). The Commission's statutory functions are to enable the Ombudsmen to investigate complaints, in particular by allocating them staff, offices and facilities and to provide bodies within jurisdiction (primarily local authorities) with advice and guidance on good administrative practice. As noted, there are currently two Ombudsmen: Dr Jane Martin and Anne Seex. They are Crown appointments with individual authority to investigate and decide complaints and they have wide discretion to initiate investigations and decide complaints bearing in mind the most effective use of public funds. Their jurisdiction is currently allocated on geographical areas.¹¹

10. The LGO's mission is to "provide an independent means of redress to individuals for injustice caused by unfair treatment or service failure by local authorities, schools and care providers and use our learning to promote good public service administration and service improvement".¹² According to the LGO, it has four strategic objectives:

- to provide a complaints handling service direct to the public which is accessible, responsive, consistent and cost-effective;
- to ensure sound decisions and appropriate redress based on impartial, rigorous and proportionate investigations;
- to use its knowledge of complaints to identify best practice and issues of wider public benefit, promote good public administration and service improvement, and influence public policy; and
- to ensure proper stewardship of public funds through the proper use of resources and effective public accountability.¹³

How the LGO handles enquiries and complaints about services

11. In its written submission the LGO explained how the current arrangements operated. The LGO Advice Team dealt with all initial contacts by phone, email, letter, or through the online complaint form. There were 95,000 contacts in 2010–11.¹⁴ The advisers clarified complaints and directed complainants back to the body in jurisdiction, if the complaint had not completed its internal process, or other relevant bodies. Advisers forwarded complaints to one of the three offices depending on the location of the body complained

¹¹ Ev 39 [Local Government Ombudsman], para 2.2

¹² Ev 40 [Local Government Ombudsman], para 2.4

¹³ As above

¹⁴ Ev 41 [Local Government Ombudsman], para 3.6

about. Where appropriate, complaints were fast tracked to an investigator without referring back to the body in jurisdiction first, for example in urgent homelessness cases. All cases were dealt with by a dedicated investigator against time targets. Once an investigator had enough evidence of fault he or she would seek to remedy any injustice caused as soon as possible. The investigator sent a provisional decision to both parties for further comment before reaching a final decision.¹⁵

12. The LGO's Advice Team received a total of 21,840 complaints and enquiries in 2010–11.¹⁶ The LGO currently accepts around 11,000 cases per year for investigation.¹⁷ The LGO explained that it often discontinued enquiries into a complaint “when we consider that a satisfactory response has been reached during the course of the investigation”. These were called ‘local settlements’ until April 2011.¹⁸ In its annual report for 2010–11 the LGO explained that for 2010–11 local settlements were agreed in 2,418 cases, that is 26.8% of all decisions (excluding outside jurisdiction complaints and adult social care complaints received since October 2010).¹⁹

13. In cases where the LGO completed a council investigation and found maladministration causing injustice, it issued a report that included recommendations for a remedy for the complainant. In 2010–11 it issued reports on 29 complaints, compared with reports on 74 complaints in 2009–10. Education matters formed the largest proportion of reports issued (38% of all reports issued). Housing formed the second largest proportion (14%) on matters concerning homelessness, applications for disabled facilities grants and housing repairs. Planning and transport and highways formed the third biggest categories of reports issued (10%).²⁰ Table 1, taken from the LGO Annual Report for 2010–11 provides an analysis of outcomes of complaints (excluding adult social care and schools complaints),²¹ though we note the figures do not exactly tally with those in the LGO's memorandum.²²

¹⁵ Ev 40 [Local Government Ombudsman], paras 3.2–3.3

¹⁶ LGO, *Annual Report 1011: Delivering Public Value*, p 17

¹⁷ LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, para 95; see also para 49 below.

¹⁸ *Local settlement* was a term used by the LGO to describe the outcome of a complaint where, during the course of its consideration of the complaint, the organisation concerned took, or agreed to take, some action that the Ombudsman considered was a satisfactory response to the complaint and the investigation was discontinued. This could occur, for example, in any of the following circumstances:

- a council on its own initiative said that there was fault that caused injustice, and proposed a remedy which the Ombudsman accepted is satisfactory;
- an organisation accepted the suggestion by the Ombudsman that there was fault which caused injustice, and agreed a remedy which the Ombudsman accepted is satisfactory;
- an organisation and the person complaining themselves agreed upon a course of action and the Ombudsman saw no reason to suggest any different outcome.

Local settlements in future are to be described as ‘Discontinued investigation: injustice remedied’ (LGO, *Annual Report 1011: Delivering Public Value*, p 44).

¹⁹ LGO, *Annual Report 1011: Delivering Public Value*, p 23; see also LGO 17 [Local Government Ombudsman], para 3.13, which appears to give a different figure.

²⁰ LGO, *Annual Report 1011: Delivering Public Value*, pp 23–24

²¹ LGO, *Annual Report 1011: Delivering Public Value*, p 21

²² Ev 41–52 [Local Government Ombudsman], paras 3.13, 4.13

Table 1: Analysis of outcome of complaints 2010–11 (excluding adult social care and schools complaints)

Outcome	No. of complaints	% of total ²³
Local settlements	2,215	26.34
Maladministration causing injustice (report issued)	25	0.30
Maladministration, no injustice (report issued)	0	0.00
No maladministration (report issued)	1	0.01
No or insufficient evidence of maladministration (without report)	4,012	47.71
Ombudsman's discretion	2,156	25.64
Outside jurisdiction	1,574	-
Total	9,983	

14. Complainants dissatisfied with the outcome of a complaint to the LGO are able to request an internal review of their complaint within a three month period. A senior member of staff at the Commission, who had no previous involvement in the complaint and did not line manage the investigator, carries out the review.²⁴

15. Under the Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007,²⁵ the LGO can conduct joint investigations with the Parliamentary and Health Service Ombudsman. These complaints generally cover health and social care.²⁶

Staff

16. As the LGO explained in its written memorandum, the Commission employs 215 people (195.8 full-time equivalent), based in three offices in London, Coventry and York. Approximately half the workforce are complaint investigators. They deal with a varied caseload of complaints and have delegated authority to investigate and take decisions on behalf of the Ombudsmen. Each of the three offices has a number of teams of investigators (12 in total), each headed by an Assistant Ombudsman. In addition to general purpose teams dealing with local government complaints, there are specialist teams dealing with children's and schools related complaints, adult social care complaints, and (in York) planning and housing complaints.²⁷

17. There are currently three Deputy Ombudsmen, one in each office, and one Deputy Chief Executive and Secretary. The Commission's corporate and business activity is supported by a corporate services department of 31 people. The functions cover

²³ Excludes those outside jurisdiction

²⁴ Ev 41 [Local Government Ombudsman], para 3.4

²⁵ SI 2007/1889

²⁶ Ev 40 [Local Government Ombudsman], para 2.5

²⁷ Ev 44 [Local Government Ombudsman], para 5.6

communications, human resources, finance, IT, legal, policy and research, property and facilities. The Advice Team which is based in Coventry has 19 staff, consisting of one supervisor and 18 advisers.²⁸

Funding

18. The Commission is funded by grant in aid. Its sponsor department and primary source of funding is the Department for Communities and Local Government (DCLG), but it also receives funding from the Department of Health (DH) in respect of adult care and the Department for Education (DfE) to cover the schools complaints service. In 2011–12 the Commission’s combined DCLG/DH Departmental Expenditure Limit (DEL) was £14.8 million and its DfE grant was £900,000.²⁹

19. The Commission’s DCLG/DH DEL is being reduced by £1 million in 2012–13. At the time of our inquiry its DfE funding for 2012–13 had yet to be settled but was expected to be £500,000; this is the final year of the schools service following abolition legislation in 2010 (see paragraph 21 below); there will be no funding in 2013–14.³⁰

20. The LGO supplied us with a copy of its Transformation Plan (as at 29 September 2011),³¹ which “addresses these reductions in funding with efficiency savings and changes in process, designed to minimise the impact on front line service delivery”.³² The Commission told us that it anticipated an overall staffing reduction of 20.3 posts over three years in addition to voluntary redundancies currently being considered, bringing its total staffing to 175.5 fte. It will also “rationalise its office space and senior management structure”.³³ (We have considered staff figures further at paragraph 42 below.)

Changing responsibilities

21. The LGO’s responsibilities have not remained static. From 1 October 2010 the jurisdiction of the LGO was extended to include all registered care providers in England, some 13,000 bodies operated by private or independent organisations. This change provided access to redress for all users of social care including those who fund their own care. In April 2010 the LGO also gained, as we have noted, jurisdiction over schools in relation to complaints about internal matters. This was introduced in fourteen local authority areas on a pilot basis. The Education Act 2011 repealed the LGO jurisdiction, restoring the Secretary of State’s power to consider school complaints. The LGO school complaints service will end in July 2012 with all complaints about internal school matters, having to be completed by 31st March 2013. In addition, as a result of the Localism Act

²⁸ Ev 44 [Local Government Ombudsman], para 5.7

²⁹ Ev 44 [Local Government Ombudsman], para 5.8

³⁰ Ev 44 [Local Government Ombudsman], para 5.9

³¹ *A transformation plan for the Local Government Ombudsman 2011–2015*, LGO, 29 September 2011

³² Ev 44 [Local Government Ombudsman], para 5.10

³³ *As above*

2011, from April 2013 local authority tenants will take complaints about their landlord to the Independent Housing Ombudsman.³⁴

Reorganisation and transformation

22. Since the retirement of the former Chairman of the Commission, Sir Tony Redmond, in 2010, it appears to us that the LGO was in an unsettled position—what Dr Martin called a “period of uncertainty”³⁵—awaiting the appointment of a permanent Chairman, subject to a strategic review and planning, like the rest of the public sector, for savings and reductions in expenditure. Dr Martin said that since 2010 there had been “an extra strain on us” and she paid tribute to the staff in the Commission for their work since 2010.³⁶ **We echo the tribute and thanks Dr Martin has paid to staff at the Commission for their work since 2010.** All the more so since, as the Ombudsmen pointed out to us, there has been an increase in the volume of enquiries and complaints:

In 2010–11 the LGO Advice Team dealt with 95,000 contacts, and received 21,840 complaints and enquiries, an increase of more than 21% from the previous year.

In the same year, the investigative teams dealt with 11,249 complaints across a whole range of subjects, an increase of 7.5% from the previous year. Education and children’s services formed the largest category of complaints, increasing by 15% from the previous year. Complaints about special educational needs also rose significantly. Adult social care complaints concerning councils increased by nearly 50%.³⁷

23. Although the removal of educational cases may relieve the LGO’s work, the upward pressure in its remaining areas of work is likely to continue. As Brian Thompson from the University of Liverpool pointed out, it “seems likely, public expenditure cuts in local government [will] lead to an increase in complaints to the LGO” and he added that consequently “the LGO has to ensure that its efforts to work effectively and efficiently within a reduced budget do not impair the service it provides”.³⁸

Strategic Business Review

24. In these circumstances it makes sense, in our view, to carry out a review of the Commission’s operations before proceeding with the appointment of a new Chairman. In April 2011 the Commission initiated an Independent Strategic Business Review,³⁹ which was carried out by Baroness Fritchie and Denby Rowland.⁴⁰ A summary of its conclusions and the LGO’s response was published in September 2011. Among the main findings, which identified significant opportunities to make cost savings and quality improvements, were:

³⁴ Ev 40 [Local Government Ombudsman], paras 2.6–2.8

³⁵ Q 75

³⁶ Q 76

³⁷ Ev 40, paras 3.6–3.8; see also *Annual report 2011: delivering public value*, p 14.

³⁸ Ev 33, para 22

³⁹ Ev 45, commentary on Q 75; see also Q 77.

⁴⁰ LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, para 5

- a) reducing the space occupied in Millbank Tower in London and exiting the building by 2018 at the latest;
- b) reviewing whether “above average” support levels in corporate functions were strategically necessary or sustainable, and constraining the resources provided for basic administrative tasks;
- c) restructuring the Assistant Ombudsman and Deputy Ombudsman grades and relocating some investigators closer to the Advice Team;
- d) developing a coherent scheme for filtering incoming cases, including the use of risk-based assessment techniques, to reduce the number of cases passed for investigation;
- e) reducing the number of investigative staff in the organisation; and
- f) combining “frontend” and “backend” external-facing parts of the business, building on the recent initiative to produce themed publications, and identifying methods to ensure wide accessibility to LGO’s insights.⁴¹

The Strategic Business Review stated that there were almost no recommendations that “the review would make differently if making a distinction between providing a ‘full service’ and an ‘austerity mode’”.⁴²

25. In our view the Review’s findings raise two issues:

- a) whether the Commission is currently operating in an efficient manner; and
- b) what changes are to be made to the methods of operation of the LGO and how and when they are to be implemented.

The Review’s criticism of the current performance

26. Dr Martin, made the point to us that Baroness Fritchie had been “at pains to say that this is not an organisation in need of repair but one that wants to do better”.⁴³ The Review did, however, identify matters that need to be addressed, specifically:

- that staff performance data suggested that the bottom 20% of performers handled some 10% of the case throughput, and their performance was considerably below the mean;
- that some corporate functions had staffing levels that were difficult to justify; and
- that a significant proportion of operational administrative support (20%) was to provide basic administrative and office support activities.⁴⁴

⁴¹ LGO, *Commission for Local Administration in England: Strategic Business Review: Summary Statement*, September 2011, pp 8–9

⁴² LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, para 159

⁴³ Q 77; this view was echoed in the Foreword to the Strategic Business Review by Baroness Fritchie (LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, p 3).

⁴⁴ LGO, *Commission for Local Administration in England: Strategic Business Review: Summary Statement*, September 2011, p 5 and Q 91

27. When we put the detailed findings of the review to Dr Martin, we found her response revealing:

we were absolutely holding ourselves up to scrutiny as an organisation—that was what we wanted to do. We knew that we had to deliver better value for money and cost reductions. We saw this [Review] as an opportunity to look at the way in which we do business.

[...] As a result of it, we put together a transformation plan, and we are cutting staff and taking out costs throughout the organisation.⁴⁵

Addressing the output of the poorest performers could reduce costs significantly while having a disproportionately smaller impact on throughput capacity. **We conclude that the Strategic Business Review has identified inefficiencies in the current operation of the LGO which if addressed properly should result in savings.**

28. As we have noted, the Review made proposals which went beyond improvements to the existing methods of operation and would change the LGO's methods of operation. Dr Martin told us that:

by 2015, we are going to reduce the overall staffing complement by 23.5 posts, which will bring it down to 175.5 full-time equivalent posts. We will reduce the senior management team and the management cadre.⁴⁶

We will be reducing down to fewer investigative teams, and we will also be reallocating some of our investigative staff into what we are calling an assessment unit.⁴⁷

29. We detected a degree of circumspection, however, in the LGO's response to aspects of the Review.

30. First, only a summary of the Review was published and when we asked Dr Martin for the justification for this approach, she responded that “we wanted to show the response of the commission to what the review was recommending”⁴⁸ and when pressed:

Because we felt that it was more helpful to our staff, the public and the sponsor Department to have the strategic review with the commission's response. It was a strategic review commissioned by the commission. We asked for it to be done and we set the terms of reference, but we wanted it to be an objective, independent piece of work, and we are satisfied that it was. We wanted, as I have said, to publish our response to the recommendation, so that was the approach we took.⁴⁹

Subsequently, the LGO supplied us with a copy of the Review.

⁴⁵ Q 91

⁴⁶ Q 92

⁴⁷ *As above*

⁴⁸ Q 87

⁴⁹ Q 88

31. We found the LGO's reasoning for not publishing the 2011 Strategic Business Review in full unconvincing. We heard no good reason why the Review and summary were not published simultaneously. Staff at the LGO are understandably concerned about the future of the organisation and their jobs and can reasonably expect their senior managers to provide full information. Publishing a summary without the Review risks fuelling a perception that senior management are holding back unpalatable news and undermining staff morale.

32. Second, we considered how and when the Strategic Business Review would be implemented. When the summary was published in September 2011, the LGO attached a four paragraph response.⁵⁰ The final paragraph of the response stated:

We have noted the review has concluded that 27% cost savings may be possible by 2015. We need to validate the basis for these calculations as we consider the detailed review recommendations which will be incorporated into a transformation plan for Commission approval in September. This will then form the business case for funding to DCLG from 2012–15. Building on the findings of the review, this business case will confirm the level of resource needed to fulfil our statutory functions and strategic objectives in the light of citizens' reasonable expectations of our role.⁵¹

33. In oral evidence Ms Seex supplied more information on the point:

Our transformation plan sets up an assessment process that will be run by a small number of staff who are currently investigators. [...] [T]he purpose of concentrating that assessment of complaints into a smaller number of hands, with team leaders working with the staff, is that we as ombudsmen will be able to work more effectively with a smaller group of people and to give regular guidance on the principles and values to be applied on which complaints are selected for investigation and which are not.

By separating out the assessment process—people might not like the decision not to investigate their complaint, but they will hear it quickly and swiftly—we will not be mixing up long-term, complex investigations with the faster decisions out of an assessment. That will mean that the investigators get a complaint, and it will be clear why we have decided to investigate and what we expect the public value to be achieved by that investigation, in addition to remedying the individual justice for the citizen who has brought the complaint. We do not know what the outcome of that will be, because we have never done it before. We believe that being able to concentrate on those two processes distinctly will give faster decisions and more effective investigations.⁵²

⁵⁰ LGO, *Commission for Local Administration in England: Strategic Business Review: Summary Statement*, September 2011, pp 10–11

⁵¹ LGO, *Commission for Local Administration in England: Strategic Business Review: Summary Statement*, September 2011, p 11

⁵² Q 96

In a supplementary written memorandum the LGO gave more information about its Transformation Plan and supplied a copy.⁵³

34. We welcome the LGO's intention, in line with the Strategic Business Review, to set up an assessment process that will be run by a small number of experienced staff who will concentrate on assessing enquiries and complaints but it was not made clear how and when any alteration would be made. We therefore have concerns about the execution of the change.

Chief Operating Officer

35. Central to the transformation of the LGO will be the restructuring of the senior management. The Secretary of State wrote to us on 24 April to explain that he had concluded that the way forward, in parallel to the appointment of the Chairman and Vice-Chairman, was the recruitment of a:

Chief Operating Officer who will assume the roles of Chief Executive and Accounting Officer for the Commission, both roles previously undertaken by the Chairman. This will leave the Chairman free to focus on the strategic direction of the Commission and her quasi-judicial Ombudsman role, while the Chief Operating Officer handles the day-to-day running of the Commission.⁵⁴

36. Until the Chief Operating Officer is in post, the Commission will not fully emerge from the interim arrangements that have been in place since 2010. **We request that in responding to our Report the Government and the LGO set out the arrangements and timetable for appointing the new Chief Operating Officer as well as setting out his or her responsibilities.**

Transformation

37. The Secretary of State explained that the restructuring of the top management was:

a first step to radically transforming the Commission, making it more streamlined, cost-effective, and above all being more customer-focused, championing the rights of redress for local residents. This view of the future Commission reflects the future roles of the Ombudsman which we identified in our Open Public Services White Paper, and underpins the budgets (£13.859m for 2012–13; £12.879m for 2013–14; £11.9m for 2014–15) which we recently confirmed for the Commission for the remainder of this Comprehensive Spending Review period.⁵⁵

38. With the confirmation of the resources it will have up to 2014–15 the Commission can plan for the next three years. The year on year reduction in its resources provides an impetus to the Commission to carry out a significant, if not radical, transformation of its operations. Having considered the evidence we received from the Commission we are not clear, however, whether it has reached this conclusion. For example, as we have noted, the

⁵³ Ev 50 and *A transformation plan for the Local Government Ombudsman 2011–2015*, LGO, 29 September 2011

⁵⁴ Ev w29

⁵⁵ Ev w29–w30

Review recommended the use of a form of assessment to “filter in” cases for further consideration⁵⁶ and it commented on the LGO’s initial handling of complaints and suggested that it should “devote more resources to enable assessment and filtering of incoming complaints”⁵⁷ and pointed out that:

Some other Ombudsmen employ a form of filtering to incoming complaints, and some are starting to see a substantial impact on reducing the number of complaints passed forward for a fuller investigation. The benefits of this practice are two-fold: avoiding carrying out full-scale investigations where this is inappropriate, and avoiding setting inappropriate expectations of an outcome that creates a disbenefit when not met later. [...]

The experience from the Republic of Ireland and the Scottish Ombudsman suggest a target of resolving up to 70% of complaints within jurisdiction at an assessment stage is feasible.⁵⁸

39. When we asked Ms Seex about the disparity between the Irish and Scottish target and the LGO’s record (30%) she replied that they had “adopted a clear separation between assessment and investigation. That is what we are proposing to do, but we have not done it yet”.⁵⁹ When we pressed, she said that the change had been “forced by economic circumstances” on the Irish ombudsman and that the Ombudsman in Scotland had “been agile and focused on achieving value for money and good practice”, while conceding that “we could have been better and faster at doing this”.⁶⁰ We note that the Transformation Plan is predicated on the basis of projected new complaints rising to 13,600⁶¹ in 2014–15 and that it indicates that investigation teams would handle around 7,600 substantive complaints per year.⁶² We were left with the impression that while the LGO intended to introduce a new system to filter incoming complaints, we saw no detailed assessment of the likely level of impact on cases falling within the categories such as ‘local settlement’ or full investigative report or on the effort to be expended per case in the categories set out in Table 1 above.

The administrative autonomy of the Commission

40. Our misgivings were not eased after we had concluded taking oral evidence when the British and Irish Ombudsman Association wrote to us to emphasise that independence was “a critical feature of a true ombudsman scheme”. The Association expressed concern about the Secretary of State’s letter of 24 April to us:

⁵⁶ LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, p 26

⁵⁷ LGO, *Commission for Local Administration in England: Strategic Business Review: Summary Statement*, September 2011, p 6

⁵⁸ LGO, *Commission for Local Administration in England: Strategic Business Review: Summary Statement*, September 2011, p 7; LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, sections 5.4–5.5

⁵⁹ Q 99

⁶⁰ Qq 101–02

⁶¹ The LGO currently accepts around 11,000 cases per year for investigation—see para 12 above.

⁶² *A transformation plan for the Local Government Ombudsman 2011–2015*, LGO, 29 September 2011, pp 59 and 14

that this gives the impression that the LGO may be subject to excessive pressure to reform with the main aim of achieving significant budget reductions. The potential for harm to actual independence and the perception of it is clear.

The Commission [...] as the governing body for the LGO Scheme, is the appropriate authority to recommend appropriate resource levels and oversee change. We understand that the Commission initiated an independent strategic business review and developed a transformation plan for the LGO Scheme during 2011 in preparation for the DCLG budget review later that year.⁶³

41. The Association is right to be vigilant to protect the independence of the Commission but that independence cannot mean that its operational and administrative arrangements are protected from scrutiny or from the reduction in resources from the taxpayer. The Strategic Business Review initiated by the LGO itself identified inefficiencies and made proposals for changes. Some of these changes have already been made by the Irish and Scottish Ombudsmen and we are not aware that their independence has been compromised, certainly the Local Government Ombudsmen did not make this point to us. **In our view, Parliament can legitimately and reasonably call the Commission to account, to explain how it plans to implement its own Review within its budget and to ensure that the Commission operates transparently and efficiently.**

Conclusions

42. The LGO's Transformation Plan produced in September 2011 has supplied us with some of the information we were seeking as well as providing the overall framework but we found it difficult to reconcile some of its figures with those in the memoranda we received from the Commission—for example, the Commission told us that it employed 195.8 fte⁶⁴ but the Plan says there were 235 fte at 31 July 2011.⁶⁵ Of more concern was the absence of milestones against which to measure progress and a clear picture of how the LGO would be operating in 2015. The Transformation Plan contains neither a high level plan along the lines of that set out in section 9 of the Strategic Business Review showing a timetable for the implementation of recommendations nor a business case model.⁶⁶ **In responding to our Report we ask the Commission to explain which of the findings in the Strategic Business Review it intends to implement in full and in part with a timetable for implementation for each.**

The role of Department for Communities and Local Government

43. According to the narrative in the Local Government Ombudsman's annual accounts, "the Chairman and the Accounting Officer meet at regular intervals with the Deputy Director Local Democracy in the DCLG and members of his team to discuss business planning, overall performance, resource management and funding, risk management and

⁶³ Ev w27

⁶⁴ Ev 44, para 5.6; see also para 16 and following above.

⁶⁵ *A transformation plan for the Local Government Ombudsman 2011–2015*, LGO, 29 September 2011, Annex 2; a footnote indicates that this figure includes agency posts and contractors.

⁶⁶ LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, pp 43–47

any matters of concern raised in audit reports [...] these meetings have been held monthly”.⁶⁷ The Secretary of State in his letter of 24 April confirmed that the Commission was “now working closely with my officials to bring about [the] transformation programme” and he expected that the whole transformation, including relocations, will be substantially completed during the remainder of this Spending Review period”.⁶⁸ **In responding to our Report we recommend that the Government explain how it will monitor the implementation of the reorganisation at the Commission.**

Open Public Services White Paper: Choice

44. The LGO pointed out that the *Open Public Services White Paper*⁶⁹ published in July 2011 highlighted the Ombudsmen as having a role in upholding people’s right to choice.⁷⁰ This appears to mean that they should focus more on the consumer and securing the best services rather than simply providing redress. The LGO has responded to the White Paper and is engaged, alongside other public service ombudsmen, in early discussions with the Cabinet Office.⁷¹ Brian Thompson from the University of Liverpool questioned this repositioning: “it is the role of ombudsmen to be independent and impartial handlers of complaints about the quality of the services rather than to champion the promotion of a choice of service providers which [...] is a matter for regulation”.⁷²

45. We note that the *Open Public Services White Paper* was published in July 2011, that is before the Strategic Business Review was completed. In our view the Commission faces a formidable task in carrying out the reorganisation arising from the Review and that developing a role in upholding the right to choice risks diverting it from its main work to 2015: the handling of complaints and implementing the reorganisation.

The Grant Memorandum

46. In the LGO’s 2010–11 annual accounts the Accounting Officer expressed concern that:

throughout the 12 months from April 2010 the Commission did not have a Grant Memorandum in place that reflected the changes occasioned by the change to Grant-in-Aid that had taken place in 2008/09. [...] it created some uncertainty over whether the Commission had a proper understanding of the requirements of its sponsor Department.⁷³

In addition, he said that the Audit Committee expressed concern on several occasions over the lack of progress on implementing management actions prompted by internal audit recommendations. The Committee recognised that a significant number of these actions

⁶⁷ Local Government Ombudsman, *Annual Accounts 2010/11*, 19 July 2011, para 14

⁶⁸ Ev w30

⁶⁹ *Open Public Services White Paper*, Cm 8145, July 2011

⁷⁰ Ev 40, para 2.9

⁷¹ *As above*

⁷² Ev 32, para 15; see also Q 42.

⁷³ LGO, *Annual Accounts 2010/11*, 19 July 2011, p 22

related to governance issues and were dependent upon DCLG making the necessary progress on their side.⁷⁴

47. We raised these concerns with the LGO when she gave oral evidence on 30 April. Dr Martin agreed that it had been “more than disappointing that the grant memorandum has not been superseded by a framework document, which is what was intended”.⁷⁵ In a supplementary memorandum the Commission indicated that, it had “actively tried to agree a Grant Memorandum to supersede the one agreed in 1999” and that it had been proposed that the Commission escalate “its concerns to the most senior levels in the Department in order to try and resolve this issue”.⁷⁶ **While the lack of progress in updating the 1999 Grant Memorandum may arise from the state of uncertainty since 2010, we consider it unacceptable that the LGO should not be clear about its relationship with, and responsibilities to, DCLG. We would go further to say that it is of particular importance in such a period that the relationship and responsibilities should be comprehensively and accurately defined. They can then be revised when the situation changes. We recommend that as a matter of urgency the Government finalise the arrangements for updating and superseding the 1999 Grant Memorandum.**

Commission staff survey

48. When the Ombudsmen gave oral evidence we were concerned that the period since 2010 and in all likelihood the period ahead may be difficult for staff at the Commission and we asked whether the Commission, as was common practice in other public bodies, carried out a staff survey. We were surprised when Ms Seex told us that one had not been carried out at least in the last five or six years. She accepted that it would be “good practice” to carry one out.⁷⁷ **We recommend that the Commission institute an annual, independent staff survey and that it publish the results.**

⁷⁴ LGO, *Annual Accounts 2010/11*, 19 July 2011, pp 22–23

⁷⁵ Q 81

⁷⁶ Ev 50

⁷⁷ Q 155

3 Handling of complaints

Introduction

49. In this chapter we examine the criticisms that have been made about the handling of complaints by the Local Government Ombudsman (LGO). It is important, however, to acknowledge the volume and nature of the work that the LGO carries out. As we have noted, the LGO dealt with 21,840 complaints and enquiries and its investigative teams pursued 11,249 complaints in 2010–11.⁷⁸ On the nature of challenge facing Commission staff we found the assessment of Gary Powell, formerly from LGO Watch and a critic of the LGO, useful:

There will always be a significant number of complaints about local authorities submitted to the LGO that are trivial, misguided or vexatious. [...] it was ironically the case that I developed some sympathy for [its] officers who regularly had to deal with the stress caused by some persistent and vexatious complainants without a valid complaint, as such people would often then turn to LGOWatch for advice and assistance, and their vexatious and unreasonable behaviour would continue.⁷⁹

“Customer satisfaction”

50. We start with the systems that LGO has in place to evaluate the satisfaction or otherwise of those who use its services. We received evidence criticising the arrangements for collecting *customers’* views. LGO Watch and Public Service Ombudsman Watchers said that the LGO’s 1995 and 1999 customer satisfaction surveys were quantitative in nature involving 1,000 complainants but that, following the extremely poor customer satisfaction levels highlighted in both those surveys (over 70% of all complaints dissatisfied), “the LGO switched to a qualitative customer satisfaction survey involving just a handful of specially selected and filtered complainants”. It had then switched back to a quantitative survey in 2007 but it had “received an extremely poor customer satisfaction level” and in 2010 it had reverted “to a qualitative survey involving just a handful of specially selected and filtered complainants”.⁸⁰

51. When we asked Ms Seex about customer satisfaction surveys, she recalled that the last survey, a quantitative survey carried out in 2007, “had about 26% satisfied with the outcome of their complaint”.⁸¹ She added that the research showed that it was:

almost impossible to extricate outcome from handling. We followed that quantitative research up with qualitative research because, in doing the survey, MORI had told us that it was very difficult for people who had got an outcome that they did not like or expect to separate that from comments on the organisation.⁸²

⁷⁸ Ev 41, paras 3.6–3.7

⁷⁹ Ev w4, para 2.9

⁸⁰ Ev w20, para 3.06; see also Ev w21, para 2 and Ev w5, para 3.

⁸¹ Q 145

⁸² Q 147

Looking to the future, Ms Seex said that she would envisage surveys done “about once every three years and to supplement them with qualitative research” and that the Commission needed “to be able to correlate people’s reporting of bad experiences with the actual practice that was applied to their complaint”.⁸³

52. We accept the LGO’s point that outcome may colour responses to customer satisfaction surveys but this is neither unique to the LGO nor grounds to abandon a regular customer satisfaction survey. What is of concern to us is that the perception has grown that LGO does not have a clear and consistent approach to customer satisfaction surveys. We see a strong case for the LGO in partnership with other Ombudsmen in the British Isles developing a common methodology, which would allow comparison between broadly similar organisations and measure changes over time. With the extent of the reorganisation taking place over the next three years we consider that it is essential that the effect of the changes on those coming to the LGO for redress is monitored and measured. **We recommend that the LGO develop and publish a methodology for measuring levels of customer satisfaction to apply for the next ten years and, if possible, develop the methodology in partnership with other Ombudsmen in the British Isles. We also recommend that having developed the methodology the Commission carry out a survey in 2013 and triennially thereafter.**

Handling of cases by the Local Government Ombudsman

53. In this section we examine the most common criticisms made against the LGO:

- a) excessive delay in handling cases;
- b) confusion between “mediation” and the LGO’s quasi-judicial functions;
- c) where the LGO carries out a quasi-judicial function it neither follows due process nor has the LGO the legal expertise to weigh issues correctly;
- d) the LGO’s lack of expertise in areas such as adult social care; and
- e) bias in favour of local authorities.

Delays in handling cases

54. In their written submission Robert Murrow and Debbie Sayers expressed concern about the effect on cases concerning children with special educational needs: “Complaints to the LGO may take a year to resolve in which time, parents and carers report that placements may have broken down and relationships deteriorate with schools and [local authorities] because of lengthy investigations. Delay in such circumstances is unacceptable”.⁸⁴ When he gave oral evidence Guy Crivello, Managing Director of Care for Community Living Ltd, told us that:

⁸³ Q 150

⁸⁴ Ev 38, para 24; see also Qq 55–59 [Robert Murrow].

there are time limits for local authorities to reply, but my experience over the years is that those are not rigorously enforced. A great deal of latitude is given in terms of what is called a complex case. You can be two and a half years into a case and just be told that it is very difficult to get this information; the local authority has to work very hard to get it. I would certainly have far more rigorously enforced time limits.⁸⁵

55. From the local authority perspective, Devon County Council said that consistency should be applied in the way the LGO set deadlines both with local authorities and her own investigators. The Council told us that it was “not aware of any timescales for investigators to consider complaints” and pointed out that in the past, investigators themselves have been delayed and this seems to be acceptable. The Council cited one case where it had:

provided a response to the Ombudsman on 22 July 2011 and received an email on 4 November 2011 stating that a different investigator had taken on the complaint offering his apologies that he had “not written to [the Council] before now”. In another case, the Council provided a response on 19 December 2011 and received correspondence on 10 February 2012 stating that the investigator was “considering the information”. In yet another case, the investigator wrote to the Council stating that a delay had occurred due to “personal circumstances”.⁸⁶

56. When the Ombudsmen came before us on 30 April we put concerns about the time they were taking to determine some cases to them. We set out below the exchange.

Chair: We have had reports [...] that it has taken months for you to come to a decision. People who have put in a grievance tend to ring up to find out where they are at only to be told they are on your desk, and that has been for literally months—I am not talking about two or three months, but six months, or up to a year.

Anne Seex: That is true.

Chair: Is that reasonable?

Anne Seex: No, it is not reasonable, and it is an unfortunate by-product of the interregnum that we have been through. It isn’t typical, and it certainly isn’t typical of our whole organisation, where 85% of complaints are decided within 26 weeks.

Chair: Sorry, but why is it a by-product of the interregnum? There have been two of you there for some time. There are two of you there now. Why should it take up to 12 months for you, as an individual, to decide some issues?

Anne Seex: It shouldn’t. In an ideal world, you would not want that. You would want to be able to pick up a complex case straight away and to devote all the time it needed to reach a decision, but that is not often the world we are in. Sometimes the case is incomplete. Sometimes it takes a long time to complete the work, get additional information and reach a view.

⁸⁵ Q 18

⁸⁶ Ev w11, para 4

Chair: When someone out there is waiting for a decision, taking 12 months sounds a bit to me like maladministration.

Anne Seex: Very probably. It is not something that we want to see happen, but it is not that that case is sitting there waiting and action is not being taken, or the work isn't being done. It is about how much time you can devote to one particular issue among all the others that need dealing with.⁸⁷

57. We found Ms Seex's concession that the LGO's delay in determining some cases was itself likely to amount to maladministration grounds for serious concern. **An organisation, whose primary job is investigating and determining whether maladministration by others has taken place, must itself take care to avoid maladministration. If it does not, it will undermine its own role and credibility.** As Brian Thompson from the University of Liverpool pointed out it was "essential that a body which is seeking to help others improve, practises what it preaches".⁸⁸ **We urge the Commission to review its current administrative arrangements, as well as those that emerge as a result of the reorganisation, to ensure that the delay in determining cases which amounts to maladministration ceases immediately. We recommend that all processes should be strictly timetabled and that cases for decision through the quasi-judicial process—other than in exceptional circumstances and with the agreement of the parties—should be determined within three months.**

58. When we asked the LGO whether complainants were informed about delays Dr Martin replied "that would usually be the case".⁸⁹ **We recommend that as part of any new timetabling arrangements complainants are always informed if there is going to be a delay.**

Confusion between "mediation" and quasi-judicial function

59. In its written submission the LGO explained that its job was to provide independent resolution of complaints.⁹⁰ Given the volume and nature of the complaints that the LGO receives there has to be more than one process for carrying out its work. These can range from advising those who contact the LGO how to complete the internal complaints processes of a local authority⁹¹ to the full investigation and determination of maladministration cases. Between these poles lie processes some of which have the characteristics of mediation.

60. We detected two concerns about the mediated process. First, whether it was the most suitable procedure to adopt. Mr Crivello expressed concerns:

The LGO has an institutional prejudice that most complaints can be redressed by talking things over or at most securing an apology. This is a clearly prejudiced constraint placed on the LGO by itself, and cannot be viewed as a credible or

⁸⁷ Qq 106–09; see also Qq 110–13.

⁸⁸ Ev 33, para 23; see also Q 73.

⁸⁹ Q 121

⁹⁰ Ev 39, para 1.1

⁹¹ Ev 40, para 3.2

impartial approach to commercial concerns, which of course will require commercial remedies or in other words, proportionate financial redress for any financial damage caused by a Council's maladministration or wrong doing.⁹²

61. Second, looking across the representations we received we were not convinced that complainants were always fully aware of the distinct between the mediated process and investigation and determination. Our concerns were underlined by a finding in the Strategic Business Review:

LGO management data shows that during 2010/11 of the total cases investigated, around 15% were determined to be as outside jurisdiction and a further 20% were concluded following exercise of Ombudsman's discretion not to investigate further. The impact of this scenario is that a lot of complainants received two conflicting messages: initially, "yes, we will investigate", later "no, we will not investigate further". The review believes this raises questions of whether work was carried out that could have been avoided, and whether good customer service was delivered.⁹³

62. In our view it is self-evident that the facility to provide a mediated process must be available to the LGO to be used where it is appropriate to achieve redress. Indeed, the Strategic Business Review considered that there was evidence that suggested there were a significant number of cases that were amenable to seeking early resolution.⁹⁴ **As we have already noted, the reorganisation and transformation programme may lead to fewer cases following the investigative route to formal determination. In these circumstances we consider that the Commission needs to be completely clear how the distinct processes operate and differ as well as the criteria against which complaints are allocated to these resolution processes. In addition, when a case moves from one process to another—for example, if mediation fails and the case is moved to investigation—the shift to a different method of handling has to be made clear to all the parties.**

Processes in cases that are investigated and determined

63. Where a case falls for investigation and determination by the LGO there is an expectation that the LGO is acting in a quasi-judicial capacity and therefore follows judicial procedures. In its memorandum LGO Watch and Public Service Ombudsman Watchers drew an unfavourable comparison between the LGO and the courts and tribunals, pointing out, among other matters, that:

- court proceedings were normally held in public;
- the judge was qualified;
- a judge could not delegate his or her job to a junior member of staff;
- all evidence was shown to both sides;

⁹² Ev 28, para 3.6

⁹³ LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, para 95

⁹⁴ LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, para 110

- a judge was not able talk to one side without the other side being present;
- courts followed case law or provided a valid reason for not doing so;
- statements were not accepted as the truth by a judge without (a) being made under oath and (b) tested by counter argument and cross examination by the other party.⁹⁵

64. In his oral evidence Mr Crivello said LGO handled evidence in a "distinctly un-forensic" manner⁹⁶ and he explained that:

In terms of the exchange of information, we have had things cited which have no references whatsoever. Again and again, you get terms like, "The council's officers feel" or "the council have said". When we are submitting evidence we give specific references of the type you will be able to replicate and use in court, not hearsay. That occurs again and again within reports. [...]

The consequences are that it is very difficult to rebut what the person is saying. If the LGO are telling you it is all fine because they have been told by the local authority that they did in fact do something, you might ask when they did it, who did it and whether there is any record to show that, or whether they are just taking an assurance. It is the validation of the evidence put before the LGO and the ability of the complainant to cross-examine it that I think is distinctly un-forensic.⁹⁷

65. Neither Dr Martin nor Ms Seex has a legal background. Dr Martin pointed out, however, that:

we were appointed at separate times as local government ombudsmen, and being a lawyer or having legal experience was not part of the role. What we bring, I hope, is a common-sense approach to administrative justice. We have legal advisers and professional staff to ensure that our investigations are conducted impartially and robustly, working within a legal and regulatory framework. But our role as ombudsmen with the authority vested in us is to make findings and recommendations of remedy based on the evidence and facts put in front of us.⁹⁸

Ms Seex also pointed out that they were "confident that we should publish all our decisions, and then people will be able to look at them on the website"⁹⁹ and in its memorandum the LGO explained that:

During the next year, the LGO intends to establish an open publication scheme where the final decision statement on all cases will be published in an anonymised format on the LGO's website This will provide a comprehensive picture of complaint outcomes for the public and for bodies in jurisdiction and a greater wealth of information on maladministration, service failure and injustice, as well as where

⁹⁵ Ev w18, para 3.02

⁹⁶ Q 30

⁹⁷ Qq 31–32

⁹⁸ Q 80

⁹⁹ Q 138

practice is validated through an LGO investigation. This will help service providers and users of services to judge their own experience of local service provision and the role of the local authority.¹⁰⁰

66. We welcome the publication of the LGO’s decisions. Comprehensive publication will provide a body of precedents and standards, to guide not only local authorities but those considering making a complaint on the grounds of maladministration.

67. The result of the introduction of what the LGO describes as a “new business model with a refocused, more robust, intake and assessment process”¹⁰¹ arising from the planned reorganisation may result, as the Secretary of State suggested, in “the Commission’s processes for handling complaints [being] wholly re-engineered with the focus on those cases involving serious service failure”.¹⁰² If this is the case, we can see the advantage in a review of the LGO’s handling of evidence in such cases, specifically the review should address to what extent the LGO’s processes should be brought into line with judicial procedures such as full disclosure of all submissions. **We therefore recommend that the LGO, as part of its reorganisation set up a review of the arrangements for treating evidence in cases involving serious service failure, specifically to what extent the LGO’s processes should be brought into line with judicial procedures such as full disclosure of all submissions, with, if necessary in sensitive cases, redactions of personal information.**

Mediated cases

68. As we have noted, the result of the proposed changes may be more mediated cases. **Where the mediated process results in an agreement we consider that, in the interests of transparency, these agreements should also be published by the LGO, if necessary in anonymised form.**

Review and evaluation of the LGO’s decisions

69. Finally, we considered the representations we received about the quality of decisions made by the LGO and whether the arrangements for reviewing the LGO’s decisions needed to be changed. The following points were made to us.

- a) The LGO’s staff did not have the expertise to comprehend and report on cases of alleged maladministration arising from all parts of her remit.¹⁰³
- b) The consequence of the LGO failing to follow norms commonly applied by the courts (as noted above) was that it was not able to ensure transparency and fairness between parties and that it was able to handle and test evidence.¹⁰⁴

¹⁰⁰ Ev 43, para 4.19

¹⁰¹ Ev 40, para 2.11

¹⁰² Ev w30

¹⁰³ For example, Qq 68–71 [Guy Crivello, Care for Community Living Ltd, Robert Murrow], Ev w12 [Paul and Gill Robinson], Ev w18, para 3.02, Ev 35–36, 38 [Robert Murrow and Debbie Sayers], paras 8–11 and *suggestions for reform* section, Ev 28–29 [Care for Community Living Ltd], para 3, Ev w24 [Sam Burns], Ev w27–w28 [Mr Williams], Ev w28–w29 [DA Burnett], Ev w32, paras 2.4–2.5, 3

- c) There is no adequate mechanism for appealing against a decision of the LGO.¹⁰⁵
- d) The LGO has a bias in favour of local authorities.¹⁰⁶ Its officers are too close to the bodies they should be investigating impartially.¹⁰⁷
- e) There is no external independent academic or legal scrutiny of complaints about decisions.¹⁰⁸ In regard to the volume of complaints about the LGO's handling of complaints, we noted that the Strategic Business Review indicated that data for investigating reviews showed that around 10% of cases investigated received a request for a review from the complainant.¹⁰⁹
- f) There are no audits to assess quality and consistency in approach across teams and offices in LGO investigation work.¹¹⁰
- g) There was no published set of criteria as to what should trigger a joint investigation by the Local Government Ombudsman and the Parliamentary and Health Service Ombudsman.¹¹¹

70. When we put some of these concerns to the Ombudsmen at the oral evidence on 30 April, Dr Martin expressed concern if there was a perception that the service was too close to local authorities. She said that “all our decisions, findings and routes to remedy are based on the evidence—the facts of the matter—and it is absolutely critical that the public have confidence that the investigations we carry out are impartial and independent”.¹¹² Ms Seex added that it would be a “cardinal sin for anybody in our organisation to make a decision based on evidence and not say what that evidence was” and that the routine practice was to “make available to the person who has made the complaint the evidence that we rely on in our decision. Sometimes we cannot do that if the evidence involves third parties”.¹¹³ On ensuring consistency of decisions, Dr Martin said that she encouraged “investigatory teams to work very much as teams and to share experiences and support each other” and that jointly with Ms Seex she held “case conferences on the adult social care new jurisdiction and the schools new jurisdiction”.¹¹⁴

¹⁰⁴ For example, Qq 16, 30–32 [Guy Crivello, Care for Community Living Ltd], Q 27 [Robert Murrow], Ev w12 [Paul and Gill Robinson], Ev w15 [Peter Ranken], Ev w18, para 3, Ev 36–37 [Robert Murrow and Debbie Sayers], paras 12–17, 20–22, Ev w32 [Sheila Robb], paras 2.6, 3, Ev 26 [Care for Community Living Ltd], paras 1–2, Ev w28 [Mr Williams]

¹⁰⁵ For example, Qq 33, 35 [Guy Crivello, Care for Community Living Ltd, Robert Murrow], Ev w6 [Gary Powell], para 3.13, Ev w13 [Paul and Gill Robinson], Ev w15 [Peter Ranken], Ev 39 [Robert Murrow and Debbie Sayers], Ev w32 [Sheila Robb], para 3

¹⁰⁶ For example, Qq 27–29 [Brian Thompson, Robert Murrow and Guy Crivello], Ev w4 [Gary Powell], para 3.11, Ev w1–w21 [LGO Watch and Public Service Ombudsman Watchers], para 3, Ev 37 [Robert Murrow and Debbie Sayers], paras 18–19, Ev w31–34 [Sheila Robb], paras 2.3–2.4, 3

¹⁰⁷ For example, Ev w5 [Gary Powell], para 3.11, Ev w12–13 [Paul and Gill Robinson], Ev w28 [DA Burnett]

¹⁰⁸ Ev w1 [Sandhya Dass]

¹⁰⁹ LGO, *Commission for Local Administration in England: Strategic Business Review*, July 2011, para 134

¹¹⁰ Ev w1 [Sandhya Dass]

¹¹¹ Ev w11 [Mr and Mrs Wain], para 7

¹¹² Q 134

¹¹³ Q 139

¹¹⁴ Q 157

71. The Parliamentary and Health Service Ombudsman in her written evidence pointed out that in considering how the LGO operated the British and Irish Ombudsman Association's five key criteria for membership should be kept in mind:

- Independence
- Fairness
- Effectiveness
- Openness and Transparency
- Accountability.

72. As we explained in the first chapter, this is a light touch review of the LGO. We are therefore not going to examine the allegations listed at paragraph 69 in detail. We have, however, considered them carefully with the points made by the Ombudsmen and we asked ourselves whether the criticisms were essentially the product of the LGO's rejection of complaints. Given the scale and nature of the evidence put to us we consider that *prima facie* there are grounds for further investigation to ensure that the LGO is fully meeting the criteria set out by the British and Irish Ombudsman Association. In these circumstances we consider that a new arrangement needs to be developed to give the public and Parliament the assurance that the LGO is meeting its remit and, if not, suggest improvements and changes. **We recommend that the LGO working with the British and Irish Ombudsman Association bring forward arrangements to ensure that there is an annual evaluation of the LGO by an external, independent reviewer to ensure that it meets the criteria of independence, fairness, effectiveness, openness and transparency and accountability. We further recommend that the first review form part of the proposed reorganisation of the LGO and that the reviewer consider the matters we raise at paragraph 69 of this Report. The reviewer should be appointed by the end of this year and complete his or her work and publish it no later than Easter 2013.**

Conclusions and recommendations

Reorganisation and transformation

1. We echo the tribute and thanks Dr Martin has paid to staff at the Commission for their work since 2010. (Paragraph 22)

The Strategic Business Review

2. We conclude that the Strategic Business Review has identified inefficiencies in the current operation of the LGO which if addressed properly should result in savings. (Paragraph 27)
3. We found the LGO's reasoning for not publishing the 2011 Strategic Business Review in full unconvincing. We heard no good reason why the Review and summary were not published simultaneously. Staff at the LGO are understandably concerned about the future of the organisation and their jobs and can reasonably expect their senior managers to provide full information. Publishing a summary without the Review risks fuelling a perception that senior management are holding back unpalatable news and undermining staff morale. (Paragraph 31)
4. We welcome the LGO's intention, in line with the Strategic Business Review, to set up an assessment process that will be run by a small number of experienced staff who will concentrate on assessing enquiries and complaints but it was not made clear how and when any alteration would be made. We therefore have concerns about the execution of the change. (Paragraph 34)

Chief Operating Officer

5. We request that in responding to our Report the Government and the LGO set out the arrangements and timetable for appointing the new Chief Operating Officer as well as setting out his or her responsibilities. (Paragraph 36)

Scrutiny of the Commission

6. In our view, Parliament can legitimately and reasonably call the Commission to account, to explain how it plans to implement its own Review within its budget and to ensure that the Commission operates transparently and efficiently. (Paragraph 41)

Implementation of the Strategic Business Review

7. In responding to our Report we ask the Commission to explain which of the findings in the Strategic Business Review it intends to implement in full and in part with a timetable for implementation for each. (Paragraph 42)
8. In responding to our Report we recommend that the Government explain how it will monitor the implementation of the reorganisation at the Commission. (Paragraph 43)

Open Public Services White Paper: Choice

9. We note that the Open Public Services White Paper was published in July 2011, that is before the Strategic Business Review was completed. In our view the Commission faces a formidable task in carrying out the reorganisation arising from the Review and that developing a role in upholding the right to choice risks diverting it from its main work to 2015: the handling of complaints and implementing the reorganisation. (Paragraph 45)

Updating the Grant Memorandum

10. While the lack of progress in updating the 1999 Grant Memorandum may arise from the state of uncertainty since 2010, we consider it unacceptable that the LGO should not be clear about its relationship with, and responsibilities to, DCLG. We would go further to say that it is of particular importance in such a period that the relationship and responsibilities should be comprehensively and accurately defined. They can then be revised when the situation changes. We recommend that as a matter of urgency the Government finalise the arrangements for updating and superseding the 1999 Grant Memorandum. (Paragraph 47)

Commission staff survey

11. We recommend that the Commission institute an annual, independent staff survey and that it publish the results. (Paragraph 48)

Customer satisfaction

12. We recommend that the LGO develop and publish a methodology for measuring levels of customer satisfaction to apply for the next ten years and, if possible, develop the methodology in partnership with other Ombudsmen in the British Isles. We also recommend that having developed the methodology the Commission carry out a survey in 2013 and triennially thereafter. (Paragraph 52)

Delays in handling cases

13. An organisation, whose primary job is investigating and determining whether maladministration by others has taken place, must itself take care to avoid maladministration. If it does not, it will undermine its own role and credibility. (Paragraph 57)
14. We urge the Commission to review its current administrative arrangements, as well as those that emerge as a result of the reorganisation, to ensure that the delay in determining cases which amounts to maladministration ceases immediately. We recommend that all processes should be strictly timetabled and that cases for decision through the quasi-judicial process—other than in exceptional circumstances and with the agreement of the parties—should be determined within three months. (Paragraph 57)

15. We recommend that as part of any new timetabling arrangements complainants are always informed if there is going to be a delay. (Paragraph 58)

Confusion between “mediation” and quasi-judicial function

16. In our view it is self-evident that the facility to provide a mediated process must be available to the LGO to be used where it is appropriate to achieve redress. (Paragraph 62)
17. As we have already noted, the reorganisation and transformation programme may lead to fewer cases following the investigative route to formal determination. In these circumstances we consider that the Commission needs to be completely clear how the distinct processes operate and differ as well as the criteria against which complaints are allocated to these resolution processes. In addition, when a case moves from one process to another—for example, if mediation fails and the case is moved to investigation—the shift to a different method of handling has to be made clear to all the parties. (Paragraph 62)
18. We welcome the publication of the LGO’s decisions. Comprehensive publication will provide a body of precedents and standards, to guide not only local authorities but those considering making a complaint on the grounds of maladministration. (Paragraph 66)
19. We therefore recommend that the LGO, as part of its reorganisation set up a review of the arrangements for treating evidence in cases involving serious service failure, specifically to what extent the LGO’s processes should be brought into line with judicial procedures such as full disclosure of all submissions, with, if necessary in sensitive cases, redactions of personal information. (Paragraph 67)
20. Where the mediated process results in an agreement we consider that, in the interests of transparency, these agreements should also be published by the LGO, if necessary in anonymised form. (Paragraph 68)

Review and evaluation of the LGO’s decisions

21. We recommend that the LGO working with the British and Irish Ombudsman Association bring forward arrangements to ensure that there is an annual evaluation of the LGO by an external, independent reviewer to ensure that it meets the criteria of independence, fairness, effectiveness, openness and transparency and accountability. We further recommend that the first review form part of the proposed reorganisation of the LGO and that the reviewer consider the matters we raise at paragraph 69 of this Report. The reviewer should be appointed by the end of this year and complete his or her work and publish it no later than Easter 2013. (Paragraph 72)

Formal Minutes

Wednesday 4 July 2012

Members present:

Mr Clive Betts, in the Chair

Heidi Alexander
Bob Blackman
Simon Danczuk
Bill Esterson

David Heyes
James Morris
Mark Pawsey

Draft Report (*The work of the Local Government Ombudsman*), proposed by the Chair, brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 72 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 16 and 30 April and 21 May): the British and Irish Ombudsman Association, Children Need Families, John Cameron, Sandhya Dass, Mike Rawson, Sheila Robb and M Stabler.

[Adjourned till 9.15am, Monday, 9 July

Witnesses

Monday 23 April 2012

Page

Guy Crivello, Managing Director, Care for Community Living Ltd, **Brian Thompson**, University of Liverpool and **Robert Murrow** Ev 1

Monday 30 April 2012

Dr Jane Martin, Chairman and **Anne Seex**, Vice Chairman of the Commission for Local Administration in England Ev 13

List of printed written evidence

Care for Community Living Ltd	Ev 26, Ev 30
Commission for Local Administration in England (LGO)	Ev 39, Ev 45, Ev 50
Robert Murrow and Debbie Sayers	Ev 34
Brian Thompson, University of Liverpool	Ev 30

List of additional written evidence

(published in Volume II on the Committee's website www.parliament.uk/clgcom)

Joseph David Abrams	Ev w7, Ev w9
British and Irish Ombudsman Association (BIOA)	Ev w26, Ev w27
Mr D A Burnett	Ev w28
Sam Burns	Ev w24
Mrs Lynette Cameron	Ev w33
Children Need Families	Ev w36
Sandhya Dass	Ev w1, Ev w2
Department for Communities and Local Government	Ev w 29
Devon County Council's Local Government Ombudsman Link Officer	Ev w10
Keith Edmunds	Ev w25
LGO Watch and Public Service Ombudsman Watchers	Ev w17
Parliamentary and Health Service Ombudsman	Ev w23
Gary Powell	Ev w3
Peter Ranken	Ev w14, Ev w16
Mike Rawson	Ev w30
Sheila Robb	Ev w31
Paul and Gill Robinson	Ev w12
Mr M Stabler	Ev w30
Mr and Mrs Wain	Ev w10
Mr Williams	Ev w27

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2012–13

First Report	Park Homes	HC 177-I
Second Report	European Regional Development Fund	HC 81

Session 2010–12

First Special Report	Beyond Decent Homes: Government response to the Committee's Fourth Report of Session 2009–10	HC 746
First Report	Local Authority Publications	HC 666 (HC 834)
Second Special Report	Local Authority Publications: Government response to the Committee's Sixth Report of Session 2010–11	HC 834
Second Report	Abolition of Regional Spatial Strategies: a planning vacuum?	HC 517 (CM 8103)
Third Special Report	FiReControl: Government response to the Committee's Fifth Report of Session 2009–10	HC 835
Third Report	Localism	HC 547 (CM 8183)
Fourth Report	Audit and inspection of local authorities	HC 763 (CM 8209)
Fifth Report	Localisation issues in welfare reform	HC 1406 (CM 8272)
Sixth Report	Regeneration	HC 1014 (CM 8264)
Seventh Report	Pre-appointment hearing for the Government's preferred nominee for Chair of the Homes and Communities Agency Regulation Committee	HC 1612
Eighth Report	The National Planning Policy Framework	HC 1526 (CM 8322)
Ninth Report	Taking forward Community Budgets	HC 1750
Tenth Report	Building regulations applying to electrical and gas installation and repairs in dwellings	HC 1851 (CM 8369)
Fourth Special Report	Preventing violent extremism: Government response to the Committee's Sixth Report of Session 2009–10	HC 1951
Eleventh Report	Financing of new housing supply	HC 1652

Oral evidence

Taken before the Communities and Local Government Committee

on Monday 23 April 2012

Members present:

Mr Clive Betts (Chair)

Bob Blackman
Simon Danczuk
David Heyes

George Hollingbery
Mark Pawsey
Heather Wheeler

Examination of Witnesses

Witnesses: **Guy Crivello**, Managing Director, Care for Community Living Ltd, **Brian Thompson**, University of Liverpool, and **Robert Murrow** gave evidence.

Q1 Chair: Good afternoon. Welcome, all of you, to the first evidence session of the Committee's inquiry into the annual report of the Local Government Ombudsman for England. For the sake of our records, please say who you are and the organisations you represent.

Guy Crivello: My name is Guy Crivello. I work for Care for Community Living, a small south London charity.

Brian Thompson: My name is Brian Thompson. I am a senior lecturer in the School of Law at the University of Liverpool.

Robert Murrow: My name is Robert Murrow. I am appearing here in a personal capacity as a representative of an informal group of parents, all of whom have been complainants to the Local Government Ombudsman in relation to the work of local authorities in their provision of special educational needs education to children.

Q2 Chair: Thank you for the written evidence you have supplied to us and also for coming this afternoon. At the beginning, let me make a statement about the scope of the evidence we are going to take. First, as the Committee made clear when it issued a call for evidence, it shall not be examining or reviewing individual cases. Second, I understand that two of the witnesses today have live cases before the Ombudsman. We are not examining those cases, nor would we expect to hear anything about them in this evidence session. Nothing in the proceedings today can or should be taken as having any bearing on the outcome of those cases. If we all understand that, and if we can proceed on that basis when we talk about the general issues of concern that will be helpful to all of us. Thank you very much. In written evidence we have had some quite severe criticism of the Local Government Ombudsman. For example, LGO Watch and Public Service Ombudsman Watchers call the LGO "the most perverse and publicly criticised system of administrative justice in the world". That is a bit sweeping, isn't it? Is it not a bit far-fetched? Do you agree with that?

Guy Crivello: If you go back to the OECD report of 2006, which looks at conflict of interest and standards in public life across the European spectrum and North America as well, there are systemic problems with the

LGO service that certainly would not give it a clean bill of health.

Brian Thompson: I think that is quite sweeping. There may be particular instances in which an organisation does not live up to the standards it would like to, but that is very strong criticism.

Q3 Chair: You would not go as far as that.

Brian Thompson: I certainly would not.

Chair: In due course we will probably come to some of the criticisms that you do have.

Robert Murrow: I have no claim to having any overview of the work of the Ombudsman, so I am not going to pretend that I do. I will say, however, that particularly parents of children with special educational needs are communicating with one another and raising significant concerns about a number of common themes about the way complaints are handled. Save for that very small statement, I do not think I can say anything else.

Q4 Chair: When we look at a service like the Ombudsman, I suppose there is a danger similar to that faced when people come to complain to Members of Parliament: you can be either a good Member of Parliament who sorts out the problem or a bad one who does not. To an extent it is the same with the Ombudsman, isn't it? People take against the service when it cannot resolve problems that sometimes are unresolvable. Is that not the fundamental difficulty here? We get criticism that is related to matters that cannot be sorted out and, therefore, the Ombudsman is blamed for not sorting them out?

Guy Crivello: I think that is a valid point. There is always a case of sour grapes when somebody does not have a decision that goes their way. I imagine that the bulk of bad feeling stems from that rather than the systemic problems to which I will be referring. I do, however, think there are genuine systemic problems and, rather than the really adverse criticism with which you led, there is a constructive way to address them.

Brian Thompson: One of the problems might well be that people generally do not understand the remit of the Ombudsman and therefore they may come in with expectations that cannot be fulfilled. It should be the Ombudsman's role to make clear what they can and

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

cannot do, but that will be part of the reason that people will be dissatisfied, as well as the general outcome effect. If they do not get the outcome they would like, they will not be happy with the service they have received.

Robert Murrow: It is fundamental, isn't it, that a complainant who has not received the outcome they like will be disgruntled and will share their displeasure with others? It would not necessarily be constructive to dismiss complainants simply because they are disgruntled as a consequence of outcomes not being as they would wish. We identify some difficulties with process as well, which I think deserve looking into.

Chair: Perhaps we may come to what improvements might be made.

Q5 Heather Wheeler: I am almost giving you the floor—if you were to design a new Ombudsman service from scratch, how do you think you would structure it, and what would it look like? For example, do you think that the Local Government Ombudsman operates at a different level from the Parliamentary Ombudsman and Housing Ombudsman? Could they be wrapped up together?

Brian Thompson: That was something that was looked at in 2000. A Cabinet Office report looked at a public services Ombudsman in England. Part of the problem with it was that it was the very early days of devolution and they did not fully recognise that the Parliamentary Ombudsman has jurisdiction in Scotland, Wales and Northern Ireland. That makes it slightly different; it is more than just England.

There certainly could be ways in which one might be able to join things up differently. The Law Commission has suggested that that ought to be done and that there should be a wider inquiry into how Ombudsmen and administrative justice is dealt with, because there are different configurations. You can devise them according to different criteria, but they could be looked at. As I said in my evidence, there is policy fragmentation in this area, and I suggest it needs to be looked at in the round.

Guy Crivello: I can add to that inasmuch as to say there is fragmentation of the service. There are also different statutory provisions covering different areas of the Ombudsmen's work. Obviously, that would apply if you extended that remit to cover other areas. A serious consideration here is that there needs to be a consistent statutory framework. Going back to the concept of people's expectations, where they are informed those will sit alongside what they can glean from the statutory provisions in front of them. One of the additional problems involves the public, in that wading their way through that patchwork of Acts is beyond the ability of most people. That is a consideration when extending the remit of the LGO.

Robert Murrow: I have nothing to say on that.

Q6 Heather Wheeler: Following on from that slightly, because of all the different statutes involved do you think the sensible outcome would be to merge them all and have only one Ombudsman? We have evidence before us that the Parliamentary

Ombudsman and LGO have looked at one case and come to two different conclusions.

Guy Crivello: If we look, say, at the work of councils, you have 60 DCLG-owned statutes from perhaps 200 different acts that apply to councils, and if we go to other Government Departments we are looking at well over 1,000 different individual statutes. I think there is a problem in that if you have one cohesive system you will want to have one cohesive statutory set of provisions governing it.

Brian Thompson: I think it might be difficult. For example, in my research we looked at Australia where you have a proper federal system. At state level you have an Ombudsman that would be a bit like the Local Government Ombudsman, but it would also be dealing with state governmental features. That would mean state police and state prisons as well as social care and education. That might work because of the size of population. For England, it might be more difficult. I think it can work in Scotland, England, Wales and Northern Ireland. Whether you can do it on a regional basis and divide it up that way, I do not know, but we do have differences. There is the Independent Police Complaints Commission; you have an Ombudsman that is not really an Ombudsman, which is the Prisons and Probation Ombudsman. That is why in my evidence I suggest there needs to be an inquiry in the round to look at it. It is quite big.

Q7 Mark Pawsey: I want to ask some questions about how we got to where we are and how we move forward. Probably the technical questions are for Mr Thompson. Prior to 1974 I understand there was not a Local Government Ombudsman service. What happened then? You mentioned there was a report in 2000. There are changes in the structure of local government; powers are to be given to mayors; we have had substantial devolution, even since 2000. Do you think it is time for another review? First, can you give us the background?

Brian Thompson: You started with the Parliamentary Ombudsman in 1967, then you had the Health Service Ombudsman in 1973–74, and then in England you got the Local Government Ombudsman.

Q8 Mark Pawsey: But what happened if someone wished to complain about the activities of local government prior to that date?

Brian Thompson: They could have complained to the local authority itself or to a councillor. The original idea behind the Ombudsman in the UK was that it supplemented going to political representatives and it operated in situations where you could not really go to the court. The Ombudsman was conceived as filling a gap between political redress and legal redress not quite working and, as a consequence, it does cover both.

Q9 Mark Pawsey: Has it done its job?

Brian Thompson: It has made a contribution, absolutely, but clearly no institution is perfect.

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

Q10 Mark Pawsey: I suppose the question to the other two witnesses is whether you think it has done its job.

Guy Crivello: My experience goes back to the mid-1990s. If that job is the improvement of complaints handling in local authorities, the answer is a resounding no.

Robert Murrow: I think I can echo that sentiment.

Q11 Mark Pawsey: Moving forward, what changes need to take place in the service to reflect the changes in local government?

Brian Thompson: There is a difficulty, in that what we have seen is that public bodies no longer deliver public services solely; there are partnership arrangements, and you have to make sure you can deal with that. For example, one thing that has happened with the Local Government Ombudsman is that they have been given responsibility to deal with complaints from privately funded social care, so that is going beyond something that is administered by local authorities. I suspect that is something that might continue. You might think they have expertise and, because they deal with children's and adult publicly funded social care, it would make sense to give them that jurisdiction, even though it is not a local government service.

Q12 Mark Pawsey: Earlier you referred to what happens in Australia. Clearly, it is entirely different geography; the population is of a different size. Are there any countries of similar size and geography to the UK where they have such a service from which we could learn lessons?

Brian Thompson: I think everybody is different. France has a similar sort of population but it is organised differently. In Germany you do not have a national Ombudsman; you have it at the level of the Länder, so I am afraid everybody does their own thing.

Q13 George Hollingbery: Mr Crivello, you have written that there "is the lack of a clear and contiguous statutory framework governing the entire complaints system", and you have picked up various other bits and bobs, such as that there does not seem to be any requirement on councillors to reply in a reasonable way, or within a time limit, and it is difficult to get judicial review, which is the only way to challenge the Local Government Ombudsman. Do you have evidence to hand that the existing framework is inadequate?

Guy Crivello: I can give an example of it that we have just discussed. A lot of the function that is transferred from local authorities has now ended up in the voluntary and third sector. Charities run those things. Therefore, we have the inclusion of what you can call corporate complaints. I think it is reasonable to suggest that for a great many dealing with mental health, children's services and such like, a lot of the time an organisation may act as an advocate for an individual filing a complaint. Most people would believe that under the Public Disclosures Act and the 2009 regulations for the NHS and local authorities there was a compulsion to deal with whistleblowing

complaints, public disclosures or serious matters in adult social care. When those are made by what is called a responsible body, such as an independent charity, they are exempt from these rulings.

The Local Authority Social Service and National Health Service Complaints Regulations is a good example of this. It gives the exemptions, and notes in paragraph 22, schedule 1, that a responsible body means "a local authority, NHS body, primary care provider or independent provider". These are exemptions from the compulsion to answer complaints at the local authority level, and that is reflected in the LGO's work if she has to rule on maladministration of, say, a whistleblowing complaint that was suppressed. Similarly, where somebody is an employee of a council and has cover in making a public disclosure, as far as I am aware the same protection is not extended to a referral to the LGO, and the council is at liberty to carry on doing what it was doing in the first place as far as concerns the whistleblower.

Q14 George Hollingbery: Can you tell me what the brave new world looks like? I am giving you the role of the Government in writing the framework. What would it look like?

Guy Crivello: I certainly would patch up these kinds of vagaries. Even if you look at the mission statement of the LGO, which has been changed just recently, in terms of a local authority the position on corporate complaints is not clear at all. It refers to the procurement of services, but where there might be a public disclosure it is not clear that these can be handled. I would certainly attend to those exemptions. Under the law it is possible for local authorities and the LGO to redefine a complaint to bring in contractual elements with other elements so that something can be exempted. I suppose the first thing I would do, if we keep the current set-up—

Q15 George Hollingbery: Let's be a little more adventurous; stand back and rewrite the whole thing. What are you going to do?

Guy Crivello: If I were redoing the whole thing, quite simply I would have a citizens court and a citizens jury looking at public complaints.

Q16 George Hollingbery: Is it possible to model something round the Local Government Ombudsman function as it currently is that looks a bit like that?

Guy Crivello: There may be something along the lines of the Tribunals Service for employment law. My main problem—of many—is that the work is conducted in private. We have just had the Prime Minister explaining why certain types of cases have to be held in private because items of national interest are at stake. I do not think there is the same level of national interest involved in these types of complaints; these are about public authorities and their work. I do not see the need for this work to always be conducted in private. It would be better to have a tribunal system.

Q17 George Hollingbery: It would be a mini-court, or quasi-court, of some sort, open and in public, just like you would expect from a regular court. Others

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

like LGO Watch and Public Service Ombudsman Watchers have suggested something similar. Is that your ideal?

Guy Crivello: I think so. That would certainly cover every criticism I have of the current system.

Q18 George Hollingbery: Would it have the power to compel authorities to reply in a certain time?

Guy Crivello: Yes. Theoretically, there are time limits for local authorities to reply, but my experience over the years is that those are not rigorously enforced. A great deal of latitude is given in terms of what is called a complex case. You can be two and a half years into a case and just be told that it is very difficult to get this information; the local authority has to work very hard to get it. I would certainly have far more rigorously enforced time limits.

Q19 George Hollingbery: Is that a fault of the system or the current incumbents of the system?

Guy Crivello: I think the big problem in the system at the moment is that in place of a set of statutory procedures what you have is the Ombudsman's discretion. We can come back to the Local Government Act where I think it is just a sentence in one paragraph: she may conduct the investigation and articulate or define maladministration as she sees fit. That leaves an awful lot of latitude. We have in the mission statement a number of fairly aspirational statements, but if they are not backed up by a statutory requirement to conduct an investigation in this way it is misleading for complainants. They might think they have a degree of protection when an investigation is not conducted in this way, which they do not in fact have. When you come to judicial review, often what happens is that a barrister will say that you have a very limited amount of challenge to the LGO because of this discretion.

Q20 George Hollingbery: It is said there really is not a problem with the system because there are no successful judicial reviews. The reason I suspect there are no successful judicial reviews is that there are so few set-down procedures to get wrong, or so few rules, that it is very difficult to prove that the job has not been done correctly. Is that a correct impression?

Guy Crivello: That is correct. In the final analysis, it is possible to have the LGO go back and do an investigation again. The cost of that, in my experience, is up to £60,000.

Q21 George Hollingbery: Do you have anything to add on this?

Brian Thompson: I do not know very much about this particular area of whistle-blowing, but it raises the very good point: what sorts of things do you want the Local Government Ombudsman to deal with? What sorts of disputes might be better dealt with in other fora? As to the idea that we start giving things over to tribunals, the Ombudsman is an alternative tribunal for a very good reason.

Another thing is that the way in which Ombudsmen now work is to try to resolve disputes as quickly as possible. Therefore, the great majority of cases will not lead to a full investigation. That is expensive and

they will do that when they think that there is something rather more systemic and that it will be worth their while, but if you wanted all that type of thing you would have to pay an awful lot more in terms of resources to be able to conduct that sort of work.

Q22 George Hollingbery: Let me ask you directly: do you feel the current statutory framework is adequate?

Brian Thompson: No; I think it needs to be changed, but it needs to be looked at in a much wider context. You keep looking at one thing and then it knocks on to something else.

Q23 George Hollingbery: Do you have anything to add?

Robert Murrow: I would be reticent to recommend a tribunal system in place of the Ombudsman. One of the purported attractions of an Ombudsman to consider complaints by private individuals against local authorities is the fact that it is supposedly accessible and supposedly much less formal than even the tribunal system. That is very valuable to private individuals who do not necessarily want to become engaged in more protracted, drawn out, formal and costly methods of dispute resolution. My concern is that there is no transparency. If you are to have an inquisitorial or mediation-style system, which the Ombudsman appears in part to be on some occasions and not others, there needs to be a greater degree of transparency as to how investigations are conducted.

Q24 Chair: Presumably, a move to a tribunal system would mean we would have judgments which were enforceable. Is not one of the bases of Ombudsman judgments or conclusions they reach at present that they are not enforceable; they are encouragements to local authorities to put right a wrong?

Brian Thompson: They are recommendations, and that is the system not just in this country with the public services Ombudsmen but other countries as well. In that sense it is public and political pressure that might lead a public body that has been found to have committed maladministration and injustice to remedy it.

Q25 Mark Pawsey: That begs the question: when there are recommendations are they always accepted by the body complained against?

Brian Thompson: Mostly.

Q26 Mark Pawsey: Can you put it in percentage terms?

Brian Thompson: It is in the high 90s.

Guy Crivello: On the question of cost, which is an important one, my experience has been that the LGO becomes ever more reliant on external professional legal advice. My cost in one case, and a fairly straightforward one at that, over two and half years was £60,000. I would ask what the LGO's legal costs are with their professional advisers. At the end of the day, I do not think it is cheaper for a member of the public to engage with the LGO than to go to a JR. My

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

experience has been that for the same cost it is easier to go directly to court.

Brian Thompson: The point is that if you go to the court for a JR, the remedy you will get is a very different one from the remedy you get from the Ombudsman because, as has been said, maladministration is a very elastic concept. That can be a good or bad thing, but it was deliberately left undefined in the legislation so that it could grow; it could be an organic thing. It is more than simply a breach of the law. If it is really a breach of the law you go to a court or tribunal. It can encompass that, but that is not their role. While they are institutions of justice, they are not determining the law. That is not their role.

Q27 David Heyes: Several of the submissions made to us have made the point that the majority of staff who work for the Local Government Ombudsman are from a local government background. I think Mr Crivello referred to a lack of rigour. The perception is that that leads to a kind of institutional bias in favour of the local authority. I just want to sound you out on that, starting perhaps with Mr Thompson. Is that a fair criticism to make? Is it an accurate perception?

Brian Thompson: It is very difficult to say whether or not people's perceptions are accurate. There is wider recruitment in the LGO than there used to be. They are employing people from other backgrounds; that is, people from advice backgrounds and sometimes people with legal qualifications who have not worked in local authorities, but inevitably it will be useful to have some people who have that experience. It is difficult to say whether those who are complaining feel that, having come from that background, they can, as it were, step back from it and be the independent and impartial investigators that they are expected to be. One assumes that is what they are trying to do, but it is a problem.

Robert Murrow: Among the complainants with whom I have communicated, there is a perception of bias. I do not think anyone is implying malice, but there is a suggestion that, wherever the investigators' and staff's previous experience is, they appear to be much more sympathetic—this is an experience common to a lot of complainants, particularly in the SEN arena—towards the local authority view.

There was one thing Mr Thompson said that I found quite interesting. By way of example, he said the Ombudsman was not supposed to be an adjudicator on legal issues, but in the SEN arena—apart from JR, which is very limited in terms of time—it is the only way in which one can seek to hold a local authority to account where it has failed in its statutory duty under the Education Act to provide the correct education to a child, as has been ordered by a special educational needs and disability tribunal. I am being a little tangential, but this is really the only forum parents can go to in order to seek justice in the traditional legal sense. Yet the investigator, when presented with irrefutable evidence, often not even denied by the local authority, that the local authority has not kept to its statutory duty, still fails to find maladministration. It still says, "The council really ought to have done this. It has a non-delegable

statutory duty to do this. It did not do it because it is a bit tough, so that is okay", if you will forgive me for being colloquial. That is an experience parents have again and again. There is no "best endeavours" defence to not arranging educational provision, and yet the Local Government Ombudsman is saying, "They really should have done it. Even though it is illegal, it doesn't really matter." That is depriving complainants, such as the people with whom I have communicated, of the means of seeking any redress.

Q28 David Heyes: You make that point very well. To what extent do you think that scenario is the result of an institutional bias that might arise as a result of being too comfortable with local government?

Robert Murrow: It is not possible to say. The reason I decided to draw out that example is that the impression we have gained, again and again, is that investigators have consistently and repeatedly, in delivering decisions, sided with local authorities. It is subjective; I acknowledge that we are talking about a disgruntled group of complainants, but decisions are not being made objectively.

Q29 David Heyes: Is there institutional bias?

Guy Crivello: I think that when the LGO started back in the 1970s it was dealing exclusively with the sort of complaints where it was a very good idea to have experience of local government, not to preside over or to adjudicate over but to engage in these matters. As the LGO's remit has expanded, there is a far more complex range of statutory engagement. I think that in itself is a problem that requires a wider field of expertise, and if that is happening it is definitely a good sign. In terms of the potential for perception, which is a very important thing when it comes to standards—many reports would reflect that—there is a degree of exchange of personnel between the LGO service and local authorities on occasion. Somebody may come on secondment to act as an independent adjudicator, for example, and also the LGO provides training for councils. A reasonable person might think that it is going to be difficult for an LGO to provide a very harsh ruling over people they have trained, or when one of their officers is in situ on that council.

Q30 David Heyes: Mr Crivello, one of your criticisms of the way LGO handles evidence is that it is "distinctly un-forensic".

Guy Crivello: Yes, it is.

Q31 David Heyes: On what is that based?

Guy Crivello: In terms of the exchange of information, we have had things cited which have no references whatsoever. Again and again, you get terms like, "The council's officers feel" or "the council have said". When we are submitting evidence we give specific references of the type you will be able to replicate and use in court, not hearsay. That occurs again and again within reports.

Q32 David Heyes: What are the consequences of that?

Guy Crivello: The consequences are that it is very difficult to rebut what the person is saying. If the LGO

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

are telling you it is all fine because they have been told by the local authority that they did in fact do something, you might ask when they did it, who did it and whether there is any record to show that, or whether they are just taking an assurance. It is the validation of the evidence put before the LGO and the ability of the complainant to cross-examine it that I think is distinctly un-forensic.

Q33 David Heyes: My last question I put to each of you. Should there be a right of appeal against the decision of the Local Government Ombudsman?

Guy Crivello: I think there is a right of appeal. At the end of the day, it is a convoluted matter. We have had a case where we have gone through it for a year; we have had the provisional rulings of an LGO and we have rebutted those. They have not paid any attention to it. The ruling has been given and we have had to engage a barrister. We have then given a point-by-point forensic breakdown of the case, and the LGO has gone off and said she will take the case and do it again. That is an awful waste of time, but it suggests to me that, if you have the legal cover and the legal backing, you can get some sort of appeal with her; otherwise, the appeal is a judicial review.

Q34 David Heyes: The tenet of my question is a right of appeal that does not require recourse to a court of law. Do you think there is space for that?

Brian Thompson: That is difficult, because the whole point of the Ombudsman service in all areas is that it is meant to be accessed after the complainant has engaged with the body that caused the difficulty. In that sense it is meant to be the top of the complaints ladder. Obviously, there has to be finality and people can make a judgment as to where they think that would be, but the Ombudsman is meant to be the final point, subject to law—so there is the possibility of judicial review, but clearly that will not be possible for everybody who feels disgruntled because they will not be able to afford it. But if you start to do that you are really changing the system, because there has to be a final point and where do you draw that?

Q35 David Heyes: So, there is no Ombudsman for the Ombudsman.

Brian Thompson: It just goes on and on.

Robert Murrow: I think there should be a right of appeal. One of the contributors to the submissions that Debbie Sayers and myself made to the Committee had a particular experience where informally requesting review of a provisional decision of an Ombudsman was met with the assurance that the decision would be reviewed but it would be reviewed by somebody from whom they had already taken soundings, so it would be unlikely to be any different. That strikes me as a particularly ridiculous half-way house; you are going through the motions of reviewing a decision but inviting somebody who has had considerable input into it to review it. I take Mr Thompson's point as to finality and the requirement for finality. There needs to be finality, and there is always recourse in certain limited circumstances to judicial review, but, given the common shared experiences of the people with whom I have communicated and the feeling among us that

decisions are manifestly irrational, illogical and based upon a failure to consider all of the pertinent and material evidence, there is a need for at least one other layer of review.

Q36 David Heyes: How would that work other than being an Ombudsman for Ombudsman, with all the same shortcomings that the existing Ombudsman has?

Robert Murrow: I am not sure that it would have to be an entirely separate Ombudsman for an Ombudsman. I do not know very much about the structure of the qualifications of investigators and how things are dealt with internally within the Ombudsman, but it appears to me as though there ought to be a level of investigator who simply has the requisite knowledge and understanding of the law. Maybe what I am discussing is particular to special educational needs, but there seems to be such a lack of understanding about SEN law and the duties of authorities that to us it feels as though there ought to be a review.

Q37 Simon Danczuk: Brian, you said near the beginning that people do not understand the remit of the Ombudsman. I was looking through some of it: provide a complaints handling service; provide appropriate redress; identify best practice; and ensure proper stewardship of public funds. That is pretty broad stuff, is it not?

Brian Thompson: Yes, it is.

Q38 Simon Danczuk: Do you think it is too broad?

Brian Thompson: It is probably about right, because it sits alongside tribunals, courts and other methods. That might be one of the things about SEN. I am not sure whether the Ombudsman is the appropriate person to go to if a tribunal decision has not been carried out. That seems to me to be mixing.

Q39 Simon Danczuk: Is it not trying to do too much stuff?

Brian Thompson: If you have got a local authority providing a range of services, it seems sensible to have a particular body that can deal with complaints about that range of services, but you are then into the question of whether or not you think the services that local authorities provide are the appropriate ones. It seems to me that is right. Maladministration is terribly useful. It is not simply a breach of the law; it can be more or less than that. One of the ideas is that it is in a sense reasonableness and fairness, and people can have different judgments about what is reasonable and fair.

Q40 Simon Danczuk: Guy, do you think its remit is too broad and it is trying to do too much?

Guy Crivello: It is an interesting question. I think some of these statements are aspirational from my experience of the LGO. I think just "ensure sound decisions and appropriate redress based on impartial, rigorous and proportionate investigations" would have been enough.

Q41 Simon Danczuk: Robert, do you have any view?

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

Robert Murrow: I would agree with Guy.

Q42 Simon Danczuk: The Government's White Paper on open public services talks about the Ombudsmen having a role in upholding people's right to choice. That is very different from complaint handling, is it not?

Brian Thompson: Yes. I have difficulty in quite understanding what is meant by that. That seems to me to be more like a job for a regulator, because the Ombudsman is about what the quality of service was like rather than whether someone other than the council might have provided that service. That just seems slightly odd to me.

Q43 Simon Danczuk: Are there any other views?

Guy Crivello: If we are looking at the quality of service, again that does not cover every type of complaint. Where we are looking at corporate complaints that might involve contractual issues between a council and a private provider, or it might provide a whistle-blowing complaint from a private provider about a council. Those appear to me to be slightly different issues. It is not really about necessarily the quality of the service but the quality of the complaints handling of the local authority. I agree that is a service, but I have to say I am not sure.

Robert Murrow: To clarify it, is the aspiration to uphold people's right to choice?

Q44 Simon Danczuk: Yes, that is right.

Robert Murrow: In my view the Ombudsman exists to deal with complaints about the quality of service provision.

Q45 Simon Danczuk: My other question is not so much about the Ombudsman but local authorities and their ability to handle complaints. If I shop at B&M Bargains in Rochdale, Marks & Spencer, Fortnum & Mason, or wherever it might be, they may have a different way of handling my complaints. Some might be good; some might be less good at doing that. I suppose I then have a choice about whether I go to shop there again. None of that really applies here. I cannot go to a different local authority, can I? Brian, you have probably done research on this. Is it fair to say that some local authorities are good at complaints handling and some are very bad. What is your view on that?

Brian Thompson: That is true. One of the things the LGO has done is to seek to provide training in complaint handling and investigation. On the whole, I think that is a good idea. The LGO and other people have provided guidance on complaint handling. The Cabinet Office produced it a long time ago, if you go back to the Citizen's Charter in the late 1990s, and we had Service First under the succeeding Government. There is lots of guidance there, but people find it very difficult to follow guidance. If they have been trained in it and have people explaining things to them they understand it better. The fact you continue to get complaints shows it is difficult. People can learn, but they may not learn as well as we might like.

Q46 Simon Danczuk: What is your view, Guy?

Guy Crivello: If we look at the LGO system, certainly local councils have very different ways of dealing with things. I have had the same type of case dealt with in radically different ways by two separate councils. When it comes to councils providing training for the handling of complaints, if we take the Tribunals Service on employment issues, pretty much every company in the country has learnt how to handle them now. They certainly do not make a mistake on it, because it is just far too costly for them to do it. When we were a small organisation with, say, nine employees, we were certainly able to operate employment law without falling foul of the tribunal and being fined for it. That does not seem to me to be the same kind of culture that exists in local authority complaints systems. The fact there is not a consistent statutory provision governing the way in which local authorities in the first instance deal with complaints is part of the systemic problem that goes all the way up to the LGO. She is going to be constrained in viewing maladministration if there is no obligation to do the thing in the first place.

Robert Murrow: Contributors to our submissions are geographically quite far apart throughout England and they have had very different experiences of local authorities and their ability to handle complaints, notwithstanding the fact they have all ended up seeking recourse from the Local Government Ombudsman. That there is not uniformity in terms of giving timely responses or managing to thrash out issues before they get to the Ombudsman, is indicative of the fact that, whatever the Ombudsman is doing to train councils, is not bringing about the level of uniformity in complaints handling for which one might hope.

Q47 Simon Danczuk: Whose job is it to set standards by which local authorities operate their complaints system? Is it a central Government or centrist approach, or do you let them decide themselves? What do you think?

Brian Thompson: It is very difficult because you have the same problem with central Government Departments, as the Parliamentary Ombudsman reported last November. There is no overall approach to it. She was complaining about central Government, and the same is obviously true of local government. But you must understand that people are not very good at dealing with complaints; they do not like it. The advice is: embrace the complaints and learn from them. It is very difficult to be able to do that, but that is what one should strive for.

Guy Crivello: It is difficult but, referring again to the employment sector and employment law, it is possible to achieve a consistent improvement across the entire state.

Q48 Chair: As well as dealing with individual complaints, the Ombudsman produces reports about particular areas of activities: school admissions; justice for homeless people; and councils using bankruptcy powers, among other things. Are these reports of any use, or should the Ombudsman just stick to the day job of dealing with individual complaints?

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

Brian Thompson: That is very difficult and is something on which I should like to do research. One would like to think it is a good idea. A little bit of research has been done that suggests that councils say, “This is helpful”, but whether they then follow it up is another matter. There is learning out there that Ombudsmen can produce, but can you take administrators to that material and make them use it? Can you take a horse to water and make it drink? If you then say, “Well, they’re not doing it. Therefore, don’t bother providing that”, that is a counsel of despair, I think.

Q49 Chair: Whether there is any value in these is something on which you might like to do some research, and maybe you could share it with us in due course.

Brian Thompson: I am sure there is value, but it is probably not achieving its potential.

Guy Crivello: I think their value would be greatly increased—it is a rather controversial thing to say here—if all cases upheld, or certainly those not rebutted, were published, even if they would go through for lack of jurisdiction or local settlement. I think all cases should be published for public perusal. I do not see why the public is not allowed to see this stuff. This affects how people vote for local councils, so I do not see why they should remain private. If the matter has been suitably and properly rebutted, there should be no compunction about displaying it. What you get in these reports is a very opaque account of the complaints. A report I am looking at gives no sense of a very serious whistle-blowing complaint that was suppressed. It mentions paving stones, and cars being towed away, but it does not mention the really big issue that had been under the Ombudsman’s nose.

Q50 Chair: I was asking about general reports rather than specific complaint reports.

Guy Crivello: I am talking about the annual review reports. For every council they are giving an itemisation of each of these things that have been upheld, but they are very opaque documents in that they give basic listings but not a good account of all the things that have passed before the Ombudsman in that year.

Robert Murrow: Again, coming at it very much from an SEN angle, guidance as to best practice is a fantastic idea. As is apparent in the case of a child with SEN, who currently has a complaint before the Ombudsman, it would have been very helpful to have had a document specific to that to guide us as to what the Ombudsman considers to be best practice and what the Ombudsman considers is falling short of good practice. Whether or not authorities manage to keep to the guidance notes of the Ombudsman, it is not immaterial; it is valuable and useful to have.

Brian Thompson: Mr Crivello may not be aware that there are different types of reports. There are what are called focus reports, which are new things in which they try to distil the learning they have had in a particular area; school admissions is one area in which they have done that. In addition to individual complaint reports and the annual one, they have these themed reports that they can produce. One of the

problems about the things they can say is that there are restrictions on what they can publish, but I quite agree with you that, as far as possible, it would be a very good discipline if their decision to investigate or not investigate, and what they find, were published.

Robert Murrow: I should like to lend my weight to that. Every decision of the Ombudsman should be publicly available.

Guy Crivello: To be clear, I am referring here to the annual review reports of the Ombudsman.

Q51 Chair: Surely, there are certain matters in those reports which by their very nature can be very personal to some individuals. Those individuals may themselves not want the sort of publicity that would come with full disclosure.

Guy Crivello: There are certain exemptions from that. When it comes to adult social care complaints, there is the ability to anonymise. Anyone who has worked in adult social care complaints knows it is eminently possible to draw up a valid account of something that has happened without identifying an individual or their circumstances.

Robert Murrow: I would like to lend weight to that and say that in the SEN world that already happens. Some complaints are publicised. The parties concerned are anonymised, and that seems to work rather well.

Q52 Bob Blackman: I want to go through the process by which people get to the Ombudsman to deal with complaints. If we look at the Ombudsman service, it employs 215 people; it has 95,000 contacts; and 11,249 complaints actually get to the service. Clearly, the Ombudsman has to make a decision about filtering the complaints to be taken on board and investigated. Mr Thompson, in your view is the current process sufficient? Is it the right way of doing it?

Brian Thompson: When you look at the raw statistics, you see there are many more people who contact the Ombudsman than cases that finally find their way through the system. In part that is because a lot of people are complaining about things which are not within the scope of the legislation so the Ombudsman cannot deal with them. Then you have discretionary things. It could be out of time but they have discretion to take it on. There is another area where there could be an alternative remedy. If the Ombudsman, in the exercise of discretion, thinks it is unreasonable to go to court or to a tribunal, they could take it on.

There is then the question of whether or not they think it is something within the scope of maladministration, so there is quite a lot of filtering that goes on. All of it is because of the legislation itself. In some cases there is a certain amount of discretion. Some are very straightforward; something is either within the scope of the legislation or it is not. A lot of people are complaining to the Ombudsman and it is not something the Ombudsman can deal with.

Q53 Bob Blackman: As I understand it, basically the Ombudsman will say, “Unless you have been through the three-stage process of the local authority, or they are very specific cases, we will not consider it.” Given

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

my experience of the three-stage complaints system of a local authority, the first complaint is to the service department. They fix it or it goes to stage two, which is an independent review. At stage three, if you have the will to live, it goes to the chief executive, and that will have taken enormous amounts of time and effort by any individual to get there, which means that often it is an extended process.

Brian Thompson: Indeed it is.

Q54 Bob Blackman: Do you think that one of the issues is the complaint handling of local authorities?

Brian Thompson: Absolutely. Ideally, there would be no need for the Ombudsman because complaints handling is better. One of the problems is that, although there is one stage of local resolution, as you have correctly identified there can be three stages, sometimes more, and all of that takes time. There is complainant fatigue. You have to be very upset to keep going if the council is not handling the complaint properly, so there is absolutely a need for all public bodies to handle complaints much better. But it is appropriate that that should be tried first, because most of the time it ought to be quicker and it should provide the public body with an opportunity to try to put things right and learn from it. There must be the opportunity for something above that. Back in the late 1990s, the Chipperfield report looked at the Local Government Ombudsman service and said there would be very little need for the Ombudsman; it could all be done by complaints handling in the councils. Mercifully, that was not accepted, because that would have been senseless.

Q55 Bob Blackman: Mr Murrow, what is your view on this, particularly from the SEN perspective?

Robert Murrow: The experience of contributors to our submissions is that complaints handling is used in the SEN world by local authorities to extend the period of time before any form of resolution is come to. In special educational needs, time is pretty much of the essence, if a disabled child is not getting the provision it needs every week and every day.

Chair: I must suspend the hearing for 15 minutes, hopefully for just one division.

Sitting suspended for a Division in the House.

On resuming—

Q56 Bob Blackman: You were just talking us through your view about SEN complaints in particular and the process by which local authorities go through them and they get to the Ombudsman.

Robert Murrow: I think I pretty much said everything. It takes too long.

Q57 Bob Blackman: To be clear—because this is important in terms of our evidence—where parents have complaints about SEN, in your evidence you have complained about the generalities of the facts. Of course, there are a number of provisions here. One is that a local authority should either provide statements for children with SEN so they will be retained within schools or they will go to specialist establishments, and the job of the local authority is to identify those. Often the disputes in my experience

arise where the parents think the children should go to one institution and the local authority thinks they should go to another.

Robert Murrow: That is correct, and that is a question for the SEN tribunal; it is not something within the remit of the Local Government Ombudsman.

Q58 Bob Blackman: I just want to clarify that you do not think there is any role for the Local Government Ombudsman in those particular cases.

Robert Murrow: Save for the fact that it takes rather too long to have a hearing in the SEN tribunal, I think that is properly something that the tribunal deals with.

Q59 Bob Blackman: That is clearly a different issue. Mr Crivello, probably more on the adult social care side, complaints go through a lengthy local authority process and then go to the Local Government Ombudsman.

Guy Crivello: It is a lengthy process. The question could be asked: why is there a three-stage process at all? If there were proper provisions in place requiring somebody to investigate in a statutorily-controlled and procedural way, why is it necessary to have this as we have this appeal system of the LGO anyway? That is the first consideration. As a taxpayer, I certainly have an eye on the cost of this service all the way from the very beginning right the way through to the end of the LGO's process. Certainly, where it involves barristers, legal departments and a corporate complaints team one has a feeling of many layers doing the same function, which is basically defending a local authority or diminishing complaints.

Somebody has to be very committed to follow through complaints. To give an example, I have had a situation where we have been through the three-stage process; we have gone to the LGO, and she has declined jurisdiction. At that point we have needed to employ a barrister to go through the law to find out that she does have the jurisdiction. Only when it is put to her by a barrister, with legal advice, does she take the jurisdiction. It is not just a case of running out of steam a little; people can be put off with an erroneous claim that there is no jurisdiction in the first instance. Following that, we can get two years or two and a half years into a claim and the LGO says, "Come to think of it, it is not under my jurisdiction." After two and a half years, that is unacceptable; it should have been decided in the first instance. There was no new evidence in the particular case to which I am referring. The process is very long-winded. It has an air of a process that is designed to put people off continuing to complain.

Q60 Bob Blackman: Do you think there are specific cases that should bypass the local authority complaints process and go straight to the Ombudsman, and the Ombudsman should take them on and investigate them without the local authority even responding to them?

Guy Crivello: I think that would be harsh. It is not necessarily the case that a chief executive can micro-manage every little slip-up that goes on. At that level they should have the opportunity to review the work

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

of their staff and comment on it before being slammed by an external body.

Robert Murrow: By and large, issues can be refined throughout the complaints process, and a complaints process properly administered has value. One of the situations, particular to the special educational needs arena, is that where a local authority is failing to make the provision ordered by a tribunal a parent is faced with making an application to the tribunal, in some circumstances by seeking a judicial review of the authority's failure, or redress can be sought by complaining to the Local Government Ombudsman for compensation after the fact. There is an argument that a more streamlined process of making complaints where time is of the essence might be helpful as a preferential avenue rather than judicial review.

Q61 Bob Blackman: After you have gone through this rather long-winded process—a three-stage council process and the Ombudsman—and the Ombudsman then finds in favour of the complainant, often the compensation is pitifully small. Do you think there is a case for ramping up the amount of compensation that can be ordered?

Guy Crivello: If you are going to put under the LGO's remit corporate complaints, you have to understand that such complaints are going to involve a complex relationship between contractual law and various other issues. It is likely that the compensation will be far greater if there is a serious slip-up. For example, if a contract has been terminated unfairly and cannot then be reissued because the tendering process has taken place and essentially has caused catastrophic damage to an institution, reputationally and financially, £1,000, £2,000 or even £15,000 is not going to set that aside. From past rulings of the LGO, I do not see any history where the level of redress that a corporate body would seek has been paid out by the Ombudsman service.

Brian Thompson: If you are looking for compensation, the Ombudsman is not the appropriate means of redress. They offer some things, but primarily injustice caused by maladministration should not really be about that. If it was, they should be directing you elsewhere. It will reflect nuisance or inconvenience in making your complaint, but it is not meant to be compensation in the way that we would understand it.

Q62 Bob Blackman: Is it your view that at the moment it is about right?

Brian Thompson: I am sure some people feel they deserve more, but it is not designed for that and, broadly speaking, it is right.

Robert Murrow: Many parents with whom I have communicated feel they have spent more in their personal time and expenditure on resources in pursuing a complaint against a council through the complaints procedure, and then with the Local Government Ombudsman, than is awarded overall, not just for the time and trouble component, which often is not necessarily awarded. The Ombudsman produces guidance on remedies, which, in the case of non-provision for special educational needs, makes specific reference to the kinds of remedies that the

Ombudsman ought to recommend in its decisions. A number of respondents found that when it got to the remedy stage, no account appeared to be taken of the Local Government Ombudsman's own internal guidance, and the level of remedy was set significantly below what one would expect it to be on a straightforward reading of that guidance. Perhaps the framework is there, if only it would be adhered to.

Guy Crivello: If we take at face value that people should not go to the Ombudsman for financial redress or compensation, that is certainly not made clear by the LGO service. I am sitting here looking at their mission statement, which says they "secure appropriate remedies for injustice as swiftly as possible". If they do not provide this service, they should advertise it very clearly at the top of the list on the front page.

Robert Murrow: I have no direct experience of this, nor have I taken particular soundings about it, but I would be concerned that, if one were to look at the level of remedies recommended by the Ombudsman and seek to set them at a more appropriate level to provide compensation, local authorities would be much less inclined to follow the recommendations, so that feeds into questions of enforceability.

Q63 Bob Blackman: Mr Thompson, do you think the system would change if MPs' or councillors' complaints were treated in a different way by the Local Government Ombudsman rather than people just complaining directly?

Brian Thompson: Are you saying that MPs and councillors would refer rather than going directly?

Bob Blackman: It would be a potential filter.

Brian Thompson: When the LGO started that was how it was; it was not meant to be a referral, and that was changed in the late 1980s. It is not the situation, as you know, with MPs and the Parliamentary Ombudsman where there is still a filter and you have the power to refer. I think that in principle direct access is better. Do not forget it is not immediately direct access; you are supposed to have complained to the body first. I think that is the way it should be: complain to the body first and then, if you are not satisfied with that, complain directly to the Ombudsman.

Q64 Mark Pawsey: We have heard evidence that the Local Government Ombudsman exists because the complaints procedure of local authorities often is not fast or robust enough. Do you think the existence of the Ombudsman makes local authorities want to prevent cases from reaching it and makes authorities' complaints procedures better, or do you think that their complaints procedures would be much the same whether or not the Ombudsman existed?

Brian Thompson: That is very difficult because it differs from council to council. Some councils do have a commitment to try to do things better; others apparently do not seem to take complaints as seriously. There might be a worry that because you have the Ombudsman it means the initial complaints handling is not as good as it might be because they know there is something else. Certainly, that was the complaint made in relation to health. When the

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

Healthcare Commission was the intermediate stage before the Health Service Ombudsman they thought trusts were not dealing with complaints as well as they might because they knew the complainant could go on to the Ombudsman.

Q65 Mark Pawsey: Perhaps I may ask the other two witnesses whether, if local authorities dealt with complaints better, there would be less reason for people to take cases to the Local Government Ombudsman.

Guy Crivello: That is certainly the case. However, we start from first principles. The bottom line is that where you do not have a comprehensive and cohesive statutory framework there are a great many complaints that do not have to be answered at all. When you start from such shaky foundations it is difficult to go on to try to remedy things up the chain when you need to remedy it at the very first principle.

Robert Murrow: There would be less call for the Ombudsman to be approached if complaints handling was better, but local authorities do a vast and wide range of different things. I would be unsure about saying complaints handling across the board is the only reason the Ombudsman might be approached.

Q66 Mark Pawsey: Would it be better if the Ombudsman acted as a mediator rather than somebody trying to sort out some kind of financial remedy for something that has gone wrong? Do you think it would be helpful for the role to be extended in that way?

Brian Thompson: That is the role. Legislation was passed that allows the Ombudsman to appoint people to act as mediators; indeed, some of their own staff have mediation qualifications. They are in the business of dispute resolution, and that is why some people are a little concerned that they did not get an investigation. It does not have to be an investigation to resolve the dispute. Most people want their dispute resolved quickly, and if that can be done without an investigation, so much the better. Obviously, some people may not be happy with that, but that is their role at the moment. They will try to resolve things without an investigation, leaving the investigation for bigger or complex issues, or where there is a wider systemic issue.

Q67 Mark Pawsey: It does not resolve them as a mediator by bringing together the parties, for example. Should it?

Brian Thompson: I do not know whether they physically bring them together, but there are types of mediation called shuttle negotiation, where you are taking the views of both parties to each other, even if they are not in the same room. Certainly, they can be doing that.

Q68 Mark Pawsey: What are your views about the calibre and skill levels of the staff employed in the Local Government Ombudsman service?

Guy Crivello: I have said in my written evidence and I say here that I do not believe there is the kind of rigour that is commensurate with the severity or the seriousness of the cases that are now being put before

the LGO. With a background in local authorities, it is perfectly good for some cases but when you get to corporate cases, the implications of maladministration and what kind of injustice can be caused to a corporate body, or to its clients if it is a charity, you are looking at a far greater skill range than perhaps will be garnered from that one source. While they may be recruiting people actively at the moment, it is certainly not true of the hierarchy that they have a wider real-life experience that would translate into a more competent service in the handling of complaints.

Q69 Mark Pawsey: You would like to see a higher calibre.

Guy Crivello: I would like to see people with legal training. That would certainly be a minimum qualification for presiding over matters of public interest and public safety as well. The safeguard that the public would want is a minimum level of legal qualification. I do not think anyone here would take legal advice from anyone other than a barrister in some of the type of cases we are looking at. With the best will in the world, the Ombudsman is out of her depth in many cases and has become a jack of all trades and master of none.

Q70 Mark Pawsey: Mr Thompson, would you agree with that view?

Brian Thompson: Perhaps Mr Crivello is talking of a concern in a particular area that he knows very well. More generally, I think they do have legally qualified people. If you are going to have more legally qualified people you will have higher staff costs. I do not know whether or not DCLG would be funding them to that level. Clearly, every organisation can upskill its staff. I do not know whether or not they are adequately resourced in terms of people's skills at the moment. I cannot really comment on that.

Q71 Mark Pawsey: Mr Murrow, I understand that you are involved in the legal profession. What is your view of the calibre of staff in the office of the Local Government Ombudsman?

Robert Murrow: I must stress, just to be clear, that my professional practice is unrelated to public law or education law. My view is that it leaves a lot to be desired. It appears, being as general as possible, that investigators sometimes do not have the rigour of thought and ability to follow argument one might hope they would have. I have a selection of quotations from some of the people who contributed to our submissions. One is, "The investigating officer did not seem to have the faintest idea about statements and procedures, to be honest." Another quote is: "She does not seem to be able to open attachments, because if she did she would see that the attachments prove that the LEA did not fulfil their duty. Everything she writes I swear is copied and pasted because it bears no relation to what actually happened." And, "I got the LGO's file, and all of the woman did was write and say, 'Is his provision in place yet?' several times, while the local authority have sent emails to the LGO telling them how difficult I was." Those are just a few choice examples of the kinds of things parents experience with the Local Government Ombudsman.

23 April 2012 Guy Crivello, Brian Thompson and Robert Murrow

The quality of the investigation and calibre of the investigators does not appear to be there. Whether it is because they are under-skilled or whether it is because they are under-resourced and overstretched I do not know, but these kinds of experiences lead one to believe that it is not happening as it ought to.

Q72 Chair: Mr Thompson in particular talked about the range of different services provided. For example, for the police, the IPCC is different from the Ombudsman service. Then we have the Health Ombudsman, Parliamentary Ombudsman and Housing Ombudsman. Looking at the way services might be delivered in future and thinking, for example, of community budgets, which we looked at recently, you can start to imagine services being brought together and budgets pooled, which involve local authority housing services, social services and health service and the police, and something going wrong. You can have an awful, interesting situation about where you complain about maladministration and where accountability lies. I just wonder whether that sort of issue will cause a wider view to be taken.

Brian Thompson: That was part of the thinking behind the 2000 report that led to legislation in 2007, particularly in the area of health and social care, so that the Health Service Ombudsman and Local Government Ombudsman could combine; otherwise, the different aspects of the complaint would have to be sent to the respective Ombudsmen. That legislation allowed them to work together, pool resources and deal with cases, which is why I am suggesting there needs to be a wider review. As you say, the delivery of services is not going to respect the old-fashioned idea that it is clearly a public body that is doing it by itself and not in partnership. To an extent, the

Ombudsman can look at something if it has been commissioned by the local authority. If they are responsible for it, even though they are not necessarily the only body engaged in delivering it, it could be looked at. I think there would be a need to have a look at it, and that is why I am urging that there be a wider review of public services.

Q73 Chair: Just a week ago we heard news that the chairman and vice-chairman of the Local Government Ombudsman have now been appointed after a somewhat long delay in reaching that conclusion. Do you welcome the appointments? Are you in any way optimistic that with fewer resources and more streamlined organisation it will prove to be more effective in the future?

Brian Thompson: Clearly, Ombudsmen are in the business of trying to help other bodies improve. Therefore, they have got to practise what they preach. I think they are trying to improve their early assessment of cases so they can streamline their process and be quicker. Clearly, that is something to be encouraged. I do not know whether or not they will have the resources to be able to deal with the complaints they might face, because if councils are facing cuts their service may go down, which may lead to an increase in business for the Ombudsman. Perhaps DCLG do not fully appreciate that the Ombudsman is part of the justice system and that possibly justice needs slightly more protection of resources than other services. They will have a challenge, there is no question about that.

Robert Murrow: I do not have an overview that gives me any qualification to pass comment on that.

Chair: Thank you all very much for coming and giving some very interesting evidence this afternoon.

Monday 30 April 2012

Members present:

Mr Clive Betts (Chair)

Bob Blackman
Simon Danczuk
Stephen Gilbert
George Hollingbery

James Morris
Mark Pawsey
Heather Wheeler

Examination of Witnesses

Witnesses: **Dr Jane Martin**, Chairman of the Commission for Local Administration in England, and **Anne Seex**, Vice Chairman of the Commission for Local Administration in England.

Q74 Chair: Good afternoon and I welcome you both to our second evidence session for the inquiry into the annual report of the Local Government Ombudsman for England. First of all, I congratulate you both on your appointments, which the Secretary of State has informed us of. The first obvious question is: what difference does this formal appointment on a permanent basis make to you? In fact, just before we begin, could you also say for the record who you are and what your position is now?

Dr Martin: Thank you, Mr Chairman. I am Dr Jane Martin. I am one of the local government ombudsmen and the recently appointed chair of the Commission for Local Administration in England.

Anne Seex: I'm Anne Seex. I was appointed as a local commissioner—or local government ombudsman, as we are known—in 2005. I have recently been appointed as vice-chair of the commission.

Q75 Chair: So, what difference does the appointment make?

Dr Martin: We are delighted to have been invited and confirmed in post as chair and vice-chair of the Commission for Local Administration in England, after what has been a long interregnum period since our predecessor chair retired in 2010. What this means in a nutshell is that a period of uncertainty is now over and we have now got a full complement, as per our statutory requirement, to lead and direct the governance of the commission and to ensure that the Local Government Ombudsman scheme is working effectively.

Anne Seex: I have not got much to add to that. For me personally, it does not make a great deal of difference. In fact, the burden of being chair and ombudsman falls to Jane. The deputy chair is nominal.

Q76 Chair: But there were three and now there are two. Does that make any difference?

Dr Martin: Yes. Tony Redmond retired in November 2010. Since then, Anne and I have been covering for all the local authorities in England, as two ombudsmen. We work within delegated authority to teams of investigators and assistant ombudsmen, and we each have deputy ombudsmen. So we are well served with experienced, professional staff who help to make sure that the LGO scheme deals with all the complaints that it needs to.

None the less, over the last 15 months it has put an extra strain on us; I would certainly like to record my

thanks to everybody during the period. But yes, Mr Chairman, you are right. We have now agreed that we will continue in the future with two ombudsmen rather than three. This became apparent to us when we conducted a strategic review of our business, when we were looking to make cost reductions across the organisation. So we have decided to do that, and we are content that the arrangements we are going to put in place will enable us continue with business as usual.

Q77 Chair: When the Secretary of State wrote to us about the appointments, I have to say that the letter he wrote hardly seemed to be a ringing endorsement of how the service has operated in the past. He talked about: appointing yourselves and then having a chief operating officer to undertake the management-type roles that you were previously doing; comprehensive restructuring; a wholly re-engineered process for handling complaints, with a focus on those cases involving serious failure; and a root-and-branch review as to whether it is fit for modern purpose. That seems to imply that he is expecting something an awful lot better than he had in the past.

Dr Martin: I hope that we will continue to maintain the standards we maintained in the past, but also to improve the service that we give to citizens in the future. I think you are aware from our submission that, since we were made aware by the Department of budget cuts required as part of the financial constraints, which we completely understand, we will look at the way in which we conduct our business. In order to do that, from around May 2011 we began a strategic business review. So this really was led by how we could deliver better value for money for the citizen from our service. The business review highlighted ways in which we might develop our business model, and indeed that is what we have chosen to do. I would not say that we were not providing a good service in the past, and in fact, Baroness Rennie Fritchie, who led the review for us, was at pains to say that this is not an organisation in need of repair but one that wants to do better. That is what we hope to do in the future.

Q78 Chair: So why has the Secretary of State mentioned the idea of a root-and-branch review of whether the service is fit for modern purpose? He talked about re-engineering, comprehensive restructuring and in particular this new post, which

30 April 2012 Dr Jane Martin and Anne Seex

seems to imply his concern that ombudsmen in the past might have been too involved in the managerial nitty-gritty of the organisation, and were not spending enough time doing what he now wants you to deal with, which is the strategic direction of the commission and the quasi-judicial role, which is your primary purpose, is it not?

Dr Martin: That is absolutely right. Among the arrangements that we are putting in place now, as you rightly referred to, is the appointment of a chief operating officer for the commission. We hope that this will give us a more effective approach to our governance. The commission has a statutory function to ensure that the Local Government Ombudsman can conduct its role—our role—in investigating and deciding complaints. In the past, the chairman’s role has also been that of the accounting officer. We feel now that the arrangements that we are putting in place, under which we will have a separation of roles, will actually give greater clarity and greater focus on the strategic role of the commission to provide for the Local Government Ombudsman scheme; we will have the proper executive support that we need in order for that to work effectively.

Q79 Chair: Does that mean that you—both of you—spent too much time in the past doing minor management control, as opposed to strategic view?

Anne Seex: No, I think it means that when there were three ombudsmen and one of them was the chair, the accounting officer and de facto chief executive of the organisation, there was the capacity among the three ombudsmen to deal with the issues as Jane described—the budgeting, the relationship with DCLG and the overall governance of the Commission for Local Administration, as opposed to the work of the ombudsmen, which is quite different and distinct. If you are going to reduce the number of post holders from three to two, something needs to give. I do not want to speak for Jane, but I think that the position for me as I am sure it is for her is that our prime interest is in being ombudsmen—we obviously want to secure good governance of our organisation, but I think my prime interest and focus is complaints.

Q80 Chair: So your prime focus is this quasi-judicial role that the Secretary of State drew attention to as your prime role. Is there a problem in exercising that? Do either of you have legal background or qualifications or a history of working in that sort of role?

Anne Seex: No, I don’t think so.

Dr Martin: No, neither have I. It is worth pointing out that we were appointed at separate times as local government ombudsmen, and being a lawyer or having legal experience was not part of the role. What we bring, I hope, is a common-sense approach to administrative justice. We have legal advisers and professional staff to ensure that our investigations are conducted impartially and robustly, working within a legal and regulatory framework. But our role as ombudsmen with the authority vested in us is to make findings and recommendations of remedy based on the evidence and facts put in front of us.

Q81 Chair: Right. I might come back to that, eventually.

In terms of the uncertainties around in the past few months, it has taken an awfully long time to agree a new grant memorandum, hasn’t it? That must have caused a lot of uncertainty. Has it affected the operation of the commission?

Dr Martin: On a day-to-day basis, it has caused some delay from time to time. Not having a grant memorandum for a period of time has, I think, not helped with the clarity in the way we have been able to respond to requests for information, from time to time, from the Department. But I want to assure the Committee that although we have not had a grant memorandum for a period of time, we do of course work within “Managing Public Money” Treasury frameworks and we have internal and external audits. I am very satisfied that, and can assure you and the public that, the organisation has been working very effectively without having confirmed a new grant memorandum.

However, I agree with you that it has been more than disappointing that the grant memorandum has not been superseded by a framework document, which is what was intended. We raised our concerns last year about progress not being made. We have worked with the Department over a number of weeks and with a number of drafts, but there has for some time now been a delay. We hope that now, having confirmed a new chair and vice-chair in post, we will be able to prioritise the framework document with the Department, to reflect the new arrangements.

Q82 Chair: The Department may be blamed for some things—lack of progress—but as an ombudsman service you presumably have to be absolutely clear that your internal arrangements are correct. I understand that your own audit committee has expressed concern on a number of occasions about lack of progress in implementing management actions after internal audit recommendations. That hardly gives the best of images, does it, about the sort of good administration that you would want to see local councils deliver?

Dr Martin: I can understand that you might draw that conclusion but, again, we have made great strides in recent months, particularly in looking at the point you are raising—the outstanding recommendations from internal audit. I don’t have the figures in front of me, but I can certainly assure the Committee that we have worked hard to make sure that those recommendations have been brought down to a minimum—certainly any of them that were of high risk to us. There was certainly a delay, but I am satisfied now that we are making good strides to make sure that that is not the case, and that it will not be the case in the future.

Q83 Heather Wheeler: I am interested in the number of complaints you are receiving and the number of contacts you are dealing with. The numbers seem absolutely vast to me, frankly. The level of increase in complaints year on year, from 11% up to 20%—that sort of level—is huge. I am interested in what you think is driving the increases in the number of complaints you are receiving.

30 April 2012 Dr Jane Martin and Anne Seex

Anne Seex: It is interesting. We look over quite long terms, and when you examine trends over 10 years there are variations between years, but over a 10-year period they are not that significant. There is probably a study in the epidemiology of complaints to be done, to work out what is the naturally occurring incidence of complaints.

There is evidence that the volume of complaints to us follows trends in the world outside. The number of planning applications has decreased, the number of planning decisions has decreased, and the number of complaints to us about planning has decreased, in an almost perfectly matching curve. Similarly, everyone in this room will be aware of the pressures on adult social care budgets—you have heard evidence from someone involved in special educational needs and parents groups. Reviews and the White Paper have been clear about the pressure on them, and such complaints are going up. They are still a very small proportion of all the transactions that take place between local authorities and citizens, and between adult social care providers and service users.

Q84 Heather Wheeler: You have given me very good background on how whatever is happening to you is just a trend that is matched elsewhere, which is a very good answer. I'm quite impressed by it, to be honest—I hadn't thought of that one. But I was wondering whether if, at the minute, these increases in complaints mean that the public are having to wait a long time for a reply and for the matter to go through your process? Does it mean that, as night follows day, it will take longer to close a file?

Anne Seex: In the past it would have done, but we started a new advice service in 2008 as a front end to our organisation whereby the advisers deal with telephone inquiries and with incoming complaints by e-mail and letter. They do a first sift to find those that are within our power to investigate. They give advice to people and also deal with premature complaints. That front end is able to deal quite expeditiously with reasonably significant variations in incoming complaints and forward to us those that we can investigate, and those where people will not accept the adviser's advice, so that we can deal with them.

The re-engineering of our organisation will increase the focus on a quick assessment of what can and should be investigated with the resources that we have. There is undoubtedly a danger that a big increase in complaints and a reduction in our resources will lead to backlogs, but our approach—as set out in our transformation plan—is to try to ensure, as far as we possibly can, that that does not happen and to minimise the impact of it. Over the past 10 to 15 years, the highest number of complaints that we decided in any one year was more than 12,500. We are not quite back to that level of complaint handling yet.

Q85 Heather Wheeler: With unemployment figures, we are used to different sets of stats, such as people who have been unemployed for more than six months, a year or two years. Do you keep stats for how long you have cases open that have not been resolved?

Anne Seex: Yes.

Q86 Heather Wheeler: Have you seen any sort of increase in length? Has the number of cases that have taken more than six months or a year to resolve increased?

Anne Seex: Yes, we have, and that is linked with the increase in the number of adult social care complaints, which tend to require a long time, for two reasons: first, a large volume of paperwork is usually generated before they get to us; and, secondly, emotions can be very high, and they need extra careful handling. Additionally, the issues can be very complex. We have seen an increase in complaints that are taking us longer, and I think that is largely related to the complexity of the complaints.

Q87 Simon Danczuk: You mentioned the strategic business review. I know that the summary has been published, but has the whole report been published in public?

Dr Martin: No, the summary is what we have made available publicly. The reason why we wanted to do that was that we wanted to show the response of the commission to what the review was recommending. I think that what you have already had access to is what has been made available publicly.

Q88 Simon Danczuk: Why would you not publish the whole business review?

Dr Martin: Because we felt that it was more helpful to our staff, the public and the sponsor Department to have the strategic review with the commission's response. It was a strategic review commissioned by the commission. We asked for it to be done and we set the terms of reference, but we wanted it to be an objective, independent piece of work, and we are satisfied that it was. We wanted, as I have said, to publish our response to the recommendation, so that was the approach we took.

Q89 Simon Danczuk: So you thought it would be helpful not to publish all the information.

Dr Martin: From memory, I do not think that anything was held back that was not substantial to the review, but I am happy to go back and check.

Q90 Simon Danczuk: You are not a competitive organisation—you are a public body to all intents and purposes—so I am puzzled as to why you would not publish the whole of the review. In this case, it would be helpful for the purposes of scrutiny.

Dr Martin: Yes, of course.

Q91 Simon Danczuk: You made the point earlier that the person doing the review said that there was no need for repair, but that it was just a case of the organisation wanting to do better. The summary makes it clear that "Staff performance data suggest that the bottom 20% of performers handle some 10% of the case throughput, and their performance is considerably below the mean." It goes on to say: "Some corporate functions have staffing levels that this review believes are difficult to justify". It also says: "a significant proportion of operational administrative support (20%) is to provide basic administrative and office support activities."

30 April 2012 Dr Jane Martin and Anne Seex

When I was reading this summary on the way down here, it conjured up an image of the 1950s, with typing pools, carbon paper, tea trolleys going round and bowler hats. That is the sort of image I got from reading the summary of the review. How do you respond to the criticism in the review and the perception that it creates for people?

Dr Martin: Well, I would always describe the ombudsman as traditional, but I don't quite recognise the picture that you painted.

I hope that the points that you have raised make the point that we were absolutely holding ourselves up to scrutiny as an organisation—that was what we wanted to do. We knew that we had to deliver better value for money and cost reductions. We saw this as an opportunity to look at the way in which we do business.

What you have read out is from the review. As a result of it, we put together a transformation plan, and we are cutting staff and taking out costs throughout the organisation, and putting in place a revised business model which, as Anne has already mentioned, will focus much more carefully—and, we hope, efficiently—on the front end of the business model, so that, as I think was mentioned in the strategic review, we are giving complainants as quick a response as we can in relation to whether their complaint would be investigated.

I can only reiterate what was said: we were not an organisation that was not seeking to do the best it could, but we want to be more efficient, and we welcome the points that were made in the review.

Q92 Simon Danczuk: What level of staff reductions are you going to make by 2015?

Dr Martin: By 2015, we are going to reduce the overall staffing complement by 23.5 posts, which will bring it down to 175.5 full-time equivalent posts. We will reduce the senior management team and the management cadre from what we call assistant ombudsman; their jobs will be changed to assistant directors. We are reducing from 12—it was already under establishment—to eight. We will reduce investigators across the piece and take staff out of corporate services. We are looking to see where we can be efficient throughout the organisation.

Q93 Simon Danczuk: Will all the operation move to Coventry?

Dr Martin: We are committed to relocating to Coventry—certainly for our head office function. I should stress that the detail of the transformation plan and the costs associated with that are still being worked through, but our plan is quite clear that all our function will be in Coventry. That is a proposal because we think that delivers least disruption. This is fit for purpose—there is fit-for-purpose accommodation—and it is very cost-effective. However, we will not rule out the possibility of having investigative staff, particularly, based in London and York, because we want to ensure that we retain the best investigative staff we can as we move to a new business model. Those things have yet to be worked through. For example, we already have some staff who are home-based, and we may do more of that,

but we are committed throughout the period to consolidate, as far as we can, to the Coventry office.

Q94 Mark Pawsey: Given that I am a Member of Parliament with a constituency immediately adjacent to Coventry, I am highly delighted to hear that you are looking to relocate there, where the costs of operating are substantially less than they would be if you retained a presence in London. You are very welcome in Coventry, and we look forward to you doing as much as you can there.

You mentioned a moment ago that by 2015 you will have 175 staff, which is a reduction of 23 posts. Can I ask you how many of that 175 will be investigators? I am trying to get an understanding of the staff mix between those who do the investigations and the support staff.

Dr Martin: I have to confess that I do not think that I can put my hand on that figure, but we can certainly get it for you.

Q95 Mark Pawsey: You did say that as your staff level drops by 23 posts, some of those will be investigators, so the number of investigators would reduce. Is that pro rata, or can you organise yourself so that more time is spent investigating, and less time and staff resource are put on support services?

Dr Martin: Yes. I am happy to provide you with the detail following the meeting, but we will be reducing down to fewer investigative teams, and we will also be reallocating some of our investigative staff into what we are calling an assessment unit. They will be dealing with more complaints in a more efficient way. We will make the best use that we possibly can of investigative staff within the organisation, but we will have fewer of them.

Q96 Mark Pawsey: Right. I wonder whether I can ask about what filtering system you have. One of the pieces of evidence that we have is that there almost seems to be too many cases. How do you go about filtering out what goes on to a full-blown investigation and what is dealt with in a less detailed way?

Anne Seex: Our transformation plan sets up an assessment process that will be run by a small number of staff who are currently investigators. People may be able to move between investigation and assessment, but the purpose of concentrating that assessment of complaints into a smaller number of hands, with team leaders working with the staff, is that we as ombudsmen will be able to work more effectively with a smaller group of people and to give regular guidance on the principles and values to be applied on which complaints are selected for investigation and which are not.

By separating out the assessment process—people might not like the decision not to investigate their complaint, but they will hear it quickly and swiftly—we will not be mixing up long-term, complex investigations with the faster decisions out of an assessment. That will mean that the investigators get a complaint, and it will be clear why we have decided to investigate and what we expect the public value to be achieved by that investigation, in addition to remedying the individual justice for the citizen who

30 April 2012 Dr Jane Martin and Anne Seex

has brought the complaint. We do not know what the outcome of that will be, because we have never done it before. We believe that being able to concentrate on those two processes distinctly will give faster decisions and more effective investigations.

Q97 Mark Pawsey: So are you saying that every case is investigated?

Anne Seex: No. I am saying that it will be as it is now.

Q98 Mark Pawsey: So what proportion of cases is currently investigated, and what proportion is dealt with at an initial assessment without the need to go into investigation?

Anne Seex: At the moment it is only an investigator who makes decisions, unless it goes up the line to an assistant ombudsman or an ombudsman. In the past year we have decided not to investigate 30% of the complaints that have been made to us.

Q99 Mark Pawsey: The experience from the Republic of Ireland and the Scottish ombudsmen suggests that 70% can be dealt with. Now, there is a big gap between your 30% and those bodies' 70%. Would you like to account for that?

Anne Seex: I think that the accounting for that comes from the fact that they have adopted a clear separation between assessment and investigation. That is what we are proposing to do, but we have not done it yet.

Q100 Mark Pawsey: Why are those two bodies so far ahead of us in process terms?

Anne Seex: I can only pay tribute to and compliment our colleagues in Scotland and Ireland for that.

Q101 Mark Pawsey: But that does not answer the question, does it? Why are they light years ahead of where we are right now?

Anne Seex: Well, the Irish ombudsman was forced by economic circumstances in Ireland to reduce its budget dramatically—that was part of its response to that. All ombudsmen understand that you do not investigate every complaint. You need to be clear and fast in making decisions about what you do and what you do not. Scotland has been agile and focused on achieving value for money and good practice.

Q102 Mark Pawsey: Should we not be agile and focused on achieving value for money?

Anne Seex: We should, indeed. We have to take that criticism on the chin. We could have been better and faster at doing this.

Q103 Mark Pawsey: Right. And how about the level of discretion given to investigators? Who determines how much autonomy an individual investigator would have?

Anne Seex: When an individual investigator is given delegated authority by an ombudsman, they have authority to decide which complaints to investigate, what remedy is appropriate if they have found something wrong and at what point to end their investigation. If they do not have delegated authority to complete an investigation and issue a report, that is reserved to Jane and I as ombudsmen.

Q104 Mark Pawsey: So what proportion of cases that come to the ombudsman pass over your desks?

Anne Seex: That is not just about delegation; that is about what complaints we want to see, and that can change over time. For example, at the moment I want to see every complaint that we are dealing with at the decision point on our adult social care jurisdiction over privately arranged and funded social care. It was new to us. We needed to do some learning and develop the whole organisation, and particularly the specialist teams, to be able to deal with them. I want to know what is happening out there—what is going on in my name—so I see all those decisions before they are made. Similarly, I saw all the decisions on complaints by parents and pupils about schools.

Q105 Mark Pawsey: But there are other areas where you wouldn't take such a detailed interest.

Anne Seex: There are other areas where I wouldn't take such a detailed interest.

Q106 Chair: We have had reports, though, that it has taken months for you to come to a decision. People who have put in a grievance tend to ring up to find out where they are at only to be told they are on your desk, and that has been for literally months—I am not talking about two or three months, but six months, or up to a year.

Anne Seex: That is true.

Q107 Chair: Is that reasonable?

Anne Seex: No, it is not reasonable, and it is an unfortunate by-product of the interregnum that we have been through. It isn't typical, and it certainly isn't typical of our whole organisation, where 85% of complaints are decided within 26 weeks.

Q108 Chair: Sorry, but why is it a by-product of the interregnum? There have been two of you there for some time. There are two of you there now. Why should it take up to 12 months for you, as an individual, to decide some issues?

Anne Seex: It shouldn't. In an ideal world, you would not want that. You would want to be able to pick up a complex case straight away and to devote all the time it needed to reach a decision, but that is not often the world we are in. Sometimes the case is incomplete. Sometimes it takes a long time to complete the work, get additional information and reach a view.

Q109 Chair: When someone out there is waiting for a decision, taking 12 months sounds a bit to me like maladministration.

Anne Seex: Very probably. It is not something that we want to see happen, but it is not that that case is sitting there waiting and action is not being taken, or the work isn't being done. It is about how much time you can devote to one particular issue among all the others that need dealing with.

Q110 Chair: Maybe it is a lack of delegation.

Anne Seex: You cannot delegate everything, and the things that have come to the ombudsman are things that are particularly troublesome or complex.

30 April 2012 Dr Jane Martin and Anne Seex

Dr Martin: If I might add, my experience is that those few cases that can take 52 weeks or a little longer are very complex. Sometimes it is possible for us not to make clear to the complainant the process that we are going through, so, for example—obviously, I am not aware of any cases that you are particularly thinking of—it is the case that a complaint will perhaps be reopened. A complainant will represent further evidence to us, which they are at liberty to do; in fact, we always make sure that we are open to complainants presenting new evidence to us. When we have either discontinued or closed a case, we will always consider reopening. Sometimes, without getting into the detail of particular cases, these things can take longer because we will consider new evidence and reopen a case.

Q111 Chair: But there are cases—Anne Seex would probably know, without going into individuals—which haven't had new evidence and haven't been reopened, but have still taken that sort of time.

Dr Martin: Okay.

Q112 Chair: It's not acceptable, is it?

Dr Martin: No, it isn't acceptable, but sometimes it is perfectly possible for some cases to be complex enough that they require further inquiries, and they do take—

Q113 Chair: Some may do, but if they don't, there isn't an excuse.

Dr Martin: Yes, of course.

Q114 George Hollingbery: Just carrying on with one or two of these lines of inquiry, we are talking about a great deal less in the way of resource in the unit, with a similar structure at the top as you have had in the past year. Are we not to expect that these delays are going to get longer and longer, despite the change in pre-screening? That will absorb some of the issues, but is it not going to get worse?

Anne Seex: I hope not. There is a difference between knowing that you are going to be working with two ombudsmen and being able to plan and structure things accordingly, and working in a period where you are not quite sure what is going to happen and how many changes you should make pending the appointment of somebody to be the chair and de facto chief executive of an organisation. The particular challenge for us during this period is the uncertainty. Clearly, going down from three people to two people dealing with those complex cases will have an impact, but, like Jane, I am confident that the arrangements we are proposing in our transformation plan and hope to implement will mean that we can work very effectively.

Q115 George Hollingbery: How do you compare with the Scottish or Irish service in terms of numbers of complaints dealt with, complexity, and outcomes?

Dr Martin: As far as we are aware, our figures stack up very well against other schemes. We do deal with very high volumes—much higher volumes—but I am not suggesting that as a defensive point.

Q116 George Hollingbery: How do you compare with those two? They have gone through a similar process, particularly in Ireland, of downsizing and so on. Have you taken the time to go and talk to them about what they did and how they transformed the service?

Dr Martin: Absolutely; we have indeed. That is why we are learning lessons from those organisations and will be putting those into place in the transformation plan. We are under no illusions, so that is why we have a transformation plan.

If I might add to the points that Anne made, it is very important to note that, now we have been confirmed in post, the uncertainty has gone. In my role as chair, I want to assure the Committee that we will now be moving ahead swiftly with changes that perhaps should have been done more speedily in the past, but we were just not in a position to do so.

Q117 George Hollingbery: Okay. Can I just ask about school places, social care and so on? You are seeing all of these cases. Can you tell me in how many cases you overturned the decision that was sent up to you for adjudication?

Anne Seex: They are not sent to me for adjudication.

Q118 George Hollingbery: Well, for you to have a look at the case.

Anne Seex: I see the decision before it is made. I have asked in a number of cases in adult social care for some further investigation to be done. I have suggested in others perhaps clearer ways of explaining the decision to people who might not naturally relate to the language that our staff have become accustomed to using. It is not an overturning of the investigator's decision. I see it very much as working with the investigators to help, support, and give them guidance about the kinds of factors that they should be taking into account and the degree of rigour that they should be bringing to it.

Q119 George Hollingbery: Is your job to be an investigator in very complex cases, or is it to oversee work done by others?

Anne Seex: It is to oversee work done by others.

Q120 George Hollingbery: So you do not get directly involved in any cases at all.

Anne Seex: I do not have my own case load, but cases are referred to me for a variety of reasons, and we deal with every complaint that goes to report.

Dr Martin: That was the point that I wanted to make. Every case that goes to report is signed by the ombudsman, so we do get closely involved when it is getting to report stage. The report is ours. It is written for us, and we will usually be more closely involved with that.

We also get involved when a case is moving beyond the average time scale. Both of us will see cases and want to know why things have not been moving, and perhaps make suggestions as to how the investigation should proceed from here on in. So there are key points at which we will get involved to support the investigators and the assistant ombudsman in their work.

30 April 2012 Dr Jane Martin and Anne Seex

Q121 George Hollingbery: Is the client informed of these potential pinch points?

Dr Martin: I would say that that would usually be the case.

Q122 George Hollingbery: Usually, or it is? Why would there be discretion over this? They are either kept in the loop or they are not.

Dr Martin: They should always be kept in the loop. We keep in touch with complainants on a regular basis. Certainly, if something was coming through for a case conference with me, I would normally expect that to be communicated to the complainant.

Q123 George Hollingbery: And to be told that there is a delay because of x, y, and z. It seems to me to be about managing expectations. It would seem to be very useful to you if you could deal with it.

Dr Martin: I completely agree. We try to work so there is no delay that needs to be communicated, but complainants would certainly want to know when the ombudsman was being involved in their case.

Q124 George Hollingbery: It seems to me that, across the piece, life is becoming a lot more complex in the delivery of services. It was always local authorities that were delivering services, and that has become increasingly spread across private business and so on with public-private partnerships. We have had the Health and Social Care Bill and health and wellbeing boards. Do you think it is time to look at the model very, very carefully and maybe completely redesign it for a new world? It seems to me that there are so many changes coming, so many bodies that need to be audited and so many complaints coming from different streams of work, controlled by all sorts of different people with different paymasters and different policy agendas, that your body of knowledge will have to become absolutely enormous. Is it time that we began to look at the whole ombudsman service and say, "Actually, something altogether different needs to happen here"?

Anne Seex: Presumably, that is why you are inquiring into the Local Government Ombudsman, and the world is certainly more complex. As you will know, there is a great danger of people falling down the gaps between health and social care, and things not joining up properly. Through the regulatory reform order that was introduced some time ago, we have powers of joint investigation with the Parliamentary and Health Service Ombudsman. The biggest proportion of those complaints is around health.

We see a division created as a result of the Localism Act 2011 between our powers to look at the role of a local authority as the strategic housing authority and the independent Housing Ombudsman looking at its role as a landlord, for those people who are still council tenants. That will add complexity but we have, through the Localism Act, secured the power to work and do shared services with the independent Housing Ombudsman to do joint investigations, so we can join up these things.

There is no doubt that the world is getting more complex—it is not just in terms of complex organisational structures and who pays for what; it is

increasingly complex in terms of competing rights of citizens and competing issues that are not always compatible with each other. If I could use an example from adult social care, you have the anxiety and natural inclination of adult children to want to know a great deal about what is happening with their parents' care. At the same time there is the right of the parent to have personal and private information kept confidential. You have council officers and care home managers managing those issues. Mostly they manage them very well, but if they go wrong it can be difficult to unpick the strands and work out who did right and who did wrong.

Q125 George Hollingbery: I think I am right in saying that you work closely with the Parliamentary Ombudsman, the Housing Ombudsman and the Parliamentary and Health Service Ombudsman. If I gave you a blank piece of paper, would you start from here?

Anne Seex: Probably not. Brian Thompson made the point in his evidence that, with 50 million people or more in this country generating complaints, the work has to be divided in some way or another. Historically it has fallen to the Parliamentary Ombudsman, then the Health Service Ombudsman was introduced, the Local Government Ombudsman, and then various other ombudsmen and adjudicators.

What you need to find out is the likely generation of complaints; what role does the country want ombudsmen to play in administrative justice, and how can that best be secured? I think the greatest overlap in our work will come with the Health Service Ombudsman. There is clearly an overlap with housing. Whether that is best brought together and then divided up on some other basis to make it workable and manageable is something that could be reviewed.

Q126 George Hollingbery: It is perfectly illustrated by the fact that an investigation by yourself and a different ombudsman service on the same case reached different conclusions. That goes to show that the world is a complex place and people come at it from different points of view. Perhaps a combined service might be better.

Anne Seex: Yes. That comes from the evidence of Mr and Mrs Wain in their written submission. I think that complaint was in 2000–01, long before my time, and certainly long before Jane's. It is difficult for us to comment on that now. I would say that since that time—and it may very well have been a factor, I don't know—the regulatory reform order was secured at the request of both the Parliamentary and Health Service and Local Government Ombudsmen, so that that should not happen in future.

Dr Martin: I just want to add that the way we should be looking at things now is to ensure the best, clear, public access to the ombudsman scheme, whether ourselves, housing, Parliament or health. We would be very willing to explore ways in which we could work with our colleagues, first and foremost, to ensure that clear public access. We would all agree with you that it is already complicated and is likely to get more

30 April 2012 Dr Jane Martin and Anne Seex

complicated, given the direction of policy in relation to Open Public Services and the like.

We should be working hard to get that clarity. We also ought to be working harder together to join up our operations. Anne referred to joint investigations, and we have already had a number of conversations with the new Parliamentary and Health Service Ombudsman to redouble our efforts to streamline our processes, so that both our organisations work closely together. So I think there is a lot that could be done and can be done in an organic way to make sure that we are working more effectively to give the public the best service they can get.

Q127 Bob Blackman: Just on this point of filtering and deciding what you are going to investigate and what you are not, you said that there are 95,000 initial contacts of which 11,000 end up as complaints. So roughly eight out of nine people go away because they have gone to the wrong place or they have another means of complaining or whatever. But those one in nine go through. In my experience, limited use is made, for example, of councillors who may have dealt with complaints initially yet do not always necessarily sign up to the complaint. They do not supply all the information they have used. Have you considered using that as one of the key stops in the mechanism before you start investigating?

Dr Martin: We have a clear policy position which is that we expect complainants to go to the body in jurisdiction, that is, councils, first of all.

Q128 Bob Blackman: Sorry—councils are one thing. People will complain to councils. What I am talking about is that normally they should go to—I am not asking them to come to me. Obviously they come to MPs to get advice. They will go to councillors. Councillors will have investigated. They will have done something. It would save an enormous amount of time if, when people make their complaint, they detail all the complaints that have been made through their councillor and their councillor signs up and says, “This is what we have done already. That is why we have banged our head against the brick wall and cannot get anything.” That would cut down your work quite a lot, wouldn’t it?

Dr Martin: It may do. As you probably know, we used to operate under a system whereby people would go to their councillors before going to the local government ombudsman. That was changed so that people come directly to us. I think that has generally been regarded as a good thing in order to get direct access. However, I think what you are suggesting is that we may be missing something in trying to expedite that direct access. It would be interesting to see what the experience of the housing ombudsman is in relation to the arrangements that have been put in place for his new jurisdiction and perhaps we could learn from that.

Q129 Heather Wheeler: You are getting round to my next area of questions. There seems to be a lack of joined-up work between the councils and the LGO. I am wondering whether there should be some sort of framework or perhaps people need to know what that

framework is. Obviously they should have gone through the council’s complaints procedure and then if they are not satisfied with that then, in your phrase, you are there to give them justice and put them back in the position they should have been in if the maladministration had not happened. From the work that I have seen you guys do for my constituents—that just does not happen. The outcome was, “You can have £350.” The court case costs £33,000. You have not given him his £33,000. You have not given him a new court date. He has £350: “Quite right, Lad. It all went wrong. Terribly sorry.” I just don’t think people are happy.

Dr Martin: We are not the courts. We don’t pretend to be.

Q130 Heather Wheeler: No. But you cannot put him back in the position he should have been in which should have been either a new court date—you cannot give him that—or £33,000 so that at least he is not out of pocket because the council did something wrong or whatever it was. You said the council did something wrong. Here is £350.

Anne Seex: It is very difficult to comment on a specific case, which is clearly in your mind, without knowing what it is. Our aim is to try to put the person who has been affected by maladministration or failings in service back in the position they would have been in if that had not occurred. Sometimes that is simply not possible. I issued a report last year about a council which, quite wrongly, interfered with a woman’s right to see her dying mother. Her mother died before she was able to see her. The council accepted that its officers had acted in error. It only happened over a short period of time, but it was a critical period of time. In that case there is no remedy for that injustice but the woman who complained to us was very satisfied by the council’s acknowledgment of its wrong, its very sincere apology for what had happened and was content to have a memorial to her mother created by the council.

Q131 Heather Wheeler: Do you think there is any benefit at all in going directly to you for a complaint rather than going through the council’s complaints procedure first?

Dr Martin: Yes, certainly when things are urgent. I am thinking of homelessness cases where people feel that they have not been treated fairly by the council in its allocation of temporary accommodation and the like. We will always consider urgent cases like that. If people come to us directly, we do not send them back to the council to go and work it out. When there are urgent homeless matters in front of us, we will take them on and look at them quickly. You only have to look at our report to see where we have got redress for people who have not been dealt with fairly by their council. We ask the council to put things right as speedily as possible.

Q132 Heather Wheeler: I am almost hearing that your function is bipolar, because on the one hand, you react incredibly quickly, but on the other, we hear that there are not limits—that a council should reply within x days to any complaints you handle or a

30 April 2012 Dr Jane Martin and Anne Seex

complaint might take six months or a year to resolve. You deal with urgent cases, but you do not have urgency in cases. Should there be time limits? Should every council reply within seven days or 14 days? Perhaps you have that framework and the public do not know it, or somehow it gets lost.

Anne Seex: We do. We ask local authorities to respond to us within 28 days and each year we produce—

Q133 Heather Wheeler: Twenty-eight days? Freedom of information requests are subject to a time limit of 20 days, so why is your time limit longer than an FOI request would be?

Dr Martin: Because we found that broadly speaking it works well. If I may say so, I have been in this post for just over two years now and one of the really important things to remember about the ombudsman scheme is that we work flexibly. We always look to see what we can do for the complainant as soon as we can. We are very willing to hold our hands up and say that we need to do more of that better, which is what we want to achieve. I think that it is really disproportionate to ignore all the good work that our investigators do in a very timely fashion, although I recognise that some complaints take too long and that is not acceptable.

I want to assure you that, particularly in cases of homelessness or where there have been special educational needs matters that have not been dealt with speedily, we will do our best to resolve things as soon as we can. We do that in all cases. Sometimes it is easier to do that than at other times, but that is our approach.

Anne Seex: Can I add to that? We publish on our website the exceptions that we will normally make to the legal requirement for a complaint to be made to the council first. The largest category of complaints that we always make that exception for is school admission complaints, because the time available to get the child's future settled is so short.

Q134 Chair: Okay. Bear it in mind that we are putting points to you that have been put to us. We do not know the accuracy of them, but we nevertheless have to try to test them out. One concern that has been raised, and was raised last week in evidence, is that the ombudsman service is seen as being too close to local authorities, and indeed it probably goes further than that. It is said that if the people at the top of the ombudsman service happen to know people at the top of a particular local authority, then cosy arrangements are arranged and the same amount of rigor is not applied to those cases as would apply to others. That may not be true, but if there is such a perception out there, is that of concern to you?

Dr Martin: If there is a perception, it is a concern to us, because we cannot and do not work in that way. All our decisions, findings and routes to remedy are based on the evidence—the facts of the matter—and it is absolutely critical that the public have confidence that the investigations we carry out are impartial and independent. It might be worth reminding ourselves of some of the statistics. Looking back at the statistics for 2010–11, they record an increasing number of

remedies where we asked a council to review policy or procedure. That amounted to 288 and was an increasing trend, which is an indication to me that we are doing our best to ensure that local authorities are held to account for changing their practice and procedure.

Of all our outcomes, it is true that just under half for the period that we are looking at—47%—result in no maladministration outcomes. Does that suggest a too cosy relationship? I do not think so. Last but not least, the number of reports that we are producing has gone up in this last year from 29 in the year that you have our annual report for to 47. Again, quite a significant upward trend, although the 29 does look like it was a blip. I suppose I would just use those figures to demonstrate to you and the wider public that we absolutely take our jobs seriously in making sure that we are not, as it were, too cosy to local authorities. Having said all that, we are not an adversarial system. It is worth pointing out that we need to understand how local authorities work, as well as fully understand the complainant's situation, in order that we can help to resolve it. We have to ensure that we understand the context in which we are working.

Q135 Chair: Right. I am interested to know, in terms of the public reports, whether 47 is a large number in historical terms as opposed to a larger number than the previous year. My understanding is that there seems to be more attempt now—after the interim report has been produced—to go and talk to local authorities and see if an arrangement can be made for them to perhaps accept your findings. The complainant may be satisfied that they get their particular issue resolved, but no public report is produced. An authority that may have behaved very badly does not get criticised, and no wider information about that issue is made available, so other people who may have experienced similar problems with that authority do not get to know about it. Does that not give an indication that perhaps there is that too cosy a relationship?

Dr Martin: Again, I would be sorry to hear if it was giving that impression. We should take that very seriously. As a matter of fact, I do not have the precise numbers, but I know that we are tending towards issuing more reports that are what we describe as remedy-agreed. Again, that gives you an indication that we are not, shall I say, covering up. We actually want to opt for a public report, because we recognise that there are wider public interest issues. It is just one indication—quite a strong indication, I hope—that we want to make matters public.

The other thing I should mention is that we have plans in place to publish all our statements on all our decisions. We communicate all our decisions by a statement of reasons. We are working through a project now, and I hope within the next 12 months it will be the case that we will be publishing all those decisions.

Q136 Chair: So even if you come to an agreement with the council in future, you would still publish that?

Dr Martin: Yes. That is our intention.

30 April 2012 Dr Jane Martin and Anne Seex

Q137 Chair: So it would be a public report?

Dr Martin: Well, it will not have the same status as a public report, but it will be public. It will be on our website and available for the public to see. We feel this is very important, because it does appear to us that sometimes the public do not get quite the right impression about the way in which we do our work, because they see only a very small number of reports, and we do not think that that is right. We want to give full transparency to the public about the work that we do. It would certainly deal with the challenge that you have put to us.

Q138 Chair: Right. You say you are not an adversarial organisation, but you clearly have this quasi-judicial role, which is what the service is founded on. The second major criticism is, as someone said to us, that you are becoming more like a customer care organisation, trying to resolve things without any degree of conflict, when actually people probably want a bit of conflict. They feel that they have experienced maladministration and they want it sorted out. They want someone held to account in a rigorous way with the evidence clearly and properly examined. Do you feel you can always demonstrate that you do that and that your staff have the skills to do it?

Anne Seex: Yes. That is why we are confident that we should publish all our decisions, and then people will be able to look at them on the website and see. We have some work to do to make sure that we are explaining things in a consistent way. The issues of local settlements are interesting. People make the criticism that local authorities' chief executives became ombudsmen and started to go soft on local authorities. In fact, the rough percentages of local settlements did not change greatly, except there was a great increase in 2000–01, 2001–02, 2002–03 when the commission was dealing with an enormous number of housing benefit complaints. For whatever reason, the state of housing benefit administration across the country was in chaos. We were getting enormous numbers of complaints and I think that is where the pragmatism came in. What can we add that the housing benefit inspectorate and the Audit Commission are not adding to statements about systems that clearly weren't working? Our role in legislation is to deal with individual complaints and remedy—well, we can have the power to recommend remedy for individual injustice. That is where the pragmatism came in.

We are an evolving institution and organisation. All the public sector ombudsmen are going through similar stages of evolution; some are evolving faster and possibly more effectively than others. That is what we went through, at that point—neither Jane nor I were there, but it seems an entirely defensible and sensible use of public resources and public money—but we are now at a stage where we are moving into a different external environment and there are a different set of requirements and expectations on us.

Q139 Chair: Do you think, however, that you should be making it clear what sort of information and evidence you have taken, and from what sources? I

understand that there have been cases where you refused to reveal that. It has not always given the impression of transparency.

Anne Seex: Yes, I did pick up on that. In my view, it would be a cardinal sin for anybody in our organisation to make a decision based on evidence and not say what that evidence was. Our routine practice is to make available to the person who has made the complaint the evidence that we rely on in our decision. Sometimes we cannot do that if the evidence involves third parties. For example, in antisocial behaviour complaints, we get records and diaries from an authority that involve other people in that neighbourhood. It would be wrong to disclose those, because it is personal and confidential information about third parties, but the investigator should give a summary of it and it should be clear what has been relied on in the decision. So the idea that we withhold evidence that we have relied on in our decisions is not one that finds any resonance with me at all.

Q140 Chair: Okay. I will come back to that in a second. There is this issue of trying to get consistency across the organisation, which I accept; you have lots of different investigators and, in the end, you are reporting on behalf of the ombudsman, so you have to get a consistency of view. Two other things have been said to us—you will appreciate that colleagues deal with cases on behalf of constituents, so they do pick these things up and have a word with us about them, too. We were referring earlier to cases taking a long time when they go to you to be looked at. We understand that you have to try to take that overview, but one thing that came back to us was not that you take an overview, but that the reports had been rewritten as usual by Anne Seex, which was a comment that one of my colleagues picked up on. It was said that so many reports get rewritten and you do not have the ability to trust the investigators to do their jobs. Is that a fair comment?

Anne Seex: I place a great deal of personal emphasis on trying to make our reports and statements as clear—in plain English and hitting the key points—as possible. So yes, if we are publishing a report, I have a great deal of personal involvement in that. It is a bit of six of one and half a dozen of the other. If people challenge a decision and I feel that we can do more to explain it—this happens with the assistant ombudsman as well—people will endeavour to give a clearer and better-reasoned explanation than perhaps may have been given in the first instance.

Q141 Simon Danczuk: The Government think you have time on your hands. They have decided, in the Open Public Services White Paper, that as well as doing what you already do, you are also going to have a role in upholding people's rights to choice. How will you do that?

Dr Martin: We have been engaged in some initial discussions. The direction of policy is not a matter for us, but if the Government—or any Government of the day—wish to put duties on a local authority, or any democratic authority acting on their behalf, we will continue to fulfil our role within that framework. So if there are new administrative duties to ensure effective

30 April 2012 Dr Jane Martin and Anne Seex

choice through commissioning and provision of services, then we stand ready to take on board any complaints of that nature against that statutory and regulatory framework. We would do it. In one sense, it is business as usual.

I think there are two other points about the open public services policy, if I may say so, that we are possibly thinking harder about. One is that the policy suggests that there will be more local democratic authorities of different types—perhaps town and parish councils, neighbourhood councils and the like—taking on the duties of the principal local authority. It seems to us that it is very important indeed that in this kind of landscape we ensure good public administration by all those bodies that are charged with commissioning or providing services. That would extend of course to individuals as well as bodies. So in those circumstances, where we are dealing with the duties of the principal local authority, again our legislation is fit for purpose—we can exercise our jurisdiction in relation to those new bodies—but, I am sure most people would agree, we need to make sure that there continues to be good public administration and that citizens are treated fairly by all those bodies charged with such duties.

The second point is that there will be—there already is, but we may expect to see greater—diversity of service providers, not just democratic authorities, but private, individual, voluntary ones, etc. In such case, we already have jurisdiction over the private, independent adult social care providers in relation to service failure and not just, as it were, maladministration so, again, we have experience of this but we expect to see more of it. It takes us further into that territory of private, independent bodies, and we are thinking about what we can learn from our initial experience of working with adult social care providers, as we see changes emerge as a result of the open public services policy.

Q142 Simon Danczuk: In terms of local authority performance—sorry if you have already answered this question—can you tell me which local authority is complained about most, and which local authority is complained about least?

Dr Martin: I do not have those figures in front of me, although I am aware that some figures were shared through a parliamentary question not too long ago. I think that what I can say is that it is de facto the case that the bigger authorities with the larger populations have more complaints coming to us. I am sure that the statistics will bear out that statement.

Q143 Simon Danczuk: But the figures are public—people can see them.

Dr Martin: Of course. Sorry, I just do not have a list of them to read to you.

Q144 Simon Danczuk: What would you do if a local authority was performing consistently poorly, in terms of handling complaints? What do you do?

Dr Martin: Perhaps I should also point out that we produce an annual review of each local authority, in which all the figures are made public and are on the website, etc. We will be putting those reviews together

for July this year. What we do in the annual review is to point out if we have any concerns about how the authority is handling complaints. We also, in a more supportive mode, offer training—indeed, our annual review is an opportunity to say, “We think you could do with some.” We will provide training and support. We also produce publications. We want to make sure that we maximise the learning from all of our complaints and feed that back, particularly in the spirit of localism and supporting local authorities in their complaints handling. What we have done recently is started to produce a series of focused reports, which are quite short and sharp so they do not take very long to read and digest, which we hope is helpful to busy people in local authorities. The reports give quick pointers as to how the local authorities might be dealing better with specific points of public administration and complaint handling. Finally, when we deal with a complaint, if we see poor complaint handling per se, we will always comment on it and feed back to the authority.

Q145 Simon Danczuk: Finally, you presumably do a satisfaction survey of your customers. What percentage is satisfied or very satisfied with how you have handled their concerns and complaints?

Anne Seex: I think the last survey, a quantitative survey that was done in 2007, had about 26% satisfied with the outcome of their complaint.

Q146 Simon Danczuk: That you as an organisation handled.

Anne Seex: With the outcome.

Q147 Simon Danczuk: So three quarters were not satisfied with how you had handled their complaint.

Anne Seex: No, sorry, I was talking there about the outcome. What we know from the research is that it is almost impossible to extricate outcome from handling. We followed that quantitative research up with qualitative research because, in doing the survey, MORI had told us that it was very difficult for people who had got an outcome that they did not like or expect to separate that from comments on the organisation.

Q148 Simon Danczuk: So you’re not measuring satisfaction with the delivery of—

Anne Seex: In that survey, we asked about the politeness of staff, the helpfulness, the thoroughness, the time taken and the ease of understanding—the whole range of things.

Q149 Simon Danczuk: And that is a public document.

Anne Seex: That’s a published report that we regard very highly.

Q150 Simon Danczuk: Do you think that you need to do the survey again? How many years in the future do you intend to do it?

Anne Seex: Depending upon the resources, I would like to see us do them about once every three years and to supplement them with qualitative research. The difficulty about quantitative research, particularly

30 April 2012 Dr Jane Martin and Anne Seex

when it is anonymous and we have got the particularities of dealing with complaints, is you don't know whether somebody's bad experience is them or us. And we need to know that. We need to be able to correlate people's reporting of bad experiences with the actual practice that was applied to their complaint.

Q151 James Morris: There's a thread coming through this discussion about the danger of your going into areas in which you have no expertise. Dr Martin, you were talking about you evaluating service failure in adult social care. How is that relevant to your core business, and what are the cross-overs between that and the responsibility of the Care Quality Commission? What expertise have you got to evaluate service failure in adult social care?

Dr Martin: That's a very good question. First of all, for adult social care, we recruited new people to the organisation, so we had balanced teams. We had generalists and specialists who knew about the area in question. So we have specialist teams looking at adult social care and other areas. Both Anne and I are very committed to making sure that we get this issue of specialisms right, so that we reflect it in our organisation. But, we cannot reflect all specialisms in the organisation. It would not be possible to do that. In future, we need to be looking at the ways in which we work with specialists to support our work in much the same way as the Parliamentary and Health Service Ombudsman does with clinical advice.

Q152 James Morris: What I'm getting at is whether there is a sense of some degree of strategic drift with your organisation and whether somehow you are picking up almost on an ad hoc basis some responsibilities as a result of some Government Department deciding that it will chuck something into the Local Government Ombudsman? Actually, you should be pushing back and saying, "No, that doesn't fit within our core remit." Otherwise, you end up getting in a situation where you are commenting on service failure in adult social care, which is way beyond your capability or capacity to deliver. Therefore, disappointed expectations are increased.

Anne Seex: May I pick that up? Our role is to investigate complaints about injustice caused by the absence of an adult social care provider, so the process of investigation is the same wherever we are. We already dealt with complaints about adult social care, as arranged and provided by local authorities. Very often, the strategic role of the local authority in planning for services and arranging overall for meeting the needs in its district and the actual experience in a care home or in domiciliary care of a citizen is collected linearly. So it was not entirely new to us to be dealing with complaints about service failure in a care home or in domiciliary care; we were already doing that in the statutory sector.

There is an argument—or debate is probably a better way of putting it—about whether the regulator should deal with complaints or whether somebody separate should deal with them. My personal view on this has changed. Initially, I felt that it was probably better for the regulator to also be the complaint-handling body, because there was synergy in the roles. On further

reflection, after a lot of discussion with ombudsmen in other countries who are also regulators, I think that that view was wrong and I have changed it. It is important to have a separation between the regulator and the ombudsman, so that you do not get cross-contamination from the regulator's inspection review of a service provider, so colouring its ability properly to consider whether something has gone wrong.

Q153 James Morris: I have a final point. Is there not a trend generally, at the moment, that when a policy decision is taken by a local authority, a complaint might be generated and there is a semi-judicial process whereby you get yourself in a position of being asked to arbitrate on a policy decision that has been taken by a local authority? We have seen that with all kinds of judicial reviews happening around adult social care and other things. Is that something that concerns you?

Anne Seex: We are very clear. The legislation says that we may not question the merits of a decision that has been taken without maladministration, so we tend not to get involved in policy decisions. But there have been some decisions—Jane has dealt with one and I can talk to you about the one I dealt with. A disabled person came forward and said, "This decision to introduce charging for disabled persons' parking has affected me directly. I can't afford to do this. I can't do my shopping in the hour allocated to me, and the decision was taken without proper reference to the impact on disabled people." We could have said, "Well, you could go to court for judicial review if you wanted to," but that would have seemed very harsh and unreasonable, so I examined the complaint. I was not interested in whether the council was right or wrong to introduce charges for disabled people's parking; I was interested in whether it had considered all the things that by law it should have considered, and I found that it had not.

Q154 Chair: This has been a difficult period for both of you, but probably for the staff as well. Simon asked about the consumer satisfaction survey. Most Departments have also introduced a staff satisfaction survey—I think they all have, in fact. Have you got one? If you haven't had one, what do you think would be found if you introduced one?

Anne Seex: There has not been one done in my five or six years as ombudsman.

Q155 Chair: Is it something that you might think about introducing?

Anne Seex: It would be good practice. Absolutely.

Q156 Chair: Presumably, there is, anyway, a grievance or complaints procedure in place for people who want to express concerns.

Dr Martin: Absolutely. Yes, indeed.

Q157 Chair: Finally, I remember that some time ago we looked at the ombudsman service. What seemed a very good idea—you haven't mentioned it today—was that investigators would come together on a regular basis to talk through issues, so you would get the consistency of decision making that you talked

30 April 2012 Dr Jane Martin and Anne Seex

about before. Does that still happen? Do you still try to work in that co-operative and collegiate way, and still have these investigator groups?

Dr Martin: Yes, in a whole number of different ways, we encourage investigatory teams to work very much as teams and to share experiences and support each other. In each of our offices—certainly in the Coventry office—I, with my deputy, host a monthly seminar for all our investigatory staff, to look at particular issues, and Anne does something similar.

A new departure, which Anne and I are committed to doing more of, is to hold case conferences on the adult social care new jurisdiction and the schools new

jurisdiction. Because those are new areas of our work, we have been holding case conferences with the investigatory teams—with the team leaders—on a monthly basis. We have been doing that for quite some time, and we recognise its value. It works very well, and we need to spread it more widely across the organisation as we get our new arrangements in place.

Anne Seex: Just to add to that: we do it together, rather than separately.

Chair: So you are working together as well, which is always a good thing. Thank you both very much for coming. At this point, we will conclude our opening session.

Written evidence

Written evidence submitted by Care for Community Living Ltd

THE PURPOSE AND LEGAL STATUS OF LGO INVESTIGATIONS

1.1 The positioning of the LGO investigations between the internal processes of Local Authority investigations and the fully independent processes of a court gives rise to two primary issues concerning its purpose and legal status.

1.2 The first issue is *the lack of a clear and contiguous statutory framework governing the entire complaints system for Local Councils/Authorities and the LGO.*

1.3 The LGO is part of a contiguous and sequential system for the public and for organisations to report and submit complaints about Councils.

1.4 The LGO system therefore sits atop the systems used by Local Councils to investigate, rule on and record complaints. Consequently, the arrangements and statutes governing the way in which each Council deals with a complaint and how it compiles evidence in the first instance, are relevant to the LGO's work.

1.5 To be clear, complainants must normally submit their complaints to Councils before they can access the LGO.

1.6 Crucially however, *there is no clear statutory requirement for local authorities to respond to, address or even record formal complaints, at all.* (Please refer to the DCLG List of Statutory Duties Placed on Local Government—Revised June 2011, 18927821.xls). Obviously, this is deeply problematic.

[***]

1.7 The absence of statutory requirements and provisions for Councils to investigate, process and *record* complaints, to a standard that would satisfy a High Court, is then crucial in understanding the limitations of the entire system that the LGO is part of, at present.

1.8 This is because the legal status of evidence submitted to the LGO is considered the same as that of evidence gathered for a High Court.

[***]

1.9 Regrettably however, there is no evidence in our experience of the LGO even acknowledging an attempt to mislead her or to provide false evidence, let alone of any sense that evidence is being treated in line with the standards of a High Court.

1.10 The combination of the absence of clear cut statutory provisions or requirements for Councils to investigate, address and record complaints and the lack of rigour in the LGO's approach to the treatment of evidence conspire to give the impression of a system designed to derail complainants into a legal cul-de-sac, which serves the purpose of protecting Councils from any legal or financial consequences of Maladministration Misconduct or Mifeasance, on their part.

1.11 This point is important. The public is rightly concerned when Councils appear to have mishandled or ignored first contacts or complaints (including whistleblowing), particularly when it appears that the deaths' of children or vulnerable adults might have been prevented, by better responses to first contacts or complaints by the Councils. Please refer to the Baby Peter Case and the Victoria Climbié case.

1.12 Surely, it is unreasonable to expect the public to have any further faith in an LGO system whose entire purpose—dealing with complaints about how Local Authorities have dealt with complaints—is completely undermined by the fact that there is no statutory requirement for Councils to answer complaints in the first place.

2. CURRENT ISSUES FOR COMPLAINANTS

2.1 *Organisational Credibility.* It is a simple fact that most people who have grown up with the Common Law cannot accept that a body consisting almost entirely of ex council staff, is appropriately configured for investigating Council maladministration or Misconduct.

Unfortunately, experience of the LGO only serves to reinforce the perception of institutional bias.

2.2 Again, there are no statutes in operation governing local authority complaints which require any special knowledge—a member of the public could easily exercise the discretion needed to investigate and rule on maladministration. The number and proportion of LGO rulings against Councils compared with those of the Parliamentary Ombudsman against Parliament, might perhaps be worth checking, for consideration.

2.3 At any rate, the fact that Councils have already usually had a three stage chance to deal with complaints internally, before they go through to the LGO, should mean that the LGO stage of investigation needs to be truly independent and should never consist of any individual who has ever worked for a Council, in any capacity.

2.4 The current situation with LGO's (ex council staff) who work alongside Councils to draw up general annual complaints reports, is far too cosy and gives further impression of systemic and institutionalised collusion and bias, in favour of Councils.

2.5 *Lack of Accountability.* The LGO does not appear to be accountable to anyone. Certainly, the LGO has refused to detail whom if anyone she might be accountable to, when we have asked her to do so.

2.6 Clearly, it is not the fault of the DCLG, that it has very little control over the LGO. Councils are autonomous bodies and the LGO is commissioned by the Crown, meaning that outside the realms of an Inquiry there simply aren't the statutes that would enable Parliament to hold the LGO or Councils to account for any malpractice or serious miscarriages/denials of justice. That being the case, the position of the public or whistleblowers when they deal with the LGO is particularly weak and is in practice unacceptable.

2.7 *Lack of Transparency.* The LGO works in private and you can't properly appeal their findings of fact. The LGO doesn't have to show all the evidence they rely on to the complainant and in our experience they have repeatedly refused, citing that they don't have to show their workings if the case might go to court, where of course they definitely won't share their evidence, since they don't have to.

2.8 The FOIA does not extend to the LGO for all practical purposes then, since any case *might* go to court. However, the first major impediment for complainants wanting to challenge the LGO in a Judicial Review is the LGO's protected status and the consequent ability to deprive the complainant of the quality of evidence that is needed for such a challenge in the first place.

[***]

2.9 *The Lack of a Statutory Framework for LGO and Council Complaints and the Lack of the Demonstration of Adequate Rigour in LGO Investigations.* In our experience the LGO has not demonstrated an adequate understanding or exercise of investigative good practice, to anything like a standard as would satisfy either the police or a High Court. This deficiency is matched and to an extent stems from, the lack of an adequate, accountable or enforceable *statutory* framework, for evolving and ensuring such good practice.

2.10 There is then a mismatch here between the statutory consideration of evidence submitted to the LGO, which treats any such as evidence submitted to a High Court and the distinctly un-forensic practices and approaches allowed by the LGO system, in gathering and validating evidence, in the first place.

2.11 Obstruction, Contempt and Perjury are items which require the cross referencing of evidence to a fairly high standard and the LGO has simply not, in our experience, demonstrated a rigorous enough approach to investigative work in general and this item in particular , to be entrusted further with the task of enforcing this statute—ie the treatment of evidence as if it were being submitted to a High Court and the reporting of potential breaches of the statute by Council staff, submitting evidence to the LGO.

2.12 A straight calculation can be made by the Inquiry here to show the rate of contempt/perjury or obstruction per case in the High Court and the reported rate of incidents of the same offences, as recorded and reported by the LGO. These should both be available to the Inquiry from the relevant Public Records.

2.13 Neither Local Councils nor the LGO appear to demonstrate anything like the basic standards required to work with front line contacts and investigations that may subsequently have to involve the police or courts.

2.14 Due to the nature of our sector—Supported Housing for Mental Health clients—even the most junior staff members, if they are working in a front line capacity, have to constrain their first contact investigations, so as not to affect a police investigation and so as to ensure that nothing that might pervert the course of justice, is entered as evidence.

2.15 To that end most front line community service providers will have some binding procedural guidance for their staff to ensure, for example, that:

- (a) Any signal of a criminal act must be reported to the police on discovery of the signal (ie within 24hrs); crimes are tried by courts alone.
- (b) Any evidence that needs to be presented to the police should be formalised and counter signed by the relevant parties where necessary as quickly as is possible. (ie recorded on the same day as signal is received and reported).
- (c) An alleged victim and an alleged perpetrator of an act are treated equally. Both must have the same opportunities to provide evidence which must in turn be treated equally.
- (d) The statements of both parties are accorded equal weight. Both parties should have the right to respond to the other's statements.
- (e) Every effort should be made to ensure that neither party has an opportunity to collude with any witnesses they have named, before the witnesses' initial statements are all taken.

2.16 Councils and thus the LGO, are responsible for using their complaints system to protect the public (eg Baby Peter)—not just themselves—and therefore, in the absence of proper statutory standards that can be enforced (in respect of complaints and evidence gathering), the public cannot be not properly protected as it expects to be, given the monies available to Councils and in light of, their significant powers and responsibilities.

2.17 *The Lack of Impartiality.* The LGO is demonstrably not even handed in the handling and consideration of the evidence she compiles and enters into her findings. The LGO will meet and discuss evidence—both circumstantial and substantive—with the Council but will not meet with the complainant or have any kind of oral discussion.

2.18 There is no reliable way of knowing what Councils say in these meetings or even if such meetings have taken place and there is no opportunity to check the veracity of what is said to the LGO, which may be highly prejudicial and inaccurate. (see LGO's web site guidance to its investigators—2011).

2.19 There is no sense that any consideration is given to the idea that the subjects of complaints might have a prejudicial interest which affects any evidence they give in these and other exchanges.

[***]

2.20 In our experience if the Council's relevant staff member, in discussions with the LGO, denies an allegation, the LGO will accept that as substantive evidence that there is no case to answer.

2.21 If the staff member gives a retrospective account of an incident or action which is not in accordance with the documented evidence recorded at the time of the incident, the standard of the LGO investigation is not consistently rigorous enough, to cross reference and address the anomaly or even to identify and acknowledge it.

2.22 Crucially however, the complainant's documented statements are not accorded the same weight nor, in our experience over the last six years, is an oral submission of a complainant's evidence or case sought or agreed to, when requested.

2.23 This type of practice presents an impression of systemic bias which is completely at odds with the spirit and principles of English common law and of the standard treatment of High Court Evidence.

[***]

2.24 *The Lack of and Failure to Enforce Reasonable Time Limits.* There are no time limits at all for the LGO to produce a ruling; thus, it is feasible to keep case away from courts and public scrutiny for many years.

2.25 Similarly, the LGO does not hold Councils to any time limits when supplying their responses to her.

2.26 The Council and the LGO, unfettered by time limits, are then free to proffer ever changing explanations to any allegation ad-infinitum, until regardless of its credibility, a defence that fits or can't be disproved by the evidence submitted originally by the complaint, is found.

2.27 Conversely, the complainant is constrained to keep to the limits of the case and evidence that were submitted by them to the Council, in the first instance. That is, notwithstanding any failure by the Council to release key FOIA requested evidence that would be relevant to such a complaint, in the designated FOIA time frame for responding to such requests and at the time the complaint needed to be raised.

2.28 Regrettably, despite the Information Commissioner's existence, *exceeding* the time limits for providing information under FOIA is still the norm for our Council when responding to FOIA requests, as it is for our Council, on almost every occasion, when responding to the LGO.

2.29 The LGO does not regard this as obstructive nor does she enforce any time limits that apply to councils responding to her.

3. COMMERCIAL CONSIDERATIONS FOR USING THE LGO IN CONTRACTUAL DISPUTES OR WHISTLEBLOWING REPORTS

[***]

3.1 Similarly the LGO won't report whistleblowing signals to the DCLG, even where the signals are backed up by clear cut documentary evidence, where the DCLG should be aware of them and where the complainant has requested that the LGO pass on the evidence and signal.

3.2 The LGO can ignore requests for updates for months.

3.3 The LGO is free to determine the level of injustice you must suffer before investigating your complaint and in assigning damages.

3.4 The LGO is free to define maladministration as they see fit.

3.5 Legal costs incurred in bringing a complaint that is upheld, even a whistleblowing complaint, will not usually be compensated.

3.6 The LGO has an institutional prejudice that most complaints can be redressed by talking things over or at most securing an apology. This is a clearly prejudiced constraint placed on the LGO by itself, and cannot be viewed as a credible or impartial approach to commercial concerns, which of course will require commercial remedies or in other words, proportionate financial redress for any financial damage caused by a Council's maladministration or wrong doing.

3.7 The LGO does not offer the level of remedy or redress for maladministration that is needed for commercial enterprises working with Councils. Charities in particular are forced to rely on the current Council Complaints system and the LGO, neither of which have reliable enough processes or working timescales, for what may be at stake.

3.8 The LGO does not have adequate institutional experience to understand the financial and reputational damage that maladministration can do to businesses that work with Councils—or to the individuals who run those businesses; these businesses, charitable or otherwise, are for all that, still working in the private sector and are bound by a plethora of relevant (in a functional sense) statutory requirements with legal penalties, for failures to comply.

3.9 There is not an interoperable match between the statutes, requirements for contractual adherence or penalties for wrong doing, in terms of the regulation of Councils and private sector companies.

3.10 Moreover, the LGO's working practices are simply not adequate for the settlement of what may be contractual disputes or maladministration claims, involving substantial financial liabilities or serious organisational consequences for a private company.

RECOMMENDATIONS

- (a) The urgent creation of binding statutory governance, requiring Councils to investigate, process and record complaints. The current unjustifiable ability to legally avoid doing this, enables Councils to legally withhold a full and honest account of their performance from the voting public. Our Council has done so. The current system is then self evidently, unacceptable.
- (b) The abolition of the current LGO System. Complainants and the public already pay through their hard pressed taxes for the already overly long-winded three stage 16 week process, of Councils' complaints systems. If these were effective, fair, functioning and subject to statutory controls (ie they were fit for purpose), there should be no justifiable reason for a Council to have any more taxpayers money or time, given over to distancing itself from Judicial challenges. Any liability for the crown would be outweighed by the efficiencies this change would surely engender.
- (c) Alternatively, the urgent creation of a truly independent, transparent, effective and time limited local government watchdog, whose rulings are binding. This body must be seen to be free from any potential for bias or institutional proximity to Councils, Council staff or consultants providing advisory or legal services to Councils.
- (d) If an alternative to court proceedings must be made available, using such a system should not rule out, diminish or deprive the right to a Judicial hearing of the original complaint. Complainants should not be denied, as they are by the design of the current system, the opportunity of judicial redress, by the fact of engagement with the system.
- (e) The overall standard of the investigative rigour of the entire complaints system requires immediate attention.

Notice of the Potential for Future Judicial Proceedings. We have been advised by the DCLG to provide notice to the Inquiry that whilst there are no Legal proceeding imminent at the time of submission, there may be the potential for some of the above information to be required in Judicial Proceedings, at a future date.

We have therefore, tried not to include too many particulars of our case currently with the LGO. Where we do note any item, it is because we have experienced or have substantive evidence of, a particular practice or issue in our dealings with the LGO.

All the statements given in this memorandum are then, accurate to the best of our knowledge and are supported by documentary evidence, which can be requested if needed.

As advised, we will notify the Inquiry in writing if we issue any notice for a Judicial Review or any other form of judicial proceedings. However, the information above is not at present the subject of pending or imminent judicial proceedings.

Care for Community Living Ltd

March 2012

Supplementary written evidence from Care for Community Living

1. ITEM 1

The Inquiry was reminded on the 23 April 2012 that my organisation Care for Community Living had a current case before the LGO. That information was correct when I left my office on the morning of the 23 April (my solicitor had written to confirm this) and it was correct to the best of my knowledge when I went into the inquiry.

However, it now transpires that the LGO had closed off the case that day (23 April) and had sent her confirmation of this to our solicitors at just before 1600 that day (1538) and thereafter, my solicitors forwarded the notice to my mail box at 1554. I understand that the LGO was aware I was giving evidence at 1600 and that her very specific timing was intentional since the LGO has noted in her contact:

“I have therefore arranged for this response and my final decision to be delivered to you at around 4.00 p.m.”

I was not aware of this last minute update when I went into the Inquiry on the 23rd; had I been so I would of course have informed the DCLG representative (Glen) prior to the start of the meeting.

Therefore, it is now necessary for me to note for the record that when the Inquiry started at 1600 on the 23 April 2012, my organisation no longer had a pending case with the LGO, as the Inquiry was originally told.

I do not know if the matter is important to the Inquiry but for my own part I did feel constrained by the need to avoid referencing specific examples from what I believed at the time was still a “live” case.

Had the LGO given my organisation any reasonable notice (eg even 24hrs) that she intended to close the current case off before the Inquiry sat, I could certainly have provided the panel with more specific and helpful evidence on the day, particularly with regard to the articulation and exemplifying of the key systemic issues that my evidence referred to (eg the Legislative Framework and Statutory/Non Statutory issues).

To be clear, we had been asking the LGO for an update on the position of cases with her that were awaiting a final decision for almost four months without any response at all from the LGO. In light of this, I believe the LGO’s timing of her contact of the 23 April and her failure to give any reasonable notice of her intention in respect of a consideration she knew would affect the scope of a witnesses’ evidence—ie closing off the live cases and freeing up the evidence therein for use, before the Inquiry sat—was both unhelpful to this witness and to the needs and aims of this Inquiry.

2. ITEM 2

Having referred in my evidence of the 23 April 2012 to the information displayed on the LGO web site, I must now note for the record that that the LGO’s web site has been updated since then on at least one occasion 25 April 2012 and in respect of the areas my evidence referred to—ie the Legal Framework.

Clearly, my evidence could not take account of any changes that have been made since.

3. SUMMARY

I have noted the above to keep to the high standard set by the DCLG for the treatment of evidence for Select Committees and to ensure that everything that I know is passed on to the DCLG and the Inquiry.

I should however be clear that the above information does not, as far as I can tell, require me to withdraw or correct any of the evidence that was given in writing or any of my evidence given to the Committee on the 23 April 2012.

Care for Community Living

May 2012

Written evidence submitted by Brian Thompson

SUMMARY

- Introduction.
- Fragmentation of Policy Development and Oversight.
- Remit.
- Complaint Resolution.
- Improving Administration.
- Corporate Matters.

INTRODUCTION

1. This inquiry by the Communities & Local Government Select Committee into the Local Government Ombudsman for England (LGO) is a welcome initiative as the accountability arrangements for the LGO are weaker than for most of the UK's Public Services Ombudsmen. With my colleagues I have conducted comparative research of public services ombudsmen in the UK, Ireland, Australia and New Zealand (Buck, Kirkham & Thompson, *The Ombudsman Enterprise and Administrative Justice*, 2011). This research focused on the role, methods, and relationships of the ombudsmen with other institutions in the emerging administrative justice system.

2. Some aspects of the LGO along with those of other ombudsmen in England and Wales were considered by the Law Commission for England and Wales in their report *Public Services Ombudsmen*, (Law Com No. 329, 2011). There were some recommendations in common made by my colleagues and I and the Law Commission, in particular, that there was need for a wider review of ombudsmen as institutions of administrative justice

FRAGMENTATION OF POLICY DEVELOPMENT AND OVERSIGHT

3. One of the reasons why my colleagues and I recommended a wider review of ombudsmen (in our book and an article "Time for a "Leggatt-style" review of the Ombudsman system?" [2011] *Public Law* 20–26) was that there had been piecemeal development from the first office, the Parliamentary Commissioner for Administration, usually referred to as the Parliamentary Ombudsman (PO). This subsequent development expanded the range of public services covered from central government through NHS administration to local government. The expansion happened first in Northern Ireland and then the rest of the UK.

4. There have been various reforms to the LGO since it was established in 1974, and in recent years, we have had a consolidated set of changes in the Local Government and Public Involvement in Health Act 2007, and then additional bodies and services brought within remit: aspects of internal management of schools by the Apprenticeships, Skills, Children and Learning Act 2009 and privately funded adult social care by the Health Act 2009. Although it seems that the current government wishes to have different arrangements for schools.

5. A more considered approach was to be seen in the 2000 Review of Public Sector Ombudsmen in England carried out by the Cabinet Office which had suggested merging the LGO, the PO and the Health Service Ombudsman for England (HSO). This restructuring was not carried out but the legislation of these three ombudsmen was amended by the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 which allowed them to work together on complaints which crossed their jurisdictional boundaries. The major areas in which collaboration, including joint investigations, have been carried out are in relation to health and social care.

6. While it is understandable that in particular service areas the relevant ombudsman overseeing them may develop differently, it is the case that the different ombudsmen are variations on the same institution and they share many common features. It was therefore odd when the Department for Communities and Local Government in the Localism Bill sought to require complainants to the Housing Ombudsman in England to be referred by a "designated person". This provision was swimming against the tide as it is now extremely unusual not to allow direct access by complainants to ombudsmen. It was discussed in the Law Commission's report where they were recommending the replacement of the requirement to have an MP to refer a complaint to the PO by "dual track" access. Under this method of access it is up to complainants to decide if they wish to complain directly to the PO or seek the assistance of an MP who might refer the complaint. It remains to be seen how section 180 of the Localism Act 2011 will work following amendments which, in specified circumstances, will not require complainants to be referred by the "designated person". In my view dual track access would have been preferable.

7. I suggest that this episode further confirms the conclusion of the analysis conducted by my colleagues and I, that policy development for ombudsmen is fragmented. While the Cabinet Office has a co-ordinating role generally on public services ombudsmen and takes the lead on the PO, DCLG leads on the LGO and the Housing Ombudsmen in England, the Department of Health on the HSO and the devolved institutions in Scotland, Wales and Northern Ireland are responsible for the ombudsmen dealing with their devolved public services.

8. In addition public services ombudsmen are part of the administrative justice system which deals with redress for, and improvement of, people's interactions with public services in which the primary responsibility in England and Wales lies with the Ministry of Justice. The Ministry of Justice has expertise in courts and tribunals but not in ombudsmen and there is concern as to whether the required high degree of co-ordination between the Ministry of Justice and the Cabinet Office on ombudsmen policy will be forthcoming, given the persistence of the "silo" mentality throughout government.

9. Another important factor in the development of ombudsmen policy is the blurring of the public and the private sectors, already reflected in the LGO by its recent acquisition of complaints in relation to privately arranged or funded adult social care. I would suggest that this was a sensible change but it is different from the position that public services ombudsmen deal with public services whether delivered by public or private

bodies. On the other hand developments in dealing with customer complaints in the private sector may also have implications for the public sector of which the relevant department is unaware.

10. Not only is there fragmentation in policy development for public services ombudsman but it is also to be found in their governance arrangements. My colleagues and I pointed out that it was desirable that the Parliaments in Westminster and Edinburgh, and the Assemblies in Cardiff and Belfast should improve their working relations with, and oversight of, the public services ombudsmen within their jurisdiction. We thought that the arrangements for the Parliamentary and Health Service Ombudsman which reports to, and is overseen by, the House of Commons Public Administration Select Committee were good, as did the Law Commission. We recommended that this Select Committee might carry out the same role for the LGO whereas the Law Commission recommended that Westminster and the National Assembly for Wales consider:

establishing formal relationships between select committees and the public services ombudsmen, other than the Parliamentary Commissioner and the Health Service Ombudsman who already benefit from such relationships.

11. Our recommendation was based on the expertise which the Public Administration Select Committee had in public services ombudsman matters and that its remit was a cross-cutting and not a departmental one. This, however, would not preclude departmental select committees from having a formal relationship with the ombudsmen, which could take into account the fact that the range of public services which the LGO deals with is wider than the remits of the departmental select committees. Examples of the LGO's jurisdiction include: housing and planning which are within the remit of the Communities and Local Government Select Committee, as well as social care, schools and transport which are of interest to the Health, Education and Transport Select Committees respectively.

12. There is a balance which has to be achieved in ombudsman policy development between generic matters and issues particular to the remits of the different public services ombudsmen. The fragmentation of responsibility within and across the different jurisdictions of the UK make it more difficult to co-ordinate a review which would focus on generic issues and their relationship with points in the various service areas responsibility for which will differ across the UK's jurisdictions.

13. The issue of the accountability arrangements for the public services ombudsmen is a matter for UK's Parliaments and Assemblies, although some general principles might be generated in the proposed wider review. While the particularities of which select committees might establish relationships have to be worked out, it would not be adding to the problems of piecemeal development if the LGO and Housing Ombudsman were authorised to lay the full range of their reports before Parliament as recommended by the Law Commission.

REMIT

14. As has been noted above the LGO has recently been authorised to deal with complaints about privately funded or arranged adult social care. This does take the LGO into the private sector but it is surely a sensible arrangement to take advantage of the LGO's experience in handling complaints about children's and public adult social care.

15. The LGO can consider complaints about public services commissioned by local authorities but delivered by private bodies and following the white paper *Open Public Services* (Cm 8145) it is government policy to promote a choice of providers of these services. It is the role of ombudsmen to be independent and impartial handlers of complaints about the quality of the services rather than to champion the promotion of a choice of service providers which, it is suggested, is a matter for regulation.

COMPLAINT RESOLUTION

16. The LGO Advice Team based at Coventry is the initial point of contact for enquirers and complainants using the telephone and they offer advice about making a complaint as well as receiving complaints. The provision of advice not only includes tips on how to make a complaint but also directing people to other possible sources of help if the matter is outside the LGO's jurisdiction. When dealing with a complaint they check if the complainant has given the council (or other body within jurisdiction) a reasonable opportunity to deal with the complaint, and if they have the case may be forwarded to an investigative team for further action.

17. The LGO pioneered expanding the way in which complaints are resolved by discontinuing an investigation if a satisfactory response had been made. In our book my colleagues and I recommended that complaint resolution be enhanced in line with the powers to be found in section 3 of the Public Services Ombudsman (Wales) Act 2007. We noted that in relation to the PO, HSO and LGO the 2007 Regulatory Reform Order authorised the appointment of a mediator and this was a drawing back from a wider power initially proposed in the consultation exercise which preceded the Regulatory Reform Order.

18. The Law Commission in their 2011 report recommended that an equivalent of the Welsh provision be included in the legislation for the other public services ombudsmen. Given that the statistics for 2011–11 show a rise in complaints which is not just attributable to the new jurisdiction of privately funded or arranged adult social care, then the LGO's prediction in their annual report for 2010–11 that this is likely to be a continuing trend, is probably accurate as people will have greater recourse to services, and certainly demographic changes

mean that more older adults will be placed in care institutions. This along with the combination of the economic downturn and the reduction in expenditure on public services is likely to lead to increased pressure on these services and a consequent rise in complaints.

IMPROVING ADMINISTRATION

19. There are a variety of ways in which the LGO can seek to improve administration. Proposals can be made in the recommendations to resolve an individual complaint. A digest of cases can disseminate more widely the lessons learned from individual complaints and special reports can be published which distil points of guidance on particular topics drawn from a number of reports. The LGO's latest version of such themed reports begun in 2011 are called Focus Reports, and concentrate on particular subjects of complaint with recommendations on good practice.

20. Another activity in which the LGO was the pioneering ombudsman in the UK is the provision of training in complaints handling. The LGO provides written guidance on this but it is suggested that training is likely to be a more effective way of improving councils' handling of complaints. If councils handle complaints better, then the result should be quicker resolution and also the gaining of insight which, if followed up, can enable them to get things right first time.

21. One recommendation made by my colleagues and I is to confer on ombudsmen the power to conduct investigations on their own initiative. In our research we found that none of the UK ombudsmen had such a power but that their counterparts in Australia, New Zealand and Ireland did, and that they could not conceive of doing their job without it. This power enabled them to conduct investigations into systemic issues without having to wait for them to be raised in a complaint. The LGO's powers were amended with effect from 2008 so as to allow an investigation of matters arising in an investigation. This is a "half-way house" to our recommended own initiative power of investigation. The experience in Australia, New Zealand and Ireland is that the power is not used frequently but that it can be helpful, particularly where there is a type of complainant who is less likely to be able to make a complaint, for example, a vulnerable person.

CORPORATE MATTERS

22. In common with local government the LGO has the challenge of coping with significant reductions in its budget. The Summary Statement of their Strategic Business Review published by the LGO in September 2011 considers not only efficiency savings but also making quality improvements. In terms of savings these include a reduction in staffing in senior grades, including not appointing a replacement for Sir Tony Redmond, eventual relocation to Coventry, and changes in practice including the processes for determining cases suitable for investigation, the way in which investigators are deployed on investigations, and seeking to maximise the reach of the insight derived from their handling of complaints.

23. It is essential that a body which is seeking to help others improve, practises what it preaches. The LGO has a good record of being a reflective organisation and being innovative. There is tension between efficiency and effectiveness. People who persist with their complaints to the LGO have to be determined and since the LGO is the ultimate rung on the ladder of complaining, they will want to be assured that the LGO has considered their case properly. Some complainants will be aggrieved if their case is not taken up or does not result in the outcome they desire. The LGO does have a review process in which some decisions can be reconsidered and where the decision is confirmed, as it usually is, the complainant's dissatisfaction will now include the LGO.

24. If, as seems likely, public expenditure cuts in local government lead to an increase in complaints to the LGO, then the LGO has to ensure that its efforts to work effectively and efficiently within a reduced budget do not impair the service it provides. Possible complainants' dissatisfaction with its service can be reduced by being clear about what the LGO can and cannot do. It is to be hoped that efficiency pressures do not reduce the reasonable help which the Advice Team can offer to those whose complaints are outside their jurisdiction and that the handling of complaints can be perceived as fair even though it did not achieve the complainant's desired result. The LGO like all public services ombudsmen is seeking to remedy injustice and this has both tangible and intangible aspects which must be reflected in its resources.

25. In conclusion I invite the Committee to consider endorsing the recommendations of Law Commission, its call for a wider review as well as the specific ones on the LGO's reporting practices and possible relationship with Parliament, and its powers of complaint resolution. I also invite the committee to consider the power of own initiative investigation and to be assured that the LGO is efficient and economic in its use of resources and has the appropriate level of resources to be effective as an institution of the administrative justice system.

Brian Thompson

March 2012

Written evidence submitted by Robert Murrow and Debbie Sayers

SUMMARY

- These submissions are made by a group of parents who have used the LGO to complain about failures in Local Authority provision for their children who all have statements of special educational needs.
- The authors and contributors wish to comment, primarily, on the LGO's arrangements for handling complaints and the impact of its work in this area.
- Common problems have been encountered including a failure to understand the law relating to the LGO's remit and its powers and a failure to work effectively within a human rights and public law framework to promote the rights of the child.
- Concerns are also raised relating to apparent bias, the lack of appeal against decisions, a general lack of transparency in decision-making, an over-reliance on local settlement and the failure of LGO determinations to bring about real systemic change at local authority level.
- Suggestions are made for reform.

INTRODUCTION

1. This submission is the result of collaboration between an informal group of private individuals who have experience as parents/carers of the statutory special educational needs ("SEN") system. Experiences have been shared by parents living in a variety of different locations in England and Wales and in a range of different ways, for example, through personal association, internet forums and support groups or via local support groups and organisations.

2. The delivery of provision to children with SEN is fundamental to any concept of effective inclusivity in our mainstream schools. One in five pupils—1.7 million school-age children in England—are identified as SEN.¹ Pupils with special educational needs are categorised, using the 2001 Special Educational Needs Code of Practice, according to the degree of support they require. Support is organised via a graduated pathway: School Action, School Action Plus and a statement. At January 2010, only 2.7% of school-aged children and young people had a statement of special educational needs.² These children represent the most vulnerable in our school system.

3. The term SEN encompasses a wide range of complex and significant difficulties. The established categories of SEN are: specific learning difficulty, moderate learning difficulty, severe learning difficulty, profound and multiple learning difficulty, behavioural, emotional and social difficulties, speech, language and communications needs, a hearing impairment, visual impairment, multi-sensory impairment, physical disability and autistic spectrum disorder.³ Many of these SEN also constitute disabilities and the vast majority of children with SEN have a disability under the Equality Act.⁴ This means that overlapping but distinct legal duties arise in relation to these children: statutory duties under the Education Act 1996 to support their educational needs and duties under the human rights framework which includes the Human Rights Act, the Equality Act and other international obligations. These duties should inform the way we treat children generally and, specifically, children with disabilities. It also means that the majority of children within the SEN framework are exceptionally vulnerable and reliant on specific provision to support their inclusion in education. If a child has a statement of SEN, failure to put this provision in place will breach the Education Act but it may also constitute an act of discrimination under the Equality Act.

4. In England and Wales, the responsibility for assessing SEN and arranging the provision to meet it falls to the local authority ("LA") for the area in which the child resides. The difficulties that parents face in securing provision for their children have been consistently highlighted in a variety of reports, including the Lamb Report and the Government's recent Green Paper: Support and aspiration: A new approach to special educational needs and disability—A consultation. Securing effective SEN support for a child may be a lengthy, costly, time-consuming and emotionally draining business for parents and carers. The system is complex and lines of accountability between health and educational professionals can be easily blurred. The existence of an effective and impartial system of accountability to secure a child's provision is of paramount importance.

THE OVERSIGHT ROLE OF THE LGO IN THE SEN PROCESS

5. Unfortunately, our experience is that many parents of children with SEN encounter significant problems with either the assessment or delivery of provision (or both) to their children by LAs. These problems include poor communication, delay, a failure to provide reasons for decision-making and, commonly, a failure to arrange the provision as legally required by the child's statement. It is here that the Local Government Ombudsman ("LGO") can play a very valuable role by overseeing administrative practice in this area and encouraging compliance with the law. Ombudsmen are intended to be "the independent upholder[s] of the highest standards of efficient and fair administration". They are guardians of good practice who are able to

¹ Ofsted, "The special educational needs and disability review: A statement is not enough" 14 Sep 2010

² This includes all maintained, non-maintained and independent schools.

³ DfE SEN SFR (2010)

⁴ Children with Special Educational Needs 2010: an analysis 19 October 2010
<http://www.education.gov.uk/rsgateway/DB/STA/t000965/osr25-2010.pdf>

investigate the effectiveness of systems of local administration rather than just adjudicate on the facts of the specific complaint. The LGO has the power to investigate maladministration in a variety of ways, for example, it can investigate a complaint that a council has failed to deal properly with a child's special educational needs (SEN). This includes delay in assessing a child and issuing a statement of SEN, and failing to implement a statement or carry out an annual review of it.

6. The LGO is intended to be a thorough, impartial investigator, pursuing direct primary evidence where possible to investigate local authority practice on behalf of the complainant. It may also provide direction on lawful and effective administrative practice to prevent future injustices. In connection with its general remit, the LGO is promoted as being an inexpensive and informal means for a private individual to seek redress where there has been maladministration by a LA. It is promoted as a useful alternative to more costly and formal litigation. In the case of SEN provision, however, for certain things, the LGO represents the only feasible means for a private individual to seek redress for certain wrongs. Further, a key difference between the courts and Ombudsmen is that the Ombudsman's approach to fact-finding and dispute resolution is intended to be more proactive, inquisitorial and detailed than the courts', basing their investigation on direct primary evidence.⁵ The LGO, therefore, has a duty to be looking for a culture of compliance with the law and best administrative practice.

7. For the parents/carers of vulnerable children, the LGO offers a crucial safeguard, not only because it has the capacity to offer protection by way of determining maladministration, but precisely because it has the ability to conduct an impartial and broader investigation into local authority practices to "prevent injustice being caused in the future in consequence of similar maladministration". In this way, the Ombudsmen play a critical role in making sure that providers of public services comply with the law and continue to strive for higher standards. However, we are concerned that the LGO is not currently fulfilling this mandate in relation to complaints about local authorities and SEN provision. We believe that a pattern of practice has emerged which reflects potentially systemic deficiencies in the conduct of the LGO's investigatory and adjudicative functions in this area. The authors make no claim as to the statistical significance of these submissions but our understanding, from the feedback we have received, is that the types of issues we seek to highlight represent the common experience of those parents/carers who lodge complaints with the LGO. Consequently, we believe that it is possible to draw out some common themes from our shared experiences.

COMMON PROBLEMS WITH THE PRACTICE OF THE LGO IN THE OVERSIGHT OF SEN FRAMEWORK

(i) Failure to understand its remit and/or a failure to understand the law

8. "Maladministration" is not defined in legislation but it has been interpreted broadly and is understood to encompass a broad range of administrative failure, including "bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude [and] arbitrariness".⁶ The LGO website sets out specific examples of administrative actions or omissions which may constitute maladministration including the failure to follow procedures or the law, to provide information, to reply and to liaise and consult adequately. These duties are particularly important to the parents/carers of vulnerable children within the SEN system. They are further reiterated in the LGO's published principles of good administration.⁷ It is clear, therefore, that whilst maladministration can apply to matters beyond the strictly unlawful, the LGO should seek to uphold and promote compliance with the law as a matter of basic, good administrative practice.⁸ Consequently, although acts of maladministration will not necessarily be unlawful, unlawful actions by public bodies are highly likely to involve maladministration.⁹

9. It is not always clear, however, that LGO investigators are trained sufficiently well to understand and apply these broader principles of good administration practice. Indeed, it sometimes appears that investigators are unaware of the LGO's own guidance in this area. For example, despite the very clear statutory structure for the protection of the provision supporting children with SEN, we believe that in many cases, the LGO consistently refuses to find maladministration despite clear evidence of non-compliance with the law to the detriment of a child with disabilities. This frequently arises where a LA has failed to put in place the provision required by a child's statement of SEN. Section 324(5)(a)(i) of the Education Act 1996 makes this duty very clear. The scope and content of this duty has been further defined by caselaw.¹⁰ The courts have consistently rejected LA arguments that LAs should not be blamed where delay or absence of provision is the fault of the health service. The LA's duty is owed personally to the child and is non-delegable. LAs have plenty of time to arrange provision before the issue of a statement as the statutory assessment period is long and detailed. Put simply, there is "no best endeavours defence in the legislation".¹¹

⁵ See generally M Harris, "The Ombudsman and Administrative Justice" in M Harris and M Partington (eds), *Administrative Justice in the 21st Century* (1999) 133, p 136. See also the LGO's own internal guidance on conducting an investigation.

⁶ Richard Crossman (the Minister in charge of introducing the Parliamentary Commissioner Bill), cited with approval by Lord Denning in *R v Commissioner for Local Administration ex parte Bradford City Council* [1979] 1 QB 287

⁷ The Local Government Ombudsman, "Good Administrative Practice: Guidance on Good Practice 2"

⁸ The Local Government Ombudsman, "Good Administrative Practice: Guidance on Good Practice 2" confirms that "compliance with the law is a basic necessity".

⁹ Broach, Clements and Read, *Disabled children: a legal handbook*, Legal Action Group 2010 at 2.46.

¹⁰ *R v London Borough of Harrow ex parte M* [1997] ELR 62

¹¹ *R (N) v North Tyneside Borough Council* [2010] EWCA Civ 135

10. However, despite the clarity of the jurisprudence in this area, the very clear obligations at public law to perform this statutory duty, and the possibility that failure to provide also breaches the Equality Act in some cases, the failure to arrange SEN provision will not necessarily result in a determination of maladministration. The LGO will seek instead to provide the LA's reasons for the failure, effectively establishing a "best endeavours" defence where none exists at law. There is no evidence that the LGO considers whether the LA it is investigating has a functioning system in place to meet the clear and immediate duties imposed by statute and caselaw. No public guidance has been issued on this topic by the LGO to inform the decision-making and actions of LAs and parents. This is worrying and it undermines accountability because it is not at all clear how assessments of maladministration are made in such cases. Put simply, when does non-compliance with the law become maladministration? This also means that very rarely are broader questions relating to the effective functioning of LA SEN systems investigated. Our evidence is that this may result in parents being compelled to make repeat complaints about multiple failures of provision.

11. Similarly, in relation to issues of injustice, the LGO often seeks evidence of any "progress" made by the child in spite of an absence of its statutorily entitled provision. The broader question of injustice in the sense of the denial of a child's right, distress to the child, and the loss of opportunity to make more significant progress is disregarded. Injustice is not statutorily defined but has been construed flexibly to include pure economic loss, distress, lost opportunity and even "the time and trouble" spent in pursuing a complaint. Injustice is, therefore, broader than the recognised heads of loss in tort and it requires no legal causation. It is sufficient that the "injustice" arises from the fault of the local authority and there is no definition in law that injustice has to be of any specific level or quantity. However, even in cases where the LGO finds maladministration, it has frequently resorted to relying on the decisions of third parties such as SENDIST (Special Educational Needs Tribunal) to determine questions of injustice, even though such Tribunals have a wholly distinct and far narrower remit in relation to SEN. We are concerned that this approach to injustice is erroneous. Injustice following maladministration in failing to arrange statementing provision is not a matter for SENDIST but for the LGO and it is a much wider issue than the presence or otherwise of educational progress. The impact of maladministration must be assessed, primarily, through the eyes of the child who has been failed.

(ii) Failure to take account of the human rights framework

12. This failure to find injustice where a child with SEN and/or disabilities is deprived of its legal entitlements is particularly significant in light of the human rights framework within which the LGO must operate. The LGO is a "public authority" under Human Rights Act (HRA) and so is subject to the same legal duties as providers of public services. The Act requires all public authorities to uphold these rights. The HRA creates a broad legal and ethical framework to ensure fairness and respect for users of public services and to promote a "human rights culture". Public bodies are required to promote rights which in turn will help to build confidence in public services. The LGO is subject to this obligation and has confirmed that "[The Human Rights Act has] brought clarity to what we already do."

13. In respect of the LGO, the human rights framework should form part of the criteria for good administrative practice in all relevant investigations. It should also influence any guidelines which advise on good administrative practice as they aim to provide a practical application of human rights principles based on the concept of fairness.¹² Indeed, the courts have lent judicial weight to the view that Ombudsmen have a potentially distinctive human rights role to play.¹³

14. This human rights work extends beyond the HRA and the ECHR it implements. It is submitted that other rights and duties fall within this framework and that perhaps the most obvious of this is right to be free of discrimination for a protected characteristic under the Equality Act. The protection against disability discrimination is contained within the Equality Act 2010 and must also form part of the LGO's frame of reference when considering maladministration, prioritising the Ombudsmen's protective purpose in safeguarding the individual from the effects of poor administrative action. Consequently, although it is not the LGO's job to make findings of law, it has an obligation to ensure that public bodies within its remit recognise and respond to the rights and individual needs of disabled people. This is an approach that is informed by, but distinct from, the legal enforcement of those disability rights contained in the Equality Act 2010. This explicit duty to take into account the rights of the individual in the oversight process is made clear in the Ministry of Justice's 2009 guidance "Human Rights Framework as a Tool for Regulators and Inspectorate" which confirms that:

"where the public services you are regulating or inspecting are provided to disabled people you should take account of the provisions of the UN Convention on the Rights of Disabled Persons, as well as the Human Rights Act".¹⁴

15. In reality, although the LGO itself confirms that it regularly uses these human rights standards to assess complaints and that such a framework "adds moral weight and authority to [its] decision",¹⁵ we have come across no evidence from the parents/carers of vulnerable children with disabilities that this framework forms part of the LGO's reasoning in judgments. The rights of the child, and in particular the rights of the child

¹² The Local Government Ombudsman, "Good Administrative Practice: Guidance on Good Practice 2"

¹³ *Anutrijeva v Southwark LBC* ([2003J EWCA C/V 1406; [2004J Q.B. 1124, at [78]

¹⁴ Page 14.

¹⁵ Page 16.

with disabilities, are constantly compromised in assessment against the excuses made by LAs for breaching these rights.

(iii) *Failure to understand its public law obligations*

16. The LGO also functions within a broader statutory and public law framework. Like local authorities, its actions are governed by general public law principles. This is because all public bodies must act in accordance with the law even if they are afforded a degree of latitude when deciding how best to exercise their discretion.¹⁶ Consequently, the actions of the LGO, like those of local authorities, may be the subject of judicial review to request that the courts strike down decisions which are unlawful, that is that they are illegal, irrational or made without procedural impropriety. This is a way of holding public bodies to account for their acts and omissions.¹⁷

17. However, our experience is that LGO investigators frequently have very little understanding of the overriding duty of the LGO as a public body to act in accordance with the basic principles of public law, namely to act lawfully, reasonably and with procedural propriety. We have encountered numerous examples of incorrect statements relating to the purported role of the LGO, the nature of maladministration or injustice and erroneous applications of the law.

(iv) *Failures in the investigative process*

(a) Perceived bias

18. There is a general sense among the contributors that the conduct of an LGO investigation is considerably biased towards LAs. In all cases of complaints to the LGO considered herein, the investigator appeared to prioritise the evidence given by LA witnesses, often relying on secondary opinion evidence rather than seeking primary evidence in the event of a dispute. Very little effort, if any, was made to investigate the complaint from the complainant's point of view and to seek independent evidence where it existed. Indeed, many authors experienced an active refusal by the LGO investigator to speak with a complainant's witnesses. It was felt by all contributors that consistently, in conducting their investigation, the LGO investigator put much more effort into assisting the council to make defensive submissions to the LGO, and conversely, made it difficult for the complainant to elucidate their complaint. It was also perceived that while the LGO investigator may be happy to arrange a face to face meeting with the LA complained about, it offered no such face to face meeting with the complainant or their witnesses.

19. It was felt by all of the contributors that their LGO investigator(s) had consistently chosen to believe the evidence of the officer of the LA complained of in preference to the evidence of the complainant or one of the complainant's witnesses. This was the case even where documentary and witness evidence was available to the LGO showing that a claim made by the LA was demonstrably false.

(b) Failure to include the complainant in the process

20. Frequently, there is little contact between a complaint being made and initially discussed with an investigator and the provisional view being issued. This means that, where an investigator fails to understand the complaint or where other issues arise as a result of inquiries to the LA, clarification was rarely sought. Even where clarification was provided, the investigator sometimes failed to understand nuance or to discuss the issues with the complainant before making a final decision. It was also noted that LAs may undergo many months of discussion with the LGO before agreeing the terms of a provisional view (or local settlement) with the LA but that a complainant, when confronted with the agreed *fait accompli*, is generally given only a couple of weeks to respond.

21. Investigators also failed to seek advice on legal issues. It is not uncommon for complainants to have to raise legal issues and request further investigation, resulting, sometimes in recourse to paid legal representation and more than one provisional view being issued. This can mean lengthy delays. Complaints may take over a year to resolve despite the fact that they concern children's provision. Some commentators also noticed reticence on the part of the LGO investigator to ensure transparency as to the procedure of the investigation and the rights of a complainant in relation to the process.

22. These concerns about the investigatory process are particularly alarming given that a private individual is often at a disadvantage in comparison to an LA which has extensive experience in fielding such LGO complaints and investigations. Additionally, parents/carers of children with SEN are often very busy dealing with the daily challenges of having a child with complex needs. Having to pursue a complaint to the LGO is an additional burden which for many is too much. The LGO should be actively assisting complainants to explain their complaint as fully as possible and helping them to resolve the complaint impartially and fairly. It should be giving children a voice.

¹⁶ *R v Ministry of Defence ex parte Smith* [1996] QB 517, per Lord Bingham at [556]

¹⁷ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at [410] to [411]

(c) Delay

23. For SEN complainants, time is of the essence. The most vulnerable children in our society are missing valuable and often much needed time and support in education. For a government so very concerned about parents taking their child out of school for a week for a holiday, and proposing draconian and severe punishments to those parents who cause their child to miss a week, SEN children are often out of any education (or provided with a significantly inadequate education) for weeks, months, and sometimes years, in spite of parents best efforts to secure an education.

24. Complaints to the LGO may take a year to resolve in which time, parents and carers report that placements may have broken down and relationships deteriorate with schools and LAs because of lengthy investigations. Delay in such circumstances is unacceptable.

(d) Local settlements and insufficient deterrence

25. The result of a failure to find maladministration is that some LAs act with impunity as they face very little penalty for their failures. There is no evidence that the LGO considers the functioning of such systems as part of its investigation in to failure to arrange provision. This is not an onerous task. The law is very clear. LAs should be asked to explain what their system is for putting provision in place and that policy and practice should be carefully considered to ensure that the child's rights are prioritised.

26. Even when maladministration is found, cases are often concluded via the local settlement mechanism. This is not a statutory one and it deprives the complainant of any voice. Complainants may be deeply frustrated by the LGO's reliance on local settlements.

(e) The Council may just ignore the decision

27. All contributors have yet to receive the suggested remedy. It is not uncommon for multiple complaints to be taken in these types of cases.

SUGGESTIONS FOR REFORM

We would recommend that consideration be given to reform in the following areas:

1. The LGO should have binding powers to enforce its judgment.
2. LAs should be legally compelled to share maladministration determinations with their elected members, even in the case of local settlements. Democratic accountability must be established. This should be done openly.
3. Elected members should be compelled to act on maladministration determinations and report on action taken annually.
4. Local settlements should be discontinued. The LGO should comply with its statutory mandate to find maladministration or not and should declare maladministration openly on its website where it is found.
5. The LGO should seek to promote the active participation of complainants in the process, particularly in those cases concerning children. It should be creative about bringing parties together to resolve differences. It should welcome feedback from the public and it should map responses which reflect consistent areas of dissatisfaction. It should address these areas openly and it should consult widely.
6. The LGO has the power to move beyond individual complaints and facilitate systemic change by recommending reviews of procedure, policy and practice. In this way, individual complaints can result improvements to administrative practice for all. This also promotes good governance. The LGO should use this power in a consistent and transparent way, pulling together evidence from its cases in a thematic and non-adversarial way. It should publish evidence on its website.
7. The LGO should publish every maladministration determination on its website, including cases involving local settlements.
8. LGO caseworkers should be trained on the basic public law framework, including the human rights obligations. They should understand the basic principles of good governance, transparency and accountability.
9. LGO caseworkers should be better trained in the LGO's statutory remit. They should seek to apply the term maladministration causing injustice in a way which encourages consistent good administrative practice.
10. With the aim of meeting its good governance functions, the LGO also promotes institutional development by producing good practice guides for local government.¹⁸ The LGO has published principles of good administration with the stated aim of helping public bodies avoid maladministration.¹⁹ The LGO should publish more guidance on key issues such as SEN and human rights. The LGO plays a critical role in making sure that providers of public services comply with

¹⁸ The Local Government Ombudsman, "Guidance on Good Practice", <http://www.lgo.org.uk/guidance.htm>

¹⁹ The Local Government Ombudsman, "Good Administrative Practice: Guidance on Good Practice 2"

the law and strive for higher standards.²⁰ These documents have a key influencing role in promoting improvements in services by providing clear guidance and examples of expected good practice to local authorities.²¹ The LGO's guidance should have the status of statutory guidance and LGO caseworkers should seek to apply that guidance.

11. Complainants should be provided with a right of appeal to a specific internal unit with personnel who have a more detailed understanding of the legal issues.

Debbie Sayers

Rob Murrow

23.3.12

Written evidence submitted by the Commission for Local Administration in England (Local Government Ombudsman)

1. EXECUTIVE SUMMARY

1.1 The role of the Local Government Ombudsman (LGO) over nearly 40 years has been to provide independent resolution of complaints. In a time of financial constraint the LGO will continue to provide more proportionate dispute resolution with a single headquarters and leaner management structure.

1.2 The organisation has taken the lead in responding to changes in the provision of adult social care, such as direct payments, which resulted in an extension of our jurisdiction to all registered social care providers in October 2010. Our experience in this new area of work, incorporating private care providers, will stand us in good stead for other proposed changes in local public service delivery.

1.3 Independent research commissioned by the organisation has shown that our arrangements for complaint handling through our advice and investigative teams is well-regarded in terms of providing independent review and individual redress. Advocates, who deal with many of the most vulnerable in society, were particularly positive about the LGO.

1.4 In 2010–11 the LGO has met all of its key performance indicators for handling complaints.

1.5 The LGO adds public value in addition to achieving individual redress in a number of ways. This includes providing training to bodies under their jurisdiction to ensure that the effectiveness of local resolution of complaints is enhanced.

1.6 Value is also added through the publication of reports and focus reports on service areas, highlighting lessons learned from complaints. This supports the local resolution of complaints, effective public administration and improved service delivery.

1.7 By providing public data on complaints, through annual reviews and a plan to publish all decision statements, the Ombudsman will support and enhance its own accountability and scrutiny, and provide a greater wealth of information to support the local democratic function and to inform citizens about local services.

1.8 Looking ahead, the LGO remains an important and impartial arbiter of complaints, offering free and direct access to the public, many of whom are vulnerable. Changes to the provision of public services will no doubt present challenges. In this climate the LGO remains a key part of the administrative justice landscape ensuring fairness for all.

2. THE ROLE OF THE COMMISSION AND LOCAL GOVERNMENT OMBUDSMAN

2.1 The Commission for Local Administration in England was established under the Local Government Act 1974. It is an independent body funded by annual grant from the Government to support the activities of the Local Government Ombudsmen (LGO). The Commission comprises the Local Commissioners (Local Government Ombudsmen) and the Parliamentary Commissioner for Administration (Parliamentary Ombudsman). The Commission's statutory functions are:

- to enable the Ombudsmen to investigate complaints, in particular by allocating them staff, offices and facilities; and
- to provide bodies within jurisdiction with advice and guidance on good administrative practice.

2.2 There are currently two Local Commissioners (Local Government Ombudsmen), Anne Seex and Jane Martin. They are Crown appointments with individual authority to investigate and decide complaints. They have wide discretion to initiate investigation and decide complaints bearing in mind the most effective use of public funds. Their jurisdiction is currently allocated on geographical areas. Legislation requires that the Secretary of State for the Communities and Local Government appoints one Local Commissioner as Chair and one as Vice-Chair of the Commission.

²⁰ Equality and Human Rights Commission, "The impact of human rights on public services" page 65

²¹ *ibid*

2.3 As Vice-Chair of the Commission, Jane Martin has been the Acting Chairman and Chief Executive since the retirement of Sir Tony Redmond in November 2010. During this period Nigel Karney, Deputy Chief Executive and Secretary, has acted as Accounting Officer.

2.4 *The Commission's mission is to* "Provide an independent means of redress to individuals for injustice caused by unfair treatment or service failure by local authorities, schools and care providers and use our learning to promote good public service administration and service improvement". *There are four strategic objectives to deliver this mission:*

- Provide a complaints handling service direct to the public which is accessible, responsive, consistent and cost-effective.
- Ensure sound decisions and appropriate redress based on impartial, rigorous and proportionate investigations.
- Use our knowledge of complaints to identify best practice and issues of wider public benefit, promote good public administration and service improvement, and influence public policy.
- Ensure proper stewardship of public funds through the proper use of resources and effective public accountability.

2.5 Under the Regulatory Reform Order 2007, the LGO conducts joint investigations with the Parliamentary and Health Service Ombudsman (PHSO). These complaints generally cover health and social care.

The changing landscape impacting on our role

2.6 From 1st October 2010 the jurisdiction of the LGO was extended to include all registered care providers in England, some 13,000 bodies operated by private or independent organisations. This change provides access to redress for all users of social care including those who fund their own care.

2.7 In April 2010 the LGO also gained jurisdiction over schools in relation to complaints about internal matters. This was introduced in fourteen local authority areas on a pilot basis. The Education Act 2011 repealed the LGO jurisdiction, restoring the Secretary of State's power to consider school complaints. The LGO service will end in July 2012 with all complaints about internal school matters, having to be completed by 31 March 2013.

2.8 As a result of the Localism Act 2011, from April 2013 local authority tenants will take complaints about their landlord to the Independent Housing Ombudsman (IHO). We are currently in dialogue with the IHO about the transfer of responsibilities.

2.9 The Open Public Services White Paper in July 2011 highlighted the Ombudsmen as having a role in upholding people's right to choice. The LGO has responded to the White Paper and are engaged, alongside other public service ombudsmen, in early discussions with the Cabinet Office.

Transformation and proposed restructuring of the organisation

2.10 In the context of a reduced budget over the Comprehensive Spending Review period the Commission has developed a Transformation Plan, which will maintain a stable and sustainable LGO scheme.

2.11 It will:

- Rationalise the LGO's accommodation down to one head office base.
- Reduce the staffing complement including a leaner management structure and a reduced corporate services function.
- Introduce a new business model with a refocused, more robust, intake and assessment process which resolves complaints swiftly and proportionately, and provides for greater flexibility within the overall investigation process.
- Place greater emphasis on the impact and influence generated from insight from our complaints for wider public benefit and public value.

3. INVESTIGATING COMPLAINTS

3.1 The LGO scheme provides free, direct access for citizens to an independent and impartial investigation of complaints of personal injustice caused by maladministration or service failure.

3.2 The LGO Advice Team deals with all initial contacts by phone, email, letter, or through the online complaint form. The advisers clarify complaints and will signpost complainants back to the body in jurisdiction if the complaint has not completed its internal process, or other relevant bodies. Independent research commissioned by the LGO has highlighted that the advisers dealt with a range of difficult and complex calls in a highly professional manner.

3.3 Advisers forward complaints to one of the three offices depending on the location of the body complained about. Where appropriate, complaints will be fast tracked to an investigator without referring back to the body in jurisdiction first, for example in urgent homelessness cases. All cases are dealt with by a dedicated

investigator against time targets. Once an investigator has enough evidence of fault they will seek to remedy any injustice caused as soon as possible. They send a provisional decision to both parties for further comment before reaching a final decision. Although representation is not required, some complaints from our most vulnerable complainants are received through an advocate, or advice agencies such as the Citizens Advice Bureau (CAB) and the Children's Legal Centre. In 2010, customer satisfaction research²² showed that users were positive about the LGO service, although the research highlighted that satisfaction is often linked to the complaint outcome.

3.4 Complainants can request an internal review of their complaint within a three month period. A senior member of staff, who has had no previous involvement in the complaint and does not line manage the investigator, will carry out the review. The LGO considers lessons learned from reviews to help to improve the quality of the service.

The volume and nature of complaints

3.5 The details of the volume and nature of complaints are set out in our Annual Report 2010–11.

3.6 In 2010–11 the LGO Advice Team dealt with 95,000 contacts, and received 21,840 complaints and enquiries, an increase of more than 21% from the previous year.

3.7 In the same year, the investigative teams dealt with 11,249 complaints across a whole range of subjects, an increase of 7.5% from the previous year. Education and children's services formed the largest category of complaints, increasing by 15% from the previous year. Complaints about special educational needs also rose significantly. Adult social care complaints concerning councils increased by nearly 50%.

3.8 Looking at trends in complaints over the last five years there has been a considerable increase in adult social care complaints, which constituted 4.3% of all complaints in 2006–07 and in 2010–11 constituted 9% of complaints. A rise can also be seen for education and children services complaints over the same period from 11.9% of all complaints to 24%.

Key performance indicators 2010–11

3.9 Investigation teams decided 10,725 local government complaints, compared with our target of 10,500 decisions.

3.10 The LGO exceeded its targets for the times taken to decide these complaints (54.2% decided within 13 weeks, 83.4% within 26 weeks and 97% within 52 weeks against targets of 50%, 80% and 96% respectively).

3.11 2% of complaints made about LGO decisions were found to be justified, following rigorous internal review, which out-performed the target of 3%.

3.12 There were no successful applications for judicial review. This is the only challenge to the Ombudsmen's decisions following internal review.

3.13 In 2010–11 the total number of complaints where redress was obtained or recommended for the complainant was in 2,474 cases or 27% of all complaints determined. Of these, 2,215 were remedied by a local settlement where the body agrees to undertake satisfactory actions to remedy the complaint during the course of an investigation. The LGO also decided that there was no maladministration or insufficient evidence of maladministration in 4,218 cases or 39% of complaints determined.

IMPACT OF THE WORK OF THE LGO

Remedying individual injustice and improving local public services

4.1 At the core of the LGO's mission is a focus on providing individual redress as well as improving local public services.

4.2 The LGO always takes account of complainants' views. We ask them at the outset about their views on injustice and appropriate remedies. But we are independent and arrive at our own view of what is a fair and appropriate remedy.

4.3 We seek to put the person affected by the injustice back in the position they would have been in, had the fault not happened, as quickly as possible. Our recommendations will ask the body in jurisdiction to take actions to do so where this is still possible. For example, to conduct a care assessment, offer adequate new accommodation or offer a fresh admissions appeal hearing. Only if it is not possible will we then consider asking for a compensatory payment.

4.4 Complainants appreciate recognition of fault and injustice by the body in jurisdiction and our recommendations very often include a request for an apology. In 2010–11, this remedy was obtained in 631 cases or 26% of cases where a remedy was recorded.

²² Understanding expectations: customer satisfaction research for the LGO 2010, Ipsos Mori, October 2010 <http://www.lgo.org.uk/about-us/surveys/customer-satisfaction-2010/>

4.5 We will also often ask the body in jurisdiction to address systemic failings as part of the remedy. This can involve revising policies and procedures that have been revealed to be inadequate as well as ensuring staff undertake training. In 2010–11 there were 288 cases in which the LGO asked bodies to review policies and/or procedures. This ensures that the value of an individual complaint has a long term effect and should positively impact on other service users, preventing future cases of maladministration and injustice, as well as cases coming to LGO.

4.6 The LGOs have no powers to enforce their recommendations for remedy where they have found the council at fault. The LGO's recommendations are accepted by Councils in all but a very small number of cases.

Recent cases

4.7 We achieve remedy for all categories of complaint, the following three brief examples give an indication of impact. A young man who had been a looked after child and subject to a care order since the age of 13 complained to the LGO about a number of matters. At the centre of the complaint was the fact that the council had failed to fulfil its duty as a "parent" in a number of ways. They had placed him with a series of unsuitable carers growing up, exposing him to drugs, domestic violence and neglect. They failed to facilitate sibling contact, ensure that he was involved in care decisions, and to provide advice about education and employment opportunities. The investigation found incomplete records on the complainant by social workers. To provide redress the LGO recommended that the council explain procedures to the affected person, broker contact with his siblings and establish a fund to help him to enter into employment or training.

4.8 A school admissions complaint provided wider justice to pupils and parents affected. The complaint received revealed that due to the lack of effective admissions criteria set by the local authority, a primary school had been mandated to accept more pupils than they could accommodate, leading them to teach reception classes in the outdoors. In response to the investigation the council changed its admission criteria to include a distance tie-break in catchment area criteria, preventing a repeat situation. Additional classrooms were also provided at another site.

4.9 The LGO provided redress for a number of individuals in a recent parking case, where the council introduced charges for blue badge holders and evening users without adequate communication and publicity. A number of people were unfairly charged an excess charge notice of £80 as they were unaware of the policy change. The LGO's finding of maladministration causing injustice led the council to fully reimburse those affected so that they were back in the position they would have been in, if maladministration had not occurred.

Adult social care complaints

4.10 We have over many years received complaints on a range of issues in this area including the quality of care, hygiene, neglect and abuse, nutrition, deprivation of liberty, hospital discharge and moving into residential care. Common complaints subjects included charging, safeguarding and council assessments. Since the extension of our jurisdiction in October 2011 to include all registered care providers, complaints have often covered several overlapping issues, with poor communication often being a key feature. Around three quarters of complaints investigated under the LGO's new jurisdiction have been about residential care, the most common subjects were care quality and fees.

Education complaints

4.11 We have for many years handled school admission appeal complaints as well as complaints about special education needs, school transport and exclusion appeals. From April 2010, we have received (often multi-faceted) complaints about a range of issues, including bullying, curriculum, behaviour and discipline.

4.12 During this period the LGO has had a positive impact on the way in which schools deal with complaints. Independent research commissioned by the Government into school complaints²³ found "tangible evidence that the LGO service has increased capacity for complaints handling" with regards to complaints about internal school matters.

Supporting good local public administration and complaints handling

LGO reports

4.13 The LGO issues and publishes a report on a complaint when it is necessary to bring it to the wider attention of the body in jurisdiction and the public. Through this process we make recommendations for remedy and follow up to ensure compliance. In 99% of these cases, bodies in jurisdiction comply. In 2010–11 we issued reports on 29 complaints. For 2011–12 to date, we have issued 47 reports.

²³ Parents' and young people's complaints about schools, Ecorys for Department for Education, February 2012, <https://www.education.gov.uk/publications/RSG/AllRsgPublications/Page1/DFE-RR193>

Special and focus reports

4.14 The LGO publishes special reports and focus reports on specific service areas to communicate where things can go wrong and to identify lessons learned. In the last year we have published a number of focus reports on:

- School admissions—focused on the rights of parents and pupils to a fair and impartial school appeal hearing, and how councils can ensure that happens.
- Children out of school—urging councils to ensure that children’s rights to full-time education are met and to avoid some of the common mistakes made when providing education to children not in school.
- Ensuring justice for homeless people—asking councils to consider how the people who face homelessness get the help they are entitled to.
- Councils’ use of bankruptcy powers—highlighting flaws in the way councils pursue bankruptcy for council tax debts.

4.15 A recent survey of local government revenue officers provided positive feedback on the bankruptcy focus report. 85% said they found it useful, most followed the steps identified in the report for avoiding maladministration, and the vast majority said they would take action to put the other steps in place.

4.16 Comments included:

“Having read the report we will be looking at our current procedure and ways we can improve this.”

“This was useful to review the current procedure and can see how some steps already taken could be tightened further.”

Annual reviews of councils

4.17 Each year the LGO publishes annual reviews for councils which summarise : the numbers of complaints received by LGO about them in a business year; the outcomes; any lessons in handling complaints; and more generally, the services that complaints have focused on. These reviews should form a key part of the local authority’s own accountability and scrutiny function.

4.18 In July 2011 the LGO published a report in conjunction with the Centre for Public Scrutiny (CfPS) about how complaints information can feed into local authority scrutiny and business planning arrangements.

Decision statements

4.19 During the next year, the LGO intends to establish an open publication scheme where the final decision statement on all cases will be published in an anonymised format on the LGO’s website This will provide a comprehensive picture of complaint outcomes for the public and for bodies in jurisdiction and a greater wealth of information on maladministration, service failure and injustice, as well as where practice is validated through an LGO investigation. This will help service providers and users of services to judge their own experience of local service provision and the role of the local authority.

Supporting local complaints handling

4.20 The LGO support local complaint resolution as the most speedy route to remedy. Councils and care providers should have full opportunity to review their own practice and to correct any mistakes. This is better both for the complainants and service providers.

4.21 Since April 2009 the LGO has operated a “Council First” policy which requires complainants to have first gone through all stages of the council’s own complaints procedure before complaining to the LGO. The same principle is also applied to all other bodies in jurisdiction. Exceptions to this policy can be applied. These include urgent and high-risk complaints, such as those regarding homelessness and also some education complaints, as well as those where there has already been unreasonable delay.

4.22 To support local complaints handling, since 2005 the LGO has had an active programme of training on effective complaints handling for bodies in jurisdiction. In 2011–12, 76 courses were delivered to councils, reaching 1,230 individual learners.

4.23 We evaluate the effectiveness of our training and aim to constantly improve what we deliver. A survey of participants in 2010 showed that our training had helped 90% of respondents to improve complaint-handling practice, with 68% of respondents giving specific examples of improvements directly attributable to LGO training. Participants are also very proactive in sharing their new skills and knowledge with colleagues.

4.24 In each council the LGO has a link officer who is the key contact for the organisation. We maintain regular contact through information bulletins and hold regular link officer seminars where we discuss current issues.

5. STRATEGIC PLANNING AND MANAGEMENT OF RESOURCES

5.1 The Commission sets out its strategic direction in a rolling three year Strategic Corporate Plan which sets out strategic objectives to deliver our mission, together with success criteria based on expected outcomes for service users and other stakeholders. This is supplemented by a one year Business Plan which specifies the initiatives that will achieve those outcomes and which forms the basis of the Commission's request for funding from its sponsor Department. A Grant Memorandum agreed between the Commission and the sponsor Department (in the process of being updated) specifies the terms under which these funds are disbursed.

5.2 The Commission meets every eight weeks and, as part of business, receives monitoring information on financial and organisational performance.

5.3 Our Annual Report (and Annual Accounts) is a key vehicle for accountability to stakeholders, and is laid before Parliament in July. This states the extent to which our strategic objectives and other performance targets and assumptions have been met.

5.4 In 2010–11, we were pleased to report that we met all of our performance targets for the year (as reported earlier).

5.5 The Commission has established:

- an Audit Committee, chaired by an experienced independent person, which advises on matters of probity, regularity, efficiency and effectiveness, and also monitors and reports on the operation of the Commission's Risk Management Strategy (based on the HM Treasury model); and
- a Remuneration Committee, responsible for advising and making recommendations to the Commission on the remuneration and succession of senior staff and staff pay schemes.

Staff

5.6 The Commission employs 215 people (195.8 fte), based in three offices in London, Coventry and York. Approximately half the workforce are complaint investigators. They deal with a varied caseload of complaints and have delegated authority to investigate and take decisions on behalf of the Ombudsmen. Each of the three offices has a number of teams of investigators (12 in total), each headed by an Assistant Ombudsman. In addition to general purpose teams dealing with local government complaints, there are specialist teams dealing with children's and schools related complaints, adult social care complaints, and (in York) planning and housing complaints.

5.7 There are currently three Deputy Ombudsmen, one in each office, and one Deputy Chief Executive and Secretary. Commission's corporate and business activity is supported by a corporate services department of 31 people. The functions cover communications, human resources, finance, IT, legal, policy and research, property and facilities. The Advice Team in Coventry has 19 staff, consisting of one supervisor and 18 advisers.

Funding

5.8 The Commission is funded by grant in aid. Its sponsor department and primary source of funding is DCLG, but it also receives funding from DH in respect of the adult care self funder jurisdiction and DfE to cover the schools complaints service. In 2011–12 the Commission's combined DCLG/DH Departmental Expenditure Limit (DEL) was £14.839 million and its DfE grant was £900,000.

5.9 The Commission's DCLG/DH DEL is being reduced by £1 million in 2012–13—a 10.9% reduction. Its DfE funding for 2012–13 has yet to be settled but is expected to be £500,000; this is the final year of the schools service following abolition legislation in 2010; there will be no funding in 2013–14.

5.10 The Commission's Transformation Plan addresses these reductions in funding with efficiency savings and changes in process, designed to minimise the impact on front line service delivery. The Commission anticipates an overall staffing reduction of 20.3 posts over three years in addition to voluntary redundancies currently being considered, bringing its total staffing to 175.5 fte. It will also rationalise its office space and senior management structure.

6. LOOKING AHEAD

6.1 Within a context of leaner resources the LGO plans to maintain and develop a relevant service for citizens and continue to support bodies in jurisdiction in improving public administration and service provision. By 2015, the scheme will have significantly reduced its expenditure while still achieving the strategic objectives and its statutory purpose.

Commission for Local Administration in England (LGO)

March 2012

Supplementary Information from the Commission for Local Administration in England (Local Government Ombudsman) to the Communities and Local Government Select Committee

The Local Government Ombudsman welcomes the opportunity to provide additional information, to help fully answer the questions put by the Committee on 30 April 2012. This further information is being provided about the role of the Commission for Local Administration in England (CLAE) and the operation of the Local Government Ombudsman (LGO) Scheme, in response to questions asked by the select committee. It is structured in accordance with the order in which questions were asked at the oral evidence session and uses the question numbering used in the uncorrected transcript of Oral Evidence.

INTERREGNUM AND APPOINTMENT OF CHAIR AND VICE CHAIR

Question 75

The interregnum, prior to the appointment of a Chair and Vice Chair of CLAE was a prolonged period of uncertainty. During this period, the Commission adopted a proactive approach in initiating an independent Strategic Business Review and proposing transformational change. The proposals in our transformation plan were developed in response to the recommendations made by the strategic business review and in a constructive effort to help achieve budget reductions. We very much welcome the Secretary of State's support for our plan. A chronology of this period is given below.

November 2010 Sir Anthony Redmond retired as third Ombudsman (Local Commissioner) and Commission Chairman.

December 2010—DCLG commences appointment process to replace Sir Anthony

March 2011—DCLG confirms budget for 2011–12 and indicative budgets of 33% for the following 3 years subject to budget review in October 2011.

April 2011—Commission initiates Independent Strategic Business Review. A full copy of the review is attached.

July 2011—Commission accepts strategic business review recommendations and initiates a Transformation Plan.

September 2011—Commission submits Transformation Plan to DCLG to the budget review process, including approval for transition costs. The Commission suggests that a third Ombudsman need not be recruited.

December 2011—DCLG halts third Ombudsman and Chairman appointment process (until this point a new chairman was expected).

February 2012—DCLG confirms Commission budget for 2012–13, equivalent to a £1 million reduction on the previous year.

March 2012—DCLG confirms the Commission budget for the remaining CSR period equivalent to a 27% reduction.

16 April 2012—The two remaining Ombudsmen (Local Commissioners) are confirmed in the posts of Chair and Vice-Chair of the Commission in line with the statutory requirement in Section 23(7) of the Local Government Act 1974, which says that the Secretary of State should appoint one of the Local Commissioners as Chair and one as Vice-chair. It is further proposed to appoint a Chief Operating Officer to the Commission who will act as Accounting Officer.

3 May 2012—First meeting convened by DCLG to consider transition costs of Commission transformation plan.

SECRETARY OF STATE'S LETTER

Question 77 & 78

The Secretary of State refers to the independent strategic business review commissioned by the Commission in April 2011. The "fitness for purpose" of the LGO Scheme, was one of the key objectives set by the Commission for the strategic review.

DELAY IN AGREEING A GRANT MEMORANDUM WITH DCLG

Question 81

Discussions to date concerning a framework document between the Commission and DCLG have highlighted the "special" status of the Commission as the governing body of a quasi judicial LGO Scheme, rather than an arms length body established to deliver departmental objectives. This has focused on the need to ensure proper accountability for use of public funds without fettering the discretion and independence of the Ombudsmen to deal with complaints.

LGO IMPLEMENTATION OF AUDIT RECOMMENDATIONS

Question 82

The Commission is subject to rigorous internal and external audit. During the interregnum period much progress has been made in responding to outstanding recommendations from internal audit which was noted in the minutes of the Audit Committee meeting on 16 June, 2011. The current situation is as set out in the attached record.

CASE PROCESSING NUMBERS, TIMES AND DELAY

Questions 83, 84, 85 & 86

Published figures in the Annual Report 2010–11 show that 21,840 contacts were made with the LGO advice team, 11,249 complaints were allocated for investigation and 10,792 cases were decided.

Of these, over half, 54.2%, were decided within 13 weeks. 83.4% within 26 weeks and 97% within 52 weeks. In summary, of 10,792 cases decided, 133 took over 52 weeks. Over the period 2011–12 45.5% of complaints were decided in 13 weeks, 77.7% in 26 weeks and 95% within 52 weeks.

THE COMMISSION TRANSFORMATION PLAN

Question 91, 96, 97, 98, 99

A copy of the Commission's Transformation Plan is available on request.

There are four key components to achieving the Transformation Plan:

1. Rationalisation of our accommodation onto one headquarters site in our existing Coventry offices.
2. A reduced staffing complement, a leaner management structure and a reduced corporate services function.
3. A refocused, more robust, intake and assessment process which resolves complaints swiftly and proportionately and provides for greater flexibility within the overall investigation process.
4. Greater emphasis on the impact and influence generated from insight from our complaints for wider public benefit and public value.

In order to achieve greater efficiencies and value for money the Commission's Transformation Plan introduces a new business model of intake and assessment. 30% of complaints under the current business model are not investigated. Under the new business model the intention is to arrive at more decisions at the earliest possible stage in the complaints process, at lowest possible cost, sifting out more serious cases (and those cases which overlap with other ombudsman jurisdictions) and passing these rapidly on to the investigation teams. We will apply the following criteria to assess complaints:

- The level of apparent injustice involved;
- The scale of maladministration alleged;
- The wider public interest issues raised by the case;
- The prospect of achieving a satisfactory outcome; and
- The potential implications for other ombudsman jurisdictions.

We estimate that we will make prompt decisions "not to investigate", or quickly resolve, at least 5,000 complaints each year, equivalent to 40% of all complaints and we will make these decisions within 28 days of receipt.

We will continue to provide clear and simple access for potential complainants by phone, email and post. We will make use of push-button telephone technology and structured webmail formats to streamline access to help to significantly limit the number of misdirected, incomplete and incomprehensible enquiries that we handle.

Question 94 & 95

The Commission Transformation Plan assumes a reduction in the number of investigators to 101fte posts by 2015, a reduction of 17.7%. This compares with a reduction of 25.3% in the total number of fte posts by 2015. We are doing everything we can to protect the investigative workforce, and our intention is that this group will not be proportionally reduced as much as other groups.

JOINT INVESTIGATIONS

Questions 125 & 126

Since the Regulatory Reform Order 2007, LGO has been able to conduct joint investigations and issue joint reports with the Parliamentary and Health Service Ombudsman. In 2011–12 we issued seven joint reports. Notably in 2009, we jointly investigated complaints brought by the charity Mencap on behalf of the families

of six people with learning disabilities who died whilst in NHS or local authority care between 2003 and 2005. This “*Six Lives*” Report has resulted in all NHS bodies and all 152 Local Authorities confirming that they have carried out a local review and reported to their Boards. The Care Quality Commission, Monitor and the Equality and Human Rights Commission have also written to the Ombudsmen outlining what they have done in response to the recommendations in “*Six Lives*”. The Department of Health (DH) supported the implementation of the “*Six Lives*” recommendations through the following actions:

- The Chief Executive’s of the NHS and Director’s for Social Care, Learning Disabilities and the Director’s for Primary Care have all written to NHS and local authorities at different times to remind organisations of their responsibilities to people with learning disabilities. DH also established a Directed Enhanced Service to deliver annual health checks to people with learning disabilities.
- (DH) established a confidential inquiry into premature and avoidable deaths of people with learning disabilities.
- DH has also set up a new Learning Disabilities Public Health Observatory.
- DH has published guidance to support NHS and social care organisations to deliver improved healthcare for people with learning disabilities.
- DH commissioned the Council for Healthcare Regulatory Excellence (CHRE) to work with its member organisations and report on how they are ensuring healthcare professionals are able to meet the needs of people with disabilities, particularly learning disabilities

In 2011 a joint investigation highlighted significant failings in the care provided to a man with Down’s syndrome. His basic human rights were ignored after he was detained unnecessarily in hospital for months and was then moved into inappropriate locked accommodation until his death. The NHS Trust and the Council agreed to provide the man’s family with a full acknowledgement of the serious mistakes and an apology. £2,000 was also paid in recognition of the distress caused, which the family have said they will donate to charity. The Ombudsmen have also asked the Trust and the Council to prepare, and report progress on, an action plan setting out what they have done (or will do) to ensure that these mistakes are not repeated in future.

REMEDIES

Question 129

It is important that citizens are aware of their right to come to the Ombudsman with their complaint. Local authorities will signpost complainants to the LGO Scheme when they have completed their internal complaints process. We would support promotional work which raises citizen awareness of how the whole system works for them. LGO advisers make it clear when complainants first make contact how we can help them. Investigators always ensure that complainants understand at the outset what sort of remedy we might achieve and how it might redress their injustice.

The LGO Scheme is primarily concerned to achieve restorative justice and our first priority is to require action to correct an injustice. This may include asking the local authority to take a decision again. We cannot consider the merits of a decision taken by a democratically elected authority but this does not apply to private, independent bodies. We only consider payments to complainants when they have incurred a material financial loss or when it is not possible to take action. In such cases we will recommend payments in recognition of distress, inconvenience or time and trouble caused. A copy of the Principles on Remedies guidance to investigators is attached.

CONCERNS ABOUT INSTITUTIONAL BIAS IN FAVOUR OF COUNCILS

Question 134

It is critical that the public have confidence that they will get an impartial investigation and decision. An Ombudsman, or an investigator under their delegated authority, will not deal with any cases where they may have a conflict of interest because of previous work connections or past or present family or other close relationships with serving officers or members. In such circumstances where an Ombudsman is involved, a transfer of delegated authority is made to another Ombudsman. This has to be authorised by the Commission and is on the public record.

Question 135

There were 74 reports issued about local authorities in 2009–10, 26 reports issued in 2010–11 and 82 reports issued 2011–12. The number of reports issued “remedy agreed” during 2011–12 is 18. These are reports issued in the public interest even though the local authority has agreed to implement the remedy to the satisfaction of the Ombudsman.

CUSTOMER CARE

Question 138

Investigators acting under delegated authority in handling complaints will always seek “restorative justice” at the earliest opportunity based on the facts of the matter. Where appropriate we will use mediation techniques and have skilled mediators on our staff. Research conducted by Ipsos MORI shows that people primarily value a remedy which deals with their injustice but also acknowledges fault, provides an apology and makes changes to practice or policy so that others are not affected in the future. The LGO role does not require remedy which is punitive on the body in jurisdiction.

LOCAL AUTHORITY COMPLAINT NUMBERS

Question 142

Figures for 2011–12 requested by the Committee are shown below, in respect of the 20 local authorities with the highest and the lowest number of LGO complaints. These figures, will reflect the size of the resident populations in the local authority area and should be treated with caution without supplementary information about the outcomes of each complaint

<i>Local authority most complained about</i>	<i>Number of complaints in 2011–12</i>
Birmingham City Council	258
Southwark London Borough	180
Lambeth London Borough	174
Kent County Council	152
Cornwall Council	142
Leeds City Council	141
Camden London Borough	127
Haringey London Borough	119
Croydon London Borough	115
Hackney London Borough	113
Ealing London Borough	111
Islington London Borough	110
Buckinghamshire County Council	109
Hammersmith and Fulham London Borough	105
Bristol City Council	102
Newham London Borough	100
Essex County Council	94
Sheffield City Council	92
Redbridge London Borough	89
Brighton and Hove City Council	88
<i>Local authority least complained about</i>	<i>Number of complaints in 2011–12</i>
Durham County Council	1
Erewash Borough Council	1
Isles of Scilly	1
Oadby & Wigston Borough Council	1
Purbeck District Council	1
Rushmoor Borough Council	1
Chiltern District Council	2
Gosport Borough Council	2
Hyndburn Borough Council	2
Rutland County Council	2
South Northants District Council	2
West Somerset District Council	2
Cambridge City Council	3
Carlisle City Council	3
Copeland Borough Council	3
Craven District Council	3
East Northants Council	3
Eden District Council	3
Melton Borough Council	3
North Dorset DC	3

CUSTOMER SATISFACTION RESEARCH

Questions 145–150

The last quantitative customer satisfaction survey was undertaken in 2007. This was an independent survey carried out by Ipsos Mori and published in full on the CLAE website. The research found that 26% of people surveyed were satisfied with the outcome of their complaint, whilst 71% were dissatisfied. It also found that around half (49%) were satisfied with the way their complaint was dealt with and 44% were dissatisfied. The research concluded that “A positive outcome is a major driver in whether a complainant is satisfied or dissatisfied with the handling of their complaint”. The Ombudsmen were keen to understand more about the different attitudes of those who were satisfied with the outcome of their complaint and those who were not. Ipsos Mori produced additional tables of analyses. These showed that those who were satisfied with the outcome of their complaint recorded very positive opinions about staff and the way the complaint was handled (only 3% said they were dissatisfied and the number was too small to use for further analysis). The people who were satisfied with the outcome of their complaint reported positive scores of between 90% and 98% on how their complaint had been dealt with, fairness, investigator’s understanding of the complaint, the amount and clarity of the information provided and politeness, helpfulness, efficiency, professionalism of staff.

The CLAE commissioned a further piece of research Ipsos Mori in 2010, with a qualitative methodology in order to explore in greater depth perceptions of the service delivered by CLAE (also published in full on the CLAE website). This found that many complainants were positive about different points of the complaints process, but again that the complaint outcome coloured their perception of the service; those who received a negative outcome were unlikely to express satisfaction with other aspects of the service. Respondents generally found CLAE staff to be polite, respectful and professional. In 2011 LGO commissioned mystery shopping and Communications research from BDRG, instead of a customer satisfaction study. The research, which included telephone and email mystery shops, depth and group interviews found that considering the difficult job LGO advisers have to do (handling difficult calls and a range of sometimes complex complaints) overall LGOAT advice line is well executed, almost impeccable in terms of politeness, professionalism, friendliness and clarity. The next satisfaction survey, subject to resources, is planned for 2013.

WORKING WITH REGULATORS

Question 151

Insight from complaints supplements the work of the regulators and we have arrangements in place to share information with regulatory bodies. We have a Memorandum of Understanding with the Care Quality Commission which sets out the arrangements in relation to adult social care matters and with Ofsted for complaints related to the internal management of schools. We will always act as a “good citizen” in immediately alerting the relevant authorities to any case brought to us where there appear to be safeguarding issues.

STRATEGIC FOCUS

Question 152

Having reviewed our mission and strategic objectives in 2010, the Commission has remained focused on its core business of ensuring fairness for citizens and providing remedy for injustice caused by maladministration or service failure. This is incorporated into our corporate strategic plan and annual business plan. The corporate management team review forthcoming legislation on a fortnightly basis and respond to consultations to advise on the appropriate role for LGO. For example, since 2010 we have responded to policy initiatives on: health and safety complaints; housing complaints; complaints from members of the armed services; and complaints from voluntary bodies in relation to the local authority Compact arrangements. Detailed parliamentary and consultation logs are maintained. We have raised issues for legislative change with the sponsor department in our Triennial Review which will be submitted at the end of May, eg. Town and Parish Councils.

OUTSTANDING AUDIT RECOMMENDATIONS FOR THE COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND (LGO) AS AT 9 MAY 2012

SUMMARY SHEET

Risk Management and Governance (2 March 2011)
 2 outstanding recommendations; awaiting action by DCLG.
Business and IT Continuity (24 October 2011)
 1 outstanding recommendation; will complete in May 2012
NAO Management Letter on the 2009–10 Financial Statement Audit (August 2010)
Recommendations arising from the NAO's audit of the accounts to 31 March 2010
 2 outstanding recommendations; one awaiting action by DCLG, the other will complete in May 2012.

<i>Internal Audit Recommendation</i>	<i>Priority¹</i>	<i>Management Response</i>	<i>Original Due Date</i>	<i>Lead Officer</i>	<i>Any revision to management response</i>
<p><i>Risk Management and Governance (2 March 2011)</i></p> <p>Rec. 9 Agreement of grant memorandum At the time of our review Grant Memorandum had yet to be agreed with CLG. The main areas of dispute are the ability of CLG to alter the terms of the agreement unilaterally; and the discretion allowed to LGO to set pay. This should be resolved with CLG as soon as possible.</p>	H	Agreed	Not possible to set a date	DCEx ²	The GM is being replaced with a Framework Document
<p>Rec. 10 Commissioners' Code of Conduct document A governance statement incorporating the Code of Conduct for commissioners has been drafted but its implementation has been delayed due to concerns over the statutory basis for the delegation of authority. Since production of the governance statement is likely to be delayed, LGO should consider issuing a separate update to the existing Code of Conduct for Commissioners.</p>	M	Agreed The Ccssn will be asked if it wishes to update the Code of Conduct.	March 11	DCEx	The Commission decided not to take any action on the code until a decision on Governance has been made by the Government.

<i>Internal Audit Recommendation</i>	<i>Priority¹</i>	<i>Management Response</i>	<i>Original Due Date</i>	<i>Lead Officer</i>	<i>Any revision to management response</i>
<p><i>Business and IT Continuity (24 October 2011)</i></p> <p>Rec. 1 Update BIA The Business Impact Assessment for each LGO site has not been revised since the plans were restructured, by an external consultant, in 2008. Although LGO do not expect this to have greatly varied, the business impact analysis may be inconsistent with current business operations which may translate into incorrect continuity requirements being addressed in the BCPs</p>	L	<p>Accepted. We will put a review of the business impact assessment in hand, to be completed by the end of this financial year.</p>	April 2012	DCEx	None.

¹ Priority ratings, as provided by the internal auditors (KPMG) are H (High), M (Medium) and L (Low)

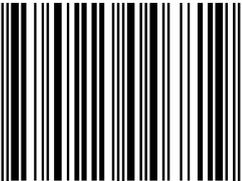
² Deputy Chief Executive and Secretary of the Commission

<i>External Audit Recommendation</i>	<i>Priority¹</i>	<i>Management Response</i>	<i>Original Due Date</i>	<i>Lead Officer</i>	<i>Any revision to management response</i>
<p><i>NAO Management Letter on the 2009–10 Financial Statement Audit (August 2010) Recommendations arising from the NAO's audit of the accounts to 31 March 2010</i></p> <p>3 Grant Memorandum Although the Commission has actively tried to agree a Grant Memorandum to supersede the one agreed in 1999, we suggest that the Commission now escalate its concerns to the most senior levels in the Department in order to try and resolve this issue.</p>	M	<p>A letter has been sent from the Chairman of the Commission to the Deputy Director, CLG on 24 June 2010, reminding him that a response has been awaited from the Department since our letter of 15 April 2010.</p> <p>2010–11 commentary DCLG submitted a revised Grant Memorandum to the Commission in April 2011. However the Commission has not been able to agree to its terms. DCLG has agreed that the Memorandum will be replaced by a Framework Agreement. A timetable for the creation of this document has been agreed with DCLG. A draft agreement will be presented to the Commission meeting in July 2011.</p>	Unable to set a date	Acting Chair	New framework agreement being drafted.
<p>6 IT Service Level Agreements We recommend that revised Service Level Agreements are introduced between the IT department and the rest of the organisation.</p>	L	<p>We agree it is no longer appropriate for there to be SLAs for individual offices. From 2010/11 onwards IT services are charged per capita, with a standard service across off three offices. A single SLA will be agreed with the Deputies Group on behalf of the whole organisation.</p> <p>2010–11 commentary The IT department is configuring their Helpdesk to capture performance statistics to support an SLA. The SLA will be put in hand when resources can be directed, primarily from the COIN project; we anticipate this will be put in place by October 2011.</p>	Jun—11	DCE&S ²	

¹ Priority ratings, as provided by the external auditors (NAO) are H (High), M (Medium) and L (Low)

² Deputy Chief Executive and Secretary of the Commission

ISBN 978-0-215-04681-9



9 780215 046819

