SCOTTISH PUBLIC SECTOR OMBUDSMAN BILL

Report of consultation on the proposals

November 2001

Introduction

1. The Scottish Executive undertook two consultation exercises on the proposals contained in the Scottish Public Sector Ombudsman Bill. *Modernising the Complaints System*, a consultation paper published in October 2000, invited views on a wide range of issues relating to the work of public sector ombudsmen in Scotland. The paper was distributed widely to around 800 organisations and individuals, including special interest and community groups, public bodies and professional and trade organisations. The Ombudsmen also sent copies and questionnaires on behalf of the Executive to 650 people who had recently submitted complaints. A total of 86 responses were received, together with 216 completed questionnaires from complainants. Respondents were broadly supportive of the proposals.

2. A second paper titled *A Modern Complaints System*, was published in July 2001. The paper was distributed in a similar basis to the first and set out more detailed proposals, based on the responses to the initial consultation. A total of 94 responses were received and again, the proposals drew widespread support.

3. This report provides a summary of the responses to both consultation exercises. The report appears on the Scottish Executive website (www.scotland.gov.uk) and copies of the responses are available for inspection at the Executive’s Library at Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, in accordance with the Executive’s policy on consultation procedures. Copies of individual responses are also available on request.

4. The Scottish Public Sector Ombudsman Bill was introduced in the Scottish Parliament on 22 November and published by the Parliament on its website on 23 November at www.scottish.parliament.uk/parl_bus/legis.html. The Policy Memorandum accompanying the Bill sets out the principles and considerations which influenced the Executive’s development of the Bill and addresses many of the points raised during consultation.

First Consultation: *Modernising the Complaints System*

One-stop shop

5. The vast majority of respondents supported the concept of a one-stop shop. A wide range of respondents, such as the existing public sector ombudsmen, private individuals, Robert Brown MSP, Deafblind UK, Scottish Joint Consultants Committee, Shelter, Disabled Persons Housing Service, Central Council for Education and Training in Social Work, Royal Town Planning Institute, RICS, Fire Officers’ Association and several local authorities and health boards, felt that simplified procedures and a single address for all complaints would be much more straightforward for the public to understand and would reduce both confusion and costs. It was also pointed out that a one-stop shop would have a more identifiable profile
and would be relatively easy to publicise. Some consultees, e.g. COSLA, Scottish Homes, Scottish Federation of Housing Associations, the HAOS, Scottish Association of Health Councils, and some local authorities, were concerned about preserving the expertise and specialist knowledge which the existing ombudsmen have in particular areas. COSLA and Glasgow City Council supported establishing a one-stop shop to improve accessibility and achieve efficiencies in sharing facilities but did not favour a complete integration of Ombudsman services at this stage.

6. There was clear support for the criteria set out in the consultation paper for setting up a one-stop shop and, in particular, for limiting the one-stop shop to public sector ombudsmen. The existing public sector ombudsmen pointed out that it will be important to ensure that, as now, private sector bodies acting on behalf of public authorities are within the jurisdiction of the one-stop shop.

7. Again there was a clear majority in favour of including the HAOS in any one-stop shop. The HAOS supported the logic of having one Ombudsman service covering both sectors of social housing (i.e. Council housing and landlords presently covered by the HAOS), and considered that this would be done most effectively within a one-stop shop. However, the Scottish Federation of Housing Associations felt that bringing voluntary housing organisations within a public sector one-stop shop would not assist in simplifying the system for the consumer. While noting the advantages of this proposal, the Advice Services Alliance were concerned that the inclusion of the HAOS may deter landlords who have previously voluntarily participated within the existing set-up.

8. Most of the responses to the first Consultation paper were submitted before the publication of the Millan Committee’s Report on the Review of the Mental Health (Scotland) Act 1984. The general view was that no decision should be made on this question until after publication of the Report. The Scottish Joint Consultants Committee felt that this was a very sensitive issue and great care would need to be exercised if it was to be subsumed into a one-stop shop. The Ayrshire & Arran Primary Care NHS Trust believed that the Mental Welfare Commission should not be subsumed into the main-body of the one-stop shop because issues relating to the Mental Health Act require specialist knowledge and expertise.

9. The sharing of accommodation and staff was welcomed by most of those who responded, as means to make more efficient use of resources. However, the existing public sector ombudsmen warned that this could lead to problems relating to the confidentiality of information and, in certain circumstances, conflicts of interest.

10. The option of an all-encompassing Ombudsman, with supporting deputies who have expertise in specific areas, was preferred by the majority of respondents, including the existing public sector ombudsmen, private individuals, Disabled Persons Housing Service, Scottish Joint Consultants Committee, RICS, Scottish Homes, several local authorities and COSLA. There was some support for the "college" system, e.g. the Scottish Legal Action Group, Scottish Federation of Housing Associations and Angus Council. A very few, like Midlothian Council, preferred the present set-up of individual Ombudsmen.

11. The general view of those who responded was that the Executive had highlighted the key points. There was also general agreement that the advantages of a one-stop shop outweigh the disadvantages.
Remit

12. A majority of the replies agreed that the range of authorities subject to investigation by a new Scottish Parliamentary Ombudsman should be the same as those currently covered by the SPCA and with the Executive’s proposal to add Scottish Enterprise and Highlands & Islands Enterprise to the Ombudsman’s remit. A few respondents supported some addition to the range of authorities covered; e.g. COSLA, and Angus and North Lanarkshire Councils suggested that all public authorities should be covered; the British Federation of Women Graduates, COSLA, and Glasgow City and Fife Councils supported the addition of water authorities. Highlands and Islands Enterprise considered that they already have a sophisticated and rigorous complaints procedure and do not support any alteration to current arrangements.

13. Most respondents agreed that the legislation should specify the authorities not within the Ombudsman’s jurisdiction, rather than those which are as it would increase clarity and avoid the need for regular amendments to legislation. The existing public sector ombudsmen pointed out that it may be difficult to frame a definition of "public authority" which is both sufficiently general and sufficiently precise. On the other hand, they advised against listing by name all the bodies within jurisdiction, as in the existing legislation. The Scottish Consumer Council considered that any body funded by public money should be accountable to the public. They, therefore, agreed that there should be an assumption that an authority is within the Ombudsman’s jurisdiction unless specifically excluded.

14. An overwhelming majority of respondents supported the proposition that the primary role of public sector Ombudsmen should continue to be investigation of complaints of maladministration. In addition, a few respondents, such as the existing public sector ombudsmen, the Scottish Association of Health Councils, the Mental Welfare Commission, Scottish Federation of Housing Associations and Shelter, drew attention to the need to retain the ability of the Health Service Ombudsman to investigate complaints relating to clinical care and treatment, and the ability of the Housing Association Ombudsman for Scotland to consider complaints relating to matters other than maladministration.

Defining maladministration

15. There was wide agreement that a statutory definition of "maladministration" would not be practical. The proposal that there should be guidance on the meaning of maladministration was generally welcomed. The Scottish Parliament Local Government Committee stressed that there is a need to provide citizens with clear information on the role and powers of the Ombudsmen and urged the Executive to consider how best this could be achieved. A number of responses stressed the need for any guidance to be written in plain English.

Scope of investigatory powers

16. Most replies agreed with the Executive’s view that it would be very difficult to extend the remit of the Ombudsmen to include investigation of discretionary decisions. However, a few (including the Scottish Consumer Council and Scottish Homes) suggested that the remit of the Ombudsman should be extended to fall into line with the HAOS, who may investigate complaints other than those relating to injustice caused by maladministration if he considers it is in the public interest.
17. Most of those who responded to the proposal agreed that the Ombudsman’s remit could be extended to the administration of courts.

18. There was similar support for the Ombudsman to be able to investigate maladministration in the process leading up to contracts and commercial transactions. COSLA did not support this proposals as they felt that anyone aggrieved by the tendering process would have recourse to the courts.

19. In general, there was little opposition to the proposal to allow the Ombudsman to investigate the internal organisation and management of schools. The Scottish Parliament’s Local Government Committee agreed that complaints about matters such as teaching standards should not be within the Ombudsman’s remit but considered that the administration of education services should be included. COSLA did not support any extension of the role of the Ombudsman in the educational sphere unless it can clearly be defined as an administrative activity.

20. There was unanimous support for the extension of the Health Service Ombudsman’s jurisdiction to FHS practitioners or independent providers who have ceased to provide a service. There was, however, no clear consensus on the time limit within which complaints against former FHS practitioners or independent providers should be submitted. There was an even split between the 3 year option and the 1 year option, with a couple of suggestions of 2 years. The Scottish Association of Health Councils would welcome more discretionary powers and extensions to time limits as people complaining about health services are often traumatised and need longer to report a complaint.

**Arrangements for submitting complaints**

21. In general, the MSP filter was viewed as an unnecessary hurdle and its removal was seen as making the complaints process simpler and more efficient. The retention of such a filter was seen as incompatible with the one-stop shop concept, which would require procedures to be the same for all complaints. A number of respondents, including the Scottish Parliament Local Government Committee, acknowledged that MSPs or local councillors would still be able to play a useful role, e.g. by providing informed advice to complainants which would help them in submitting a complaint. A few replies suggested that the MSP filter can help to reduce the Ombudsman’s workload, e.g. by weeding out minor or trivial complaints.

22. There was a clear consensus that, as at present, complaints should only be made by the person directly affected. If complaints were to be accepted from any person whether they were affected or not, there was unanimous support for the Ombudsman to have a discretionary power to reject frivolous or vexatious complaints.

23. A majority of the replies supported the idea that individuals should be able to authorise a representative to complain on their behalf. A number of bodies, such as Renfrewshire Council, North Lanarkshire Council, and BMA Scotland, noted that it is important there should be a specific written authorisation to ensure that complaints are not made without the knowledge and permission of the person affected. The existing public sector ombudsmen pointed out that they already allow a good deal of latitude to complainers
who wish to have their case put forward by, for example, a solicitor or local health council, provided it is clear that these are acting with the consent of the complainer.

24. A clear majority agreed that oral complaints should be allowed in special circumstances at the discretion of the Ombudsman. Several respondents, e.g. the existing public sector ombudsmen, Victoria Hospital in Kirkcaldy, BMA Scotland, and the British Federation of Women Graduates, stressed that it was important to put a complaint into writing as soon as possible because of the obvious drawbacks of relying upon oral evidence. Greater Glasgow Health Board said that they accept telephone complaints noting the main points; and the complainant is then sent a form to sign stating that this is the complaint they wish to submit. A number of consultees, including COSLA, Angus Council, North Glasgow University Hospitals NHS Trust, Scottish Consumer Council, and Scottish Homes, suggested that the Ombudsman’s staff should help a complainant to put their grievances in writing.

25. The proposal for electronic communications to be a permitted format for submitting complaints was supported by all who responded to it. The Scottish Joint Consultants Committee raised the concern that it may be difficult to weed out ‘unauthorised’ complaints if there is no signature to the communication. Deafblind UK and the Scottish Council on Deafness argued that video-telephony should be an accepted means of communication for deaf and deafblind people.

Accessibility to, and publicity of, the Ombudsman

26. A number of respondents, including COSLA, Glasgow City Council, Scottish Borders Council, Scottish Council on Deafness, Advice Services Alliance, highlighted the need for greater public awareness of the Ombudsman system, e.g. through clear leaflets, a comprehensive website, better advice and assistance for complainants, and liaison meetings with representatives of the advice sector. The Scottish Legal Action Group also suggested that local one-stop shop offices should be set up around Scotland or, alternatively, that links should be established with other local organisations who could provide a link between an individual and the one-stop shop.

27. A variety of ideas were suggested for publicising Ombudsmen:

- all public authorities should be required to advise members of the public of their right to complain to an Ombudsman, e.g. in leaflets, forms, internal complaints procedures, etc;
- regular newspaper, TV and radio adverts/publicity and poster campaigns;
- information should be provided in all formats, e.g. Braille, large print, audio tape and video;
- the one-stop shop should have a recognised logo or trademark, a single telephone number, and e-mail address, all of which should appear on all public authority literature with information on the right to complain;
- leaflets should be available in appropriate locations, e.g. Scottish Executive offices, Citizen’s Advice Bureaux;
• a leaflet should be sent each household.

Time limit for submitting complaints

28. An overwhelming majority of replies supported the current time limit of 12 months from when the aggrieved person became aware of the matter complained about, with a discretion for the Ombudsman to accept late complaints. A few consultees, such as Disabled Persons Housing Service, Scottish Association of Health Councils, and Scottish Joint Consultants Committee, favoured some relaxation of the time limit.

Ombudsman initiated investigations

29. There was some support for allowing Ombudsmen to initiate their own investigations, mainly from a minority of local authorities, private individuals, Scottish Council on Deafness, British Federation of Women Graduates, Scottish Legal Action Group, Scottish Consumer Council, and Advice Services Alliance. However, the general consensus was that the primary role of the new Ombudsman should continue to be the investigation of individual complaints and that the power to initiate investigations could distract the Ombudsman from that role. There was also some concern that this option could lead to the roles of the Ombudsmen and Auditors becoming confused. Most consultees favoured strengthening the links between the Ombudsmen and auditors.

30. The consultation responses were generally in favour of an authority being able to ask the Ombudsman to carry out an investigation, although there was some caution about ensuring that such investigations do not interfere with the Ombudsman’s primary role of dealing with individual complaints of injustice caused by maladministration.

Investigation procedure

31. The responses showed clear agreement with the Executive’s view that it was not necessary for investigation procedures to be set out in primary or secondary legislation. A few consultees, e.g. the Disabled Persons Housing Service, and Professional Association of Teachers, were of the opinion that the procedures should be set out in more detail in secondary legislation to aid clarity and consistency. However, the overall view was that it should be left to the Ombudsmen to set up their own procedures. Few responded directly to the question of who should provide oversight and these were evenly divided between the Parliament, and Ministers. Glasgow City Council and Ayrshire & Arran Primary Care NHS Trust suggested that an advisory body or liaison/stakeholder group should be established to advise the Ombudsmen.

32. There was clear agreement among respondents on the need for consultation and co-operation between Ombudsmen; particularly between any one-stop shop and the equivalent UK Ombudsmen. Similarly, there was clear support for extending the consultation and co-operation provisions to include auditors and other Commissioners (e.g. Public Appointments, Scottish Information or Standards Commissioners).
Evidence

33. Almost all of the consultees who responded to the question of strengthening or otherwise improving the Ombudsmen’s evidence gathering powers agreed with the Executive’s view that the Ombudsmen’s existing powers were sufficient. The Scottish Parliamentary Commissioner for Administration subsequently drew attention to a particular difficulty concerning evidence relating to applications for legal aid made to the Scottish Legal Aid Board. There was a similar level of support for the Executive’s view on the need for evidence provided to an Ombudsman to remain confidential.

Reporting arrangements

34. The general mood of the responses was that the reporting arrangements for the existing Ombudsmen were satisfactory, although it was noted that establishing a one-stop shop would require arrangements to be standardised. A number of respondents, particularly COSLA, several local authorities, RICS, Scottish Consumer Council, Scottish Homes, and Advice Services Alliance, argued that all Ombudsmen should adopt the existing Local Government Ombudsman arrangements.

35. The suggestion that special reports on cases of unremedied injustice should be made mandatory was widely supported, in particular by Scottish Legal Action Group, private individuals, Scottish Homes, RICS, Advice Services Alliance and some local authorities. However, some respondents, e.g. COSLA and some local authorities, believed that the decision to publish a report on a case of unremedied justice should remain at the Ombudsman’s discretion.

36. There was broad support for publicising investigation reports and making them available to the Parliament.

37. Most of those who responded agreed that there should be some minimum requirements on the content of annual reports. A few, such as COSLA and Glasgow City Council considered that the current arrangements were sufficient. Renfrewshire Council and North Lanarkshire Council suggested that the Executive should produce guidance on the content of annual reports.

38. In general the existing reports were seen as sufficient. 6 monthly reports were not considered necessary. Some consultees, e.g. Deafblind UK, and Scottish Council on Deafness, asked for reports to be published in accessible formats, such as Braille, large print, audio tape, etc.

Enforcement

39. There was some limited support for giving Ombudsmen enforcement powers, e.g. from private individuals, and the Educational Institute of Scotland. However, a clear majority of consultees accepted the Executive’s arguments against such an approach, including the Scottish Parliament’s Local Government Committee and Health & Community Care Committee, COSLA, several local authorities, the existing public sector ombudsmen, Deafblind UK, Scottish Council on Deafness, and Scottish Consumer Council.
40. There was general agreement that it should be left to the discretion of the Scottish Ministers or the Scottish Parliament to take whatever enforcement action they considered necessary. COSLA and some local authorities thought that there should be no provision for the Parliament or Ministers to take enforcement action.

41. Most of the responses favoured publicising investigation reports and requiring authorities to publish a statement where they fail to take action on an Ombudsman’s recommendations. However, it was pointed out that NHS patient information must remain confidential.

**Appointment**

42. The proposal that Ombudsmen be elected or recommended by the Scottish Parliament, before being formally appointed by Her Majesty was supported by a majority of respondents on the grounds that it would reinforce independence and be more democratic. However, some, including COSLA, the Housing Association Ombudsman for Scotland and the British Federation of Women Graduates, opposed the concept of the Ombudsman being subject to political vote as they believed this would undermine his/her political independence. A suggested alternative was appointment through parliamentary committee. Several consultees felt that the post should be advertised.

43. The consultation responses showed a clear consensus in favour of limiting the length and number of appointments. There were a variety of suggestions as to what those limits should be but the most popular was 5 years for the length of appointment and a maximum of 2 or 3 terms in office. The responses on whether to retain the compulsory retirement age of 65 were mixed but a small majority supported keeping the retirement age and providing that appointments should not run beyond that age.

44. Only a few consultees commented on arrangements for determining pay, allowances and pensions but they broadly favoured retaining the current arrangements. However, the existing public sector ombudsmen pointed out that there are disadvantages in allowing the Scottish Ministers to determine the pay and other benefits of the Ombudsman. Scottish Legal Action Group and Scottish Homes suggested that this should be a matter for the Scottish Parliament.

45. An overwhelming majority of consultees supported "Ombudsman" as the formal legal title of the appointment as it is the most widely recognised and understood title. A few favoured retaining the present "Commissioner" and other suggestions were "Public Defender", "Public Protector", "Public Examiner", "Complaints Investigator", "Ombud", "Ombuds" or "Ombudsperson". There were also some suggestions of "Complaints Scotland", "Scottish Public Sector Complaints" or "Scottish Public Complaints Office" as a name for the one-stop shop.

**Finance and Staffing**

46. There was no clear consensus among the consultation responses on which funding arrangements for the Ombudsmen would be appropriate but a definite view emerged that the arrangements should continue to ensure the independence of the Ombudsman. It was also pointed out that, like other public bodies, the Ombudsman’s finances should be subject to public scrutiny to ensure that their operations are cost effective.
47. It was generally accepted that if a one-stop shop were established there would be no need for Audit Scotland’s involvement to continue.

48. It was agreed that, whether separate Ombudsman appointments were retained or a one-stop shop established, staffing matters should be left to the Ombudsman.

49. It was generally accepted that arrangements would need to be made to allow staff of the existing Ombudsmen to transfer to the one-stop shop.

**Summary of Complainant Questionnaires**

50. A questionnaire was sent by the Scottish Parliamentary, Health Service and Local Government Ombudsmen, on behalf of the Executive, to 650 people who had recently submitted complaints. 220 completed questionnaires were returned. The questionnaire asked for information and comments on the outcome and handling of complaints.

**Outcome of complaints**

51. Where an investigation had been carried out and the complaint was upheld, people were generally satisfied. However, approximately three-quarters of those who completed a questionnaire were dissatisfied with the outcome of their complaint. In most cases, this was because the Ombudsman either did not accept the complaint as it was outwith his remit, or else did not carry out a formal investigation. In a few cases, people were dissatisfied because their complaint was not upheld following a formal investigation, and some of them felt that they should have been able to see the evidence submitted to the Ombudsman by the authority they were complaining against. A few others were dissatisfied because they did not receive an apology or compensation, even though their complaint had been upheld. Some of the dissatisfied complainants questioned the independence of the Ombudsman concerned.

52. Much of the dissatisfaction appears to be the result of unrealistic expectations based on a misunderstanding of the role and powers of an Ombudsman. In particular, the meaning of the term "maladministration" was not widely understood. Many people expected the Ombudsman to be able to:

- overturn decisions which they disagreed with;
- require authorities to change a policy which they did not like; or
- resolve any dispute with a public authority.

53. To many people it was simply not clear why the Ombudsman had not been able to investigate their complaint. This all points to the need for clearer guidance on what the Ombudsman does and for the Ombudsman to provide a clear and simple explanation when he is rejecting a complaint or not undertaking a formal investigation. A few complainants suggested that an Ombudsman should have powers to enforce his recommendations, or that there should be a system for appeals against Ombudsman decisions.
Handling of complaints

54. There was a greater degree of satisfaction with the general handling of complaints, with many complainants commenting favourably on the efficiency, professionalism, helpfulness and courtesy of the Ombudsmen’s staff. However, many complainants commented that the process for dealing with their complaint was not adequately explained to them. Several complainants said that they would have preferred more personal contact with the Ombudsman or his staff, e.g. interviews or home visits. A few suggested that there should have been an independent and impartial professional review of their complaint.

55. Some felt cheated because there was no formal investigation, even though the Ombudsman had managed to achieve an informal resolution of the problem which produced the same result. This indicates that the Ombudsman needs to make it clearer to complainants that formal investigation is a last resort, and that they always try to resolve complaints informally because it is quicker and easier for all concerned. Conversely, others felt that the complaints process was too slow and complicated, and wanted quicker resolution of complaints.

Second Consultation: A Modern Complaints System

One-stop shop

56. The proposal to combine the offices of the SPCA and the Health Service, Local Government and Housing Association Ombudsmen attracted almost unanimous support.

57. The transfer from the Mental Welfare Commission (MWC) to the Ombudsman of complaints relating to mental health, along with the other responsibilities of the Health Service Commissioner, was also widely supported. Argyll and Arran Health Board highlighted that given the vulnerability of those with mental health problems, extraordinary sensitivity would be needed in handling such complaints. The proposal that the Ombudsman should be required to consult the MWC in dealing with such complaints was supported although the MWC considered that consultation should only be required where the Commission would be particularly well placed to offer advice, e.g. complaints relating to improper detention.

58. The proposal that the one-stop shop should comprise one Ombudsman supported by a maximum of 3 deputy Ombudsmen was widely welcomed. The British Medical Association were concerned that the expertise necessary for investigating problems in certain areas such as health care would be lost.

59. Strong support was received for the proposal that it should be for the Ombudsman to allocate responsibilities to the deputy Ombudsmen as he/she sees fit, according to variations in workload and business priorities at any particular time. The Lothian University Hospitals NHS Trust considered that such an approach might lead to the expertise of current Ombudsmen in their particular field being lost.

60. The question of whether oversight or advice on management matters should be given to the Ombudsman by a Committee of the Scottish Parliament or some form of advisory
board appointed by Parliament attracted a wide range of views, with many consultees supporting the principle of Parliamentary involvement in this respect. However COSLA and the SPCA were amongst those who did not consider this to be an appropriate approach, COSLA considering Parliamentary involvement in this area would compromise the public’s view of the Ombudsman’s independence.

61. The proposal for the Ombudsman to retain the additional powers which some existing Ombudsmen have to investigate matters other than maladministration was supported unanimously.

**Remit**

62. There was unanimous support for the principle that authorities and bodies subject to investigation by the Ombudsman should be the same as those currently covered by each of the Ombudsmen who will be brought into the one-stop shop.

63. The addition to the new Ombudsman’s remit of assessors, who carry out rating valuations of properties; and Scottish Enterprise and Highlands Enterprise, whose External Complaints Adjudicators will be wound up; was fully supported by those who responded.

64. The consultation proposed that the authorities which were to be excluded from investigation would be: nationalised industries, advisory non-departmental public bodies (NDPBs), water authorities, Scottish Agricultural and Biological Research Institutes (SABRIs), and reserved authorities. COSLA, Highland Council, Lothian Health Council, Glasgow City Council and City of Edinburgh Council all considered that Water Authorities should be included in the Ombudsman’s remit.

**Maladministration**

65. The proposals that the Ombudsman will be responsible primarily for investigation of complaints of injustice arising from maladministration, and that the Ombudsman should produce guidance on the matters which are covered by the term “maladministration”, were supported overwhelmingly.

66. Strong support was received to the proposal that the Ombudsman would not be able to investigate discretionary decisions.

67. The proposal that the Ombudsman will be given powers to investigate the administration of courts, e.g., arrangements for calling witnesses, payment of expenses, etc was unanimously welcomed.

68. The proposal that the Ombudsman will be able to investigate complaints about maladministration by a public authority in the process leading up to a contract or commercial transaction was supported, however Highland Council, North Ayrshire Council, the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR), and Renfrewshire Council did not consider this to be necessary, some viewing that other established mechanisms covered this area.

69. The proposal for the Ombudsman to investigate complaints about maladministration in the internal organisation and management of schools drew widespread support, although
COSLA, the Secondary Teacher’s Association, SOLAR, North Lanarkshire Council and Renfrewshire Council all considered that difficulties would arise in determining the boundary between “internal organisation and management” and education matters. The Headteachers’ Association of Scotland considered that too many avenues already existed for individuals to make complaints against schools and that the Ombudsman should deal directly with local authorities on this matter as they control and direct such matters.

70. The proposal that the Ombudsman should not have a role in relation to staff appointments in local government, as this would run counter to the exclusion of personnel matters was unanimously supported.

71. The consultation proposed that the jurisdiction of the Ombudsman should be extended to complaints about FHS practitioners or independent providers who have retired or otherwise ceased to provide a service. This received unanimous support.

Arrangements for Submitting Complaints

MSP Filter

72. The proposals to remove the MSP filter, allowing complaints to be made directly to the Ombudsman and to retain the provision that complaints must be made by the aggrieved person or body of persons were both unanimously supported.

73. Views were sought on a proposal to introduce provision for complaints to be made by a representative authorised in writing by the aggrieved person to complain on their behalf. This proposal was broadly welcomed, however Highlands and Islands Enterprise had concerns that those complainants able to employ professional representation may be in a stronger position to put forward complaints than those unable to employ such representatives. Angus Council hoped that the proposal would not lead the public to feel that they should obtain legal representation.

Oral complaints

74. The consultation paper proposed that there should continue to be a presumption in favour of complaints being made in writing, but that the Ombudsman should have discretion to accept oral complaints in special circumstances, e.g. where the complainant has difficulty reading or writing, or there is exceptional urgency. Again, there was broad support for this proposal, however SOLAR considered this proposal might raise the number of frivolous or uncertain complaints being considered by the Ombudsman. The City of Edinburgh Council suggested that the term “exceptional urgency” would require definition and Money Advice Scotland considered that the Ombudsman should provide a service for writing up oral complaints and that this should take account of other languages and the needs of visually or hearing impaired people. Lothian University Hospitals NHS Trust highlighted that in respect of complaints about the Health Service, assistance in drafting letters was provided by Local Health Councils.

75. The proposal for allowing complaints to be submitted using electronic communications was strongly supported. The Headteachers’ Association for Scotland, Angus Council and Lothian University Hospitals Trust noted the importance of mechanisms for determining valid complaints.
**Time limit for submitting complaints**

76. Most of those who responded agreed with the proposal of retaining the present time limit for submission of complaints, i.e. within 12 months of when the matter complained about first came to the attention of the aggrieved person. Both the Lothian Health Council and the Royal Institution of Chartered Surveyors in Scotland considered that the Ombudsman should have the discretion to accept complaints after the 12 month deadline.

**Information about the right to complain**

77. Unanimous agreement was received to the proposal that bodies within the jurisdiction of the Ombudsman should be required to provide information about the right to complain to the Ombudsman e.g. in leaflets relating to services which they provide to the public; advice or guidance relating to their internal complaints procedures; and responses to any correspondence in which a person complains about the service which they have received.

78. Instead of enabling the Ombudsman to initiate his/her own investigation, the Executive proposed to reinforce the provisions for the Ombudsman to share information with auditors, Commissioners (e.g. the Scottish Information Commissioner) and Ombudsman/Commissioners in other parts of the UK, to minimise the risk of any cases of maladministration being missed. This was unanimously agreed to by those who responded to the consultation.

79. It was proposed to allow authorities to request an investigation by the Ombudsman, provided they have exhausted all other means to resolve the problem and it complied with all the criteria which apply to a complaint from an individual, e.g. it would have to relate to an allegation of injustice caused by maladministration. The Ombudsman would be given discretion to refuse to accept a request, where he/she considers that these conditions have not been met. This proposal was overwhelmingly supported, however the Mental Welfare Commission for Scotland were concerned that if authorities could request an investigation by the Ombudsman, this might compromise his/her independence in the future investigation of any related complaints.

**Investigation procedure**

80. The Executive confirmed its intention that primary legislation should continue to make only minimal provision in relation to investigation procedure. No provision would be made in secondary legislation and it would as now be left to the Ombudsman to establish appropriate procedure. That proposal was overwhelmingly supported.

81. It was proposed that the Ombudsman would be able to co-operate and share information with the UK Parliamentary Ombudsman, the Health Service Ombudsman for England and Wales, the Local Government Ombudsman for England and Wales, the Independent Housing Ombudsman for England, the Auditor General for Scotland, the Scottish Information Commissioner, and the UK Information Commissioner; provided that the information is clearly relevant to the functions of that Ombudsman, Auditor or Commissioner. Respondents to the consultation all agreed to this proposal.
Evidence

82. The proposal that the new Ombudsman should have the same evidence-gathering powers as the existing Ombudsman was overwhelmingly supported.

83. The Executive proposed to amend section 34 of the Legal Aid (Scotland) Act 1986 to enable the Scottish Legal Aid Board to disclose information for the purposes of investigation of a complaint to the Ombudsman, without the consent of the person seeking legal aid or the person who furnished the information. This proposal was unanimously agreed to.

84. In terms of evidence given to the Ombudsman remaining confidential, the consultation paper contained proposals that the same confidentiality provisions would apply to the Ombudsman as apply to the existing Ombudsmen, and that such provisions would apply to any information provided to the Ombudsman for the purposes of a complaint. Again, these proposals were overwhelmingly supported. A consequence of such provision would be that the Ombudsman would need to be allowed to disclose information for the purposes of pursuing his/her enquiries. All respondents agreed to such a measure.

Reporting Arrangements

85. The consultation paper proposed that reporting arrangements would be based on those of the existing Ombudsmen but extended to include provisions, similar to those of the Local Government Ombudsman, for publishing reports. That proposal was unanimously supported.

86. The Executive proposed that if the Ombudsman considered that the complainant has suffered an injustice or hardship as a result of maladministration and the injustice or hardship has not been or will not be remedied, he/she may lay a special report before the Parliament and copy it to the Scottish Ministers. The Ombudsman may also advertise the report and make copies available for inspection or purchase. This proposal was widely supported, however the Scottish Federation of Housing Associations (SFHA) considered that the Ombudsman should direct special reports on housing related cases to Communities Scotland in respect of that body’s future responsibility for regulating registered social landlords on behalf of Scottish Ministers. South Lanarkshire Council questioned the purpose of special reports which offered no right of reply to the body who is the subject of the report.

87. The Executive did not intend to make it mandatory for the Ombudsman to take action on such cases because sometimes only a minor part of the injustice will not be remedied or the matter will be addressed in a different way to that recommended by the Ombudsman and, in such cases, follow up action may not be justified. This proposal was strongly supported.

88. Consultees unanimously agreed that their should be certain minimum requirements to the content of the Ombudsman’s annual reports.

Enforcement

89. The proposal that the Ombudsman should not have powers to enforce his/her recommendations was mostly supported. However two complainants considered this would detract from the effectiveness of the Ombudsman. The Educational Institute for Scotland and Headteachers’ Association of Scotland took the view that the Ombudsman should be
given enforcement powers. Ayrshire and Arran NHS Board considered that a lack of direct enforcement power for the Ombudsman would lead to undue delays.

90. On the question of whether it should be left to the discretion of the Scottish Ministers or the Scottish Parliament to take whatever enforcement action they consider necessary, SFHA suggested that enforcement, in housing related cases, should rest with Scottish Homes.

91. Following on from the proposal that the Ombudsman would have the discretion to lay before Parliament a special report on any case of unremedied injustice and copy it to Scottish Ministers, it was proposed that special reports could be published. Such a proposal was widely supported. Dumfries and Galloway, West Lothian, South Lanarkshire and Renfrewshire Councils, Liverpool Law School, the Scottish Complaints Officers Network and the Association of Directors of Social Work Standards all disagreed with the proposal that authorities should not be required to publish a statement where they fail to take action on the Ombudsman’s recommendations.

Appointment

92. The proposal that the Ombudsman and deputy Ombudsmen would be appointed by Her Majesty on the nomination of the Parliament was supported by an overwhelming majority of those who responded.

93. The proposals on length of appointment, numbers of re-appointments and retirement age were all strongly supported by a significant majority of respondents.

94. The Executive proposed that the Ombudsman and deputy Ombudsman may be relieved of office by Her Majesty on request, or may be removed from office by resolution of the Parliament, which if passed on a division must be supported by at least two thirds of the total number of MSPs. This policy was agreed to by almost all consultees.

95. The proposals:

i) that pay, allowances and pensions for the Ombudsman and deputy Ombudsmen should be determined by the Parliamentary corporation; and

ii) that the salary of the Ombudsman and deputy Ombudsmen shall be abated by the amount of any pension payable in respect of a public office,

were both agreed to by almost all respondents.

Formal legal title

96. The proposals for the formal legal titles of the appointments to be “Scottish Public Sector Ombudsman” and “Deputy Scottish Public Sector Ombudsman” were agreed to by the majority of those who responded. However the following alternatives were suggested:

Scottish Public Services Ombudsman

Public Complaints Commissioner
Scottish Public Complaints Officer

The SFHA asked that the word “Public” be omitted from the titles in view of housing associations falling within the voluntary sector. The Scottish Secondary Teachers Association commented that the term “Ombudsman” is seen as archaic for a modern, gender neutral administration.

97. The consultation paper proposed that the one-stop shop should have a corporate name which could be used in all publicity and guidance, and suggested the names “Complaints Scotland” or “Scottish Public Complaints Office”. Respondents offered the following alternatives:

- Scottish Public Services Complaints Office
- Ombudsman Scotland
- Scottish Public Sector Complaints Office
- Scottish Public Sector Ombudsman’s Office
- The Scottish Public Sector Complaints Office

Finance and Staffing

98. The proposals that:

i) the Parliamentary corporation should pay the salaries and allowances of the Ombudsman, the Deputies and their staff, and all expenses of the Ombudsman in exercising his/her functions;

ii) the Ombudsman will be required to submit annual accounts to the Auditor General for Scotland for auditing;

iii) the Ombudsman will appoint staff on such terms and conditions as he/she may determine, and make arrangements for pensions, allowances and gratuities to any person who has ceased to be a member of staff;

iv) the terms and conditions of staff and the arrangements for pensions, allowances and gratuities will require the approval of the Parliamentary corporation; and

v) transitional arrangements will be made in respect of the existing Ombudsmen,

were all unanimously agreed to.

99. The proposal that the levy which local authorities currently pay to Audit Scotland to fund the Local Government Ombudsman would be discontinued but that there would be a
small reduction in local authorities’ revenue support grant equivalent to the amount of the levy was widely agreed to by those who responded.

**Other Issues**

100. The proposal to amend section 2(3) of the Tribunals and Inquiries Act 1992 to provide for the Scottish Public Sector Ombudsman to be an ex officio member of the Scottish Committee of the Council on Tribunals was supported unanimously.

Scottish Executive
November 2001