



Lord Mackay of Clashfern
 Lord Chancellor
 Lord Chancellor's Department
 House of Lords
 LONDON
 SW1A 0PW

Prime Minister

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 01-212 3434

See attached
 Policy Unit
 note. Contact?

My ref:
 Your ref:

REC 6

11/1

13 January 1988

Yes

Dear James

RESPONSE TO THE SELECT COMMITTEE - LOCAL OMBUDSMAN
 RECOMMENDATIONS

The Select Committee on the Parliamentary Commissioner for Administration recommended in June 1986 that further measures should be taken to improve the rate of compliance by local authorities with local ombudsman recommendations were injustice due to maladministration has been found. Their proposal was that the Select Committee itself should summon representatives of recalcitrant councils to appear before them to explain their reasons for non-compliance. At about the same time, the Widdicombe Report put forward alternative proposals for allowing complainants to seek judicial enforcement of remedies. We agreed with the Select Committee that we would consider both proposals together and had intended to include a response to the Select Committee in our main response to Widdicombe.

However, our consideration of the Widdicombe Report has taken longer than originally anticipated, and Antony Buck, Chairman of Select Committee, has again written seeking an early and separate response to the Committee's proposals. We have already written to Antony on three occasions asking for his patience and indicating that we did not wish to respond on the main Widdicombe recommendations.

Nevertheless it is now unlikely that we will be in a position to make a full Government response to Widdicombe before March/April. Further delay in responding to the Select Committee now could well lead to public criticism to which there would be no convincing answer. I therefore believe that we now have no alternative but to make an early and separate response to the Select Committee in advance of the main Widdicombe response.

The Ministerial Steering Group under Michael Howard which has been examining the Widdicombe Report has endorsed a report by officials which comes down against both the Select Committee and Widdicombe recommendations and instead proposes a package of measures that would ensure that reports were properly considered by councils, and that decisions not to comply would need to be justified publicly. These would require legislation, but would not involve any fundamental departure from the current voluntary and informal ombudsman system. Although local authorities are likely to object to tighter controls they will find these measures preferable to any form of statutory or judicial enforcement.

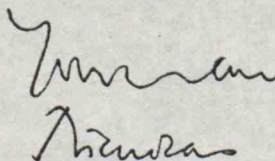


If we are to respond against the Select Committee proposal, and against Widdicombe, then there would be considerable presentational advantage in putting forward our alternative package at the same time. This would of course involve a commitment to legislation, though there is no need for us to give any commitment as to timing.

I attach a draft of the response which I propose making to the Select Committee. Details of our alternative legislative package are at paragraph 18. If Scottish and Welsh colleagues are content, I would propose that this should be a joint response covering Great Britain as a whole since the Select Committee did not confine itself to the English ombudsman system. A paragraph would then have to be added to make this clear and figures similar to those in paragraph 5 would need to be included.

I would be grateful for H Committee's approval of these arrangements and of the response and legislative proposals. I would like to reply to the Chairman of the Select Committee by the end of January so I would be grateful for a reply by 27 January at the latest.

I am copying this letter to the Prime Minister, the Lord President, other members of H Committee, the Minister for Agriculture, Fisheries and Food and Sir Robin Butler.



NICHOLAS RIDLEY

DRAFT RESPONSE TO THE SELECT COMMITTEE ON THE PARLIAMENTARY COMMISSIONER FOR
ADMINISTRATION - LOCAL OMBUDSMAN REMEDIES

Introduction

1. The Third Report of the Select Committee on the Parliamentary Commissioner for Administration published in June 1986 examined ways of reducing the number of cases where local authorities have not complied with the findings of the local ombudsman. The main conclusion reached was that the Select Committee itself should intervene directly by calling recalcitrant councils to account.

2. At about the same time as the Select Committee published its proposals, the Widdicombe Committee published its report on the Conduct of Local Authority Business. This recommended - inter alia - that there should be a new statutory right for complainants to apply to the county or ~~sheriff~~^{SHERIFF} court for a remedy in cases where the Local Ombudsman has found maladministration leading to injustice and the complainant is dissatisfied with the remedy offered by local authority. Handwritten signature
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3. The Government - with the agreement of the Select Committee - undertook to consider both proposals together, and consulted widely with local authorities and other interested organisations on these and the other Widdicombe recommendations. It was originally intended that the Government's response on the particular issues raised by the Select Committee would be included within the main response to the Widdicombe Report. However, because of the complexity and scope of the Widdicombe recommendations, the main response has not yet been made. The Government have therefore decided to announce its conclusions on both the Select Committee and Widdicombe proposals for securing a greater degree of compliance with Local Ombudsman remedies, in advance of the main response to the recommendations of the Widdicombe Committee. This paper sets out these conclusions.

THE CASE FOR TAKING ACTION TO IMPROVE THE RATE OF COMPLIANCE

4. In 1984 the Commission for Local Administration in England recommended that unless voluntary compliance improved, the Government should introduce legislation to provide judicial enforcement of remedies. The Secretary of State for the Environment's response in September 1985 agreed that steps were required to secure greater compliance. He supported, in the first instance, an initiative by the Local Authority Associations, which had written to each authority urging speedy and total compliance with all recommendations of the Local Ombudsman. The Secretary of State said he would watch the effects of that initiative with close interest before deciding whether further measures were required.

5. Regrettably, there does not seem to have been any significant improvement in the rate of compliance as a result of this initiative. The number of cases in England since 1974 where a local authority has failed to provide a satisfactory remedy following a finding of injustice caused by maladministration by the local ombudsman, has now risen to 120. This still represents about 6% of all cases where injustice caused by maladministration has been found, though the rate has come down from around 8% in the early years to about 5% more recently. There does not seem to be any pattern on non-compliance. The cases are widely distributed across all types of local authority. In total, 84 authorities have not complied with ombudsman remedies (some on several occasions). A list of these authorities is at Annex A. The Government is continuing to monitor the situation closely.

6. Although a rate of compliance of 94% might in other circumstances be considered good for a voluntary system, it is the other 6% of 'failures' which not unnaturally attract attention. There is no doubt that these cases serve to produce a particularly marked sense of grievance on the part of the complainants in these cases, as well as undermining the credibility of the ombudsman system - and to certain extent of local government itself. The Government therefore agree with the Select Committee that the rate of compliance is unsatisfactory, and that further steps should now be taken to improve it.

7. In deciding what these steps should be it is necessary to consider:-

- a) whether there are any further measures that ^{should?} ~~be~~ ^{SHOULD} taken to improve voluntary compliance; or
- b) whether it is now necessary to introduce some form of statutory or judicial enforcement.

The second - and more radical - option is examined first.

JUDICIAL ENFORCEMENT - THE WIDDICOMBE SOLUTION

8. The Widdicombe Report and the 1980 report by JUSTICE, as well as the Commission for Local Administration itself, favour a system which would give complainants the right to seek judicial enforcement of the local ombudsman's proposed remedies for injustice. This would be similar to the system currently operating in Northern Ireland.

9. Judicial enforcement of remedies has been a feature of the Northern Ireland local ombudsman system from the outset, and it apparently works well within the context of the Province. However it is unique - as far as is known among Ombudsman systems worldwide and there is no evidence that the Northern Ireland system would translate happily into a mainland setting. Certainly such a move would be highly contentious. This in itself would be likely to make councils less willing to cooperate in ombudsman investigations, and more willing to challenge the judicial process.

10. If judicial enforcement were introduced there could be particular difficulties over evidential status. Local authorities in Northern Ireland have not so far sought to challenge in court the facts of the Commissioner's reports unless as a result their evidential status has never been tested. It is doubtful whether local authorities in Great Britain would be so willing to accept Local Ombudsman reports as conclusive of the facts. One of the essential features of the ombudsman system is that it is an informal investigative procedure and is not subject to the normal judicial rules, which provide for each side to test evidence under cross examination. If there was a possibility that Local Ombudsman reports could subsequently be used as a basis for a court order, local authorities could be expected to be less willing to cooperate with the ombudsman. Investigations would become increasingly formalised, legalistic, costly and even lengthier than they already are. Complainants might find the process more intimidating, and flexibility would be lost.

11. The Government are supported in this view by the comments made by local authorities themselves, including the Representative Body for the Commission on Local Administration in England, which ^{expressed themselves} ~~was~~ firmly against the Widdicombe proposals for enforcement of remedies. Recent research carried out for DOE by Professor Lewis of Sheffield University into complaint procedures in local government also supports anxieties about formalisation. It concludes that even "good" authorities would become defensive, and that the scope for cooperation and negotiation could diminish. As a price for judicial enforcement most authorities will require the ombudsmen's procedures to become more judicial, and more adversarial. Many would press for an appeal against findings of fact.

12. The Government have concluded that on balance the disadvantages of judicial enforcement outweigh any benefits it might bring by way of improved compliance amongst recalcitrant councils. Similar arguments apply to the other options for statutory enforcement put forward in the JUSTICE report. The Government have therefore decided against the introduction of statutory or judicial enforcement of local ombudsman remedies.

THE SELECT COMMITTEE'S PROPOSAL

13. The most attractive feature of the Select Committee's proposal, that it should have a role in calling recalcitrant councils to account, is that it builds on the existing voluntary principle and would not require primary legislation. The Select Committee has already proved effective in persuading Government Departments to comply with recommendations of the Parliamentary Commissioner. The Committee would be able to bring their considerable experience to bear. It could have a strong deterrent effect on the small district councils, who account for a fair proportion of the non-compliance, and who may not relish close questioning in a Parliamentary setting and on the public record.

14. However, against this might be weighed the constitutional implications of a novel arrangement such as this. The Local Ombudsman service is constituted and perceived as a service for local authorities, funded by them and working with them in a voluntary framework. The Select Committee proposal would be strongly opposed by local government, who could be expected to see it as 'centralising' in intention and effect. On a fundamental constitutional point, they also consider that they are not accountable to Parliament although recognising that they operate within a statutory framework laid down by Parliament. The Representative Body have made this clear in their comments on the proposal.

15. There could also be other disadvantages. A small minority of councils might welcome an appearance at Parliament for the political opportunities it might present. The individual complainant's interests could be lost even further from sight in these circumstances.

16. The arguments are finely balanced, but the Government does not feel able in the circumstances to commend the proposal. Its likely effectiveness is uncertain; and it could prove damaging to the Local Ombudsman's relationship with local government, as well as affecting Parliament's relationship with local authorities.

AN ALTERNATIVE PROPOSAL

17. The Government have considered whether there are any alternative ways in which the rate of compliance might be improved. They believe that more local pressure needs to be placed on local authorities to comply with ombudsman findings, that much more could be done to ensure that adverse reports are fully and properly considered by councils, and that councils should give a full and public explanation if they decide not to comply with a recommendation of the Local Ombudsman.

18. The current arrangements assume that, when faced with an adverse report, a council will be guided by proper motives to consider it openly and remedy the injustice; and that "the best sanction against maladministration is the weight of public opinion, which is in turn dependent upon full information" (DOE Circular 76/74). Despite that, the 1974 Act in England and Wales and the 1975 Act in Scotland impose no requirements on how an authority should consider an adverse report, and only a very limited requirement for publicity.

19. The Government consider that provision should therefore be made to ensure that all adverse reports receive proper consideration, and that non-compliance in particular cases would be put firmly in the public spotlight. They therefore propose:-

- a) A requirement that decisions not to comply with remedies proposed in an adverse report from the Local Ombudsman should be taken by the council as a whole; (this is relatively rare at present);
- b) Councils should be required to respond to all adverse reports in a set time, say, 3 months; (at present extended delays often make it difficult for the Local Ombudsman to determine whether a council is procrastinating or defaulting);
- c) Councils should be required to inform the Local Ombudsman what steps they have taken, or propose to take, to prevent similar injustices recurring;
- d) Officers or members criticised by a report should be prohibited from determining or taking the lead on the council's proposed response; (at present there is a suspicion that 'guilty' parties sometimes do so in order to undermine or discredit the Local Ombudsman's report);
- e) In cases of non-compliance, councils should be required to publish in local newspapers a statement provided by the Local Ombudsman, together with their own reasons for not remedying the injustice; the Local Ombudsman would have a default power to effect the publication; (at present councils must simply advertise the availability of a report for inspection, without any requirement to outline its contents);
- f) Where a Local Ombudsman report of maladministration by the Council has involved a breach by a councillor of the National Code of Local Government Conduct, the errant councillor should be named in the Local Ombudsman's report.

20. Taken together, these provisions should ensure appropriate publicity and help to ensure that decisions not to comply are well considered and justified in public. Furthermore, whilst they would make the system more rigorous, they maintain the voluntary and informal basis of ombudsman proceedings.

21. The Government intend introducing the necessary legislation to implement these proposals in due course.



10 DOWNING STREET
LONDON SW1A 2AA

18 January 1988

From the Private Secretary

Dear Roger,

RESPONSE TO THE SELECT COMMITTEE - LOCAL OMBUDSMAN
RECOMMENDATIONS

The Prime Minister has seen your Secretary of State's letter to the Lord Chancellor of 13 January. She is content with his proposals.

I am copying this letter to the Private Secretaries to other members of H Committee, Alison Smith (Lord President's Office), Shirley Staff (Ministry of Agriculture, Fisheries and Food) and Trevor Woolley (Cabinet Office).

*Yes,
Paul*

Paul Gray

Roger Bright, Esq.,
Department of the Environment.

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ABG
Appts

PRIME MINISTER

15 January 1988

RESPONSE TO THE SELECT COMMITTEE -
LOCAL OMBUDSMAN RECOMMENDATION

Nicholas Ridley has written to the Lord Chancellor about the Government's response to the Select Committee on the Parliamentary Commissioner for Administration's recommendation that the Committee should be able to summon local authorities that have failed to comply with a finding of maladministration by the local Ombudsman.

The Ombudsman System

The Ombudsman system is an informal way of dealing with grievances by individuals about local authority administrative decisions. 94% of the Ombudsman's findings of maladministration are remedied. The Ombudsman does not deal with cases where the local authority have acted illegally, that is a matter for the courts. The strength of the system is its informality and its investigative nature, it aims to determine the facts and make recommendations accordingly. Cases can be dealt with in a reasonably speedy and straightforward way.

The Systems Failings

Nevertheless it is a matter of concern that in 6% of cases local authorities fail to remedy a finding of maladministration. Although the Ombudsman is bound to make occasional errors of judgement, the present arrangements make it too easy for local authority officials to persuade their councils not to comply with the Ombudsman's findings and to keep adverse findings from public view.

A Right of Appeal to the Courts

The Widdicombe Report proposed that there should be a right of appeal to the courts. This would clearly give an important new right to citizens that would remedy the injustice felt under the present system. But it would also:

- Make the procedure much more legalistic and cumbersome. Local authorities would need to act in each case in the knowledge that it could eventually go before a court. They would have to seek legal advice at every stage and be much more defensive in their dealings with the Ombudsman. These could well be a worse service for the 94% of cases where local authorities comply at present and they might even take a proportion of these cases to court, instead of remedying them.

- Set a clear precedent for the central Government and Health Service Ombudsmen. It is difficult to see how one would justify denying such a right in these cases whilst granting it for complaints about local authorities. Judges already are increasingly willing to get involved in challenging the legality of administrative decisions. This would extend their role by bringing the courts into decisions about whether a decision that was legal nevertheless constituted maladministration.

Although there is a right of enforcement by the courts in Northern Ireland, this has worked mainly because local authorities do not challenge the facts as found by the Ombudsman. This is most unlikely to happen in England and the courts would face a major new task in determining what constitutes maladministration.

Appeal to the Select Committee

The Select Committee proposed alternatively that it should be able to call local authorities to account for failure remedy findings of maladministration. This has some attraction since it would certainly make local authorities think more carefully about disregarding an Ombudsman's finding. But within their statutory responsibilities as laid down by Parliament, local authorities derive political power directly from their electorate, however imperfect the present mechanisms for accountability may be. The Select Committee's approach would be a highly controversial change in the constitutional position of local authorities.

Strengthening the Present System

Neither of the alternatives looks better than trying to improve the present procedures by making the local authorities consideration of adverse reports more speedy, fair and open, as Nicholas Ridley proposes.

Conclusion

n We agree that Nicholas Ridley should reply to the Select Committee as suggested in the draft note attached to his letter to the Lord Chancellor.

Peter Stredder

PETER STREDDER

Local Govt. Rels.





CEBA

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

29 February 1988

MBM
BRUB
1/3

Dear Nick

RESPONSE TO THE SELECT COMMITTEE: LOCAL OMBUDSMAN RECOMMENDATIONS

You wrote to James MacKay on 13 January seeking H Committee's agreement to your draft response to the Select Committee on the Parliamentary Commissioner for Administration's recommendations for securing compliance with local ombudsmen's reports.

The Prime Minister, James MacKay, Malcolm Rifkind, Peter Walker and Kenneth Clarke indicated that they were content. Peter and Malcolm confirmed that they would wish the response to cover the whole of Great Britain and suggested some amendments to reflect the position in Wales and in Scotland. Kenneth Baker raised some points on the mechanics of your proposal to which you have now responded to his satisfaction.

No other colleague has commented and you may take it therefore that you have H Committee's agreement to the publication of the response to the Select Committee.

I am copying this letter to the Prime Minister, members of H Committee, John MacGregor and Sir Robin Butler.

John Wakeham
John

JOHN WAKEHAM

The Rt Hon Nicholas Ridley AMICE MP
Secretary of State for the Environment

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the department for Enterprise

cebl

The Rt. Hon. Kenneth Clarke QC MP
Chancellor of the Duchy of Lancaster and
Minister of Trade and Industry

Rt Hon Nicholas Ridley MP
Secretary of State
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Our ref

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Date 29 January 1988

*NBRM
RCCG
2/11*

The Rt.

LOCAL AUTHORITY COMMITTEES AND LOCAL OMBUDSMAN RECOMMENDATIONS

Thank you for copying to me your two letters of 13^{at flap} and 18 January to James MacKay.

I will request f reqd.
I am content with the policy you propose to adopt as regards the creation of a statutory framework for the membership of local authority committees, though I note that this cannot be accomplished via the Local Government Bill. I can also agree your proposals for replying to the Select Committee on the question of compliance by local authorities with local ombudsman recommendations.

I am copying this letter to the recipients of yours.

KENNETH CLARKE

JA5ADH



ELIZABETH HOUSE
YORK ROAD
LONDON SE1 7PH
01-934 9000

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
LONDON
SW1P 3EB

CCBG
NBPM at his stage

REC 6
28/1

26 January 1988

Jim Mikh

RESPONSE TO THE SELECT COMMITTEE - LOCAL OMBUDSMAN RECOMMENDATIONS

You copied to me your letter of 13 January to the Lord Chancellor.

I share your view that the Widdicombe proposals for judicial enforcement are not the answer here and I find persuasive your arguments against the Select Committee's alternative that it should itself summon representatives of recalcitrant councils. I do, however, have some reservations about your own package of measures as outlined in paragraph 19 of your draft response to the Select Committee.

Your proposals appear to contemplate only the case where a council decides not to comply with any of the recommendations of the local ombudsman on a particular matter. It may well be that it decides to comply to a limited extent. What happens then? What is to happen if, after an adverse report, there is correspondence between the council and the local ombudsman resulting in the ombudsman agreeing to an alternative remedy proposed by the council?

I take your proposal to require the full council to take any decision not to comply with the local ombudsman's recommended remedies to mean that there must be a resolution of full council, not merely an acceptance of a resolution by a committee. In preparing the necessary legislation we shall need to have regard to the statutory position of council committees such as Education Committees.

My only other points are:

- a. On 19b, I see the need for pressure but is three months too short a time to prescribe for responses given the usual frequency of county council meetings and the committee cycle?

- b. On 19c, could not a stubborn council simply say that it did not accept that there had been an injustice and that it therefore proposed to make no changes?
- c. On 19d, I assume that you do not intend to preclude councils consulting officials or members who have previously been involved in the case and who may have been criticised in the report? Such people should surely not be denied the right to contribute to the material that will be before council when it determines its response? And what if the decision criticised by the local ombudsman was taken by the council as a whole? Who then determines the response, or takes the lead on it?

I am copying this letter to the Prime Minister, the Lord President, other members of H Committee, the Minister for Agriculture, Fisheries and Food and Sir Robin Butler.

*Tommy
Hunt*

LOCAL COV: Relations Pr 34





HOUSE OF LORDS,
SW1A 0PW

22 January 1988

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NBPM

PRIG
25/1

Dear Nick,

Response to the Select Committee -
Local Ombudsman's Recommendations

Thank you for your letter of ^{13th} 13th January in which you seek colleagues' approval to arrangements for handling the question of local authority compliance with Local Ombudsman reports.

I am content with the legislative proposals that you describe to secure a greater measure of compliance. I am also content with the draft response to the Select Committee, subject to a number of detailed points which I have arranged to be passed on to your officials.

I am copying this letter to the Prime Minister, the Lord President, other members of H Committee, the Minister of Agriculture, Fisheries and Food and Sir Robin Butler.

Yours ever,

Jan.

The Right Honourable
Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London SW1P 3EP

LOCAL GOVT: Relations PT34.



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

Lord Mackay of Clashfern
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

NRM

** Recd 20/1*

20 January 1988

Dear James,

**RESPONSE TO THE SELECT COMMITTEE ON THE PCA -
LOCAL OMBUDSMAN RECOMMENDATIONS**

lap

I refer to Nicholas Ridley's letter to you of 13 January about the proposed response to the Select Committee dealing with their own and the Widdicombe Committee's recommendations for securing compliance by local authorities with remedies suggested by the local ombudsmen.

I fully agree with Nicholas that an early and separate response to the Select Committee, in advance of our response to the Widdicombe Report as a whole, is now unavoidable. I agree also that our alternative package of proposals should be put forward at the same time.

The draft response attached to Nicholas's letter requires some minor amendments if it is to reflect the position in Scotland, and my officials are in touch with his about this.

I am copying this letter to the Prime Minister, the Lord President, other members of H Committee, the Minister for Agriculture, Fisheries and Food and Sir Robin Butler.

Yours ever,
Malcolm Rifkind

MALCOLM RIFKIND