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*Dear Willie,*

### RESPONSE TO THE FOURTH REPORT FROM THE SELECT COMMITTEE ON THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

The Fourth Report from the Select Committee on the Parliamentary Commissioner for Administration (PCA), Session 1983-84, recommends the extension of the PCA's jurisdiction (or in some cases the Commissioners for Local Administration's jurisdiction) to a number of non-Crown non-departmental public bodies (NDPBs) with executive or administrative functions. The list is at Annex A.

The PCA's present jurisdiction extends only to Crown bodies listed in Schedule 2 to the Parliamentary Commissioner Act 1967. These are mainly government departments but also include a handful of NPDBs which have Crown status. The Act applies only to Crown bodies; primary legislation would be needed to extend the PCA's jurisdiction to non-Crown bodies.

The definition of Crown status is extremely difficult in many cases. That in itself makes it, as the Select Committee's report points out, a flimsy basis for limiting the PCA's jurisdiction. But there is a more substantial consideration. Since the 1967 Act, when the line was drawn at 'Crown' bodies, the ombudsman system has been extended to the National Health Service and local government. NPDBs (and the nationalised industries, which as commercial trading bodies there are good grounds for excluding) now stand out as public organisations which are not covered by ombudsman arrangements. A number of NPDBs operate in ways (awarding grants, regulating activity)

which impact directly on individual citizens, small businesses and others and which are not dissimilar from central government functions. The Select Committee argues that people who have been wronged by administrative action should have all appropriate remedies open to them, and that in the case of wrongs committed by a publicly funded body whose functions might just as appropriately be those of central government, recourse to the PCA is as appropriate as when wrongs are committed by central government itself.

The Select Committee could point to little evidence of public concern at possible maladministration by NDPBs. I understand that since 1980 the PCA has received only about 20 complaints about NDPBs. But that cuts both ways: if there is little maladministration, we cannot plausibly argue that the burden on NDPBs of extension is an argument against extension. Officials' best assessment is that extension of PCA jurisdiction would have minimal manpower consequences for NDPBs.

I can see no defensible grounds of principle or of practicality for resisting extension of the PCA's jurisdiction to appropriate non-Crown NDPBs. A positive response to the Select Committee should be popular and give us political credit at very little cost. If colleagues agree, there is then the question of which NDPBs should be covered.

The Select Committee's approach would exclude nationalised industries (other than the Civil Aviation Authority), tribunals, and advisory and other bodies which do not have a significant direct impact on citizens. These exclusions are sensible and are to be welcomed. But the proposed exclusion of charities gives rise to inconsistencies in the treatment of bodies doing very similar things and I believe we should avoid such a hard and fast exclusion. We need to give thought also to the treatment of bodies funded by statutory levy; the Select Committee's approach to these was inconsistent. The statutory power to raise a levy places these bodies in a privileged position and in my view warrants extending to those with whom they deal similar protection to that which would apply if the bodies were publicly funded.

It is important that the criteria to be adopted in determining whether a particular body is subject to investigation by the PCA should be coherent and comprehensible. Otherwise we should

face difficulty in resisting attempts to add unsuitable bodies to the list. It is particularly important that we do not draw in voluntary bodies which may, from time to time, benefit significantly from public funds. Such criteria are not readily deducible from the Select Committee's list of bodies which they recommend should be covered, and indeed their list includes some odd choices. I suggest that coverage should extend to NDPBs which have executive or administrative functions which directly affect individual citizens (including private companies) and which would come within the PCA's jurisdiction if the bodies were government departments; and which colleagues have some degree of responsibility for, through control over their financing and continued existence as public bodies.

Finally, there is the question of the timing of legislation. It should be possible to proceed by way of a short Bill which should not make significant demands on the Parliamentary timetable and could be fitted in as time allowed. The timing of such a Bill would need to be considered in the normal way. But it may be worth noting that if it is too long delayed we might be pre-empted by a Private Member's Bill and lose the credit for a positive response to the Select Committee.

I am therefore seeking colleagues' agreement that:

- a. we should accept the principle of extension of the PCA's jurisdiction to appropriate non-Crown NDPBs, and indicate our readiness to introduce legislation in due course;
- b. we should put forward more satisfactory criteria for identifying bodies to be covered by such extension, together with our own list of existing bodies to be covered; and
- c. we should respond to the Select Committee's report in the terms of Annex B.

I am copying this to members of H, other Ministers in charge of departments, the Prime Minister and Sir Robert Armstrong. I should be grateful for replies by 7 June.

*Y  
Lms,  
T/MS  
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GOWRIE

ANNEX A

EXECUTIVE NON-DEPARTMENTAL PUBLIC BODIES WHICH THE PCA SELECT COMMITTEE SUGGESTED SHOULD BE BROUGHT WITHIN THE JURISDICTION OF AN OMBUDSMAN

**Ministry of Agriculture, Fisheries and Food**

Sea Fish Industry Authority  
Agricultural Wages Board for England and Wales  
Agricultural Wages Committees (England)

**Office of Arts and Libraries**

Arts Council of Great Britain  
British Film Institute  
Crafts Council  
Museum and Galleries Commission  
Registrar of Public Lending Right

**Department of Education and Science**

Central Bureau for Educational Visits and Exchanges  
Agricultural and Food Research Council  
British Museum (Natural History)  
Medical Research Council  
Natural Environment Research Council  
Science and Engineering Research Council  
Economic and Social Research Council

**Department of Employment**

Community Industry  
Remploy  
Wages Councils

**Department of the Environment**

British Board of Agrément  
Commission for New Towns/New Town Development Corporations  
Countryside Commission  
Council for Small Industries in Rural Areas  
Development Commission  
Housing Corporation  
London Docklands Development Corporation  
Merseyside Development Corporation  
National Heritage Memorial Fund  
Nature Conservancy Council  
Historic Buildings and Monuments Commission  
Sports Council

**Department of Health and Social Security**

Attendance Allowance Board  
Occupational Pensions Board

**Home Office**

Criminal Injuries Compensation Board

**Scottish Office**

Edinburgh New Town Conservation Committee  
Countryside Commission for Scotland  
Highlands and Islands Development Board  
New Town Development Corporations  
Scottish Development Agency  
Scottish Special Housing Association  
Scottish Sports Council  
Scottish Tourist Board  
Crofters Commission  
Red Deer Commission  
Scottish Agricultural Wages Board

**Department of Trade and Industry**

British Technology Group  
English Tourist Board  
Post Office Users Consumer Council  
Post Office Users Councils of Scotland and Wales  
Monopolies and Mergers Commission

**Department of Transport**

Civil Aviation Authority

**Welsh Office**

Cymbran Development Corporation  
Development Board for Rural Wales  
Sports Council for Wales  
Wales Tourist Board  
Welsh Development Agency  
Welsh Agricultural Wages Commission

(WP:ombuds)

DRAFT

FOURTH REPORT FROM THE SELECT COMMITTEE ON THE  
PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

SESSION 1983-84

Observations by the Government

Introductory

1. This White Paper contains the Government's response to the observations and recommendations made in the Select Committee's Fourth Report for Session 1983-84 (HC 619).

Extension of PCA's Jurisdiction

2. A note on the existing jurisdiction and method of operation of the Parliamentary Commissioner for Administration (PCA) is at Appendix A. The Select Committee recommended that the jurisdiction of the PCA (or in some cases the Commissioners for Local Administration) should be extended to certain executive non-departmental public bodies listed in the Appendix to their report. The Select Committee excluded from their list advisory bodies, where Ministers are responsible for the use they make of advice, and tribunals, which are subject to the scrutiny of the Council on Tribunals. They also excluded professional bodies, or those whose function is to disseminate knowledge in a particular field, and various promotion examination boards.

3. The Government has considered carefully the Select Committee's recommendation. The Select Committee has put forward no evidence of any significant maladministration by any of the bodies recommended for inclusion in the PCA's jurisdiction. Nevertheless the Government agrees that there is a case in principle for extending the PCA's jurisdiction to the actions of certain non-departmental public bodies. Potential for maladministration is not confined to Crown bodies and a number of non-departmental public bodies have functions whose impact on citizens is as significant as that of government

departments. It is right that appropriate protection should be available in respect of the actions or inaction of such bodies. The Government agrees with the exclusions proposed by the Select Committee referred to in paragraph 2 above and considers that PCA jurisdiction should be extended to non-departmental public bodies which:

- a. have executive or administrative functions which directly affect individual citizens or groups of citizens (including companies) and which would be within the PCA's jurisdiction if carried out by a government department; and
- b. are subject to some degree of ultimate ministerial accountability to Parliament, in that they are dependent for their financing and continued existence on Government policy (even if legislation would be needed to abolish them).

4. As the Select Committee has recognised, the functions of non-departmental public bodies vary significantly. Extension of PCA jurisdiction needs to take account of this diversity. The Government considers that it would be inappropriate to bring within the PCA's jurisdiction bodies whose direct impact on individuals is insignificant.

#### Charities

5. The Select Committee proposed to exclude non-departmental public bodies which are charities, on the grounds that these are subject to the authority of the Charity Commissioners. The Government has some sympathy with this view but considers that a hard and fast exclusion might give rise to anomalies, in that one body which had charitable status would be excluded while a very similar body which did not have such status would be included in PCA jurisdiction. Moreover, the Charity Commissioners' remit does not extend to Scotland. The Government has therefore concluded that charities should be considered for inclusion within PCA Jurisdiction on the same basis as other NDPBs.

### Levy Funded Bodies

6. The Select Committee discussed the position of levy funded non-departmental public bodies, and expressed the hope that when these were set up in future they would be brought within PCA jurisdiction. The Government considers that it would be inconsistent to distinguish between existing and future levy-funded bodies. It proposes, therefore, to bring within PCA Jurisdiction both existing and new bodies funded by statutory levy when they satisfy the criteria in paragraph 3.

### Nationalised Industries

7. The Select Committee left the nationalised industries out of their deliberations and made no recommendations save with respect to the Civil Aviation Authority. The Government considers that nationalised industries should be subject to commercial disciplines appropriate to trading organisations. They are in no sense a part of the administrative apparatus of government. In a number of cases there are also consumer councils specifically to represent the interests of consumers. Accordingly the Government does not consider that nationalised industries should be brought within PCA jurisdiction.

### NDPBs with Commercial Functions

8. The Select Committee noted that a number of non-departmental public bodies operate in a commercial or contractual manner, but suggested that complaints relating other than to the ultimate commercial decisions of such bodies might be subject to PCA examination. The Select Committee appears to have under-estimated the extent to which the procedures operated by such bodies as well as the decisions they reach are a response to commercial considerations. Several public bodies have been set up to operate at arm's length from government in order to enable them to operate in an entrepreneurial way. Their activities are more analagous to those of nationalised industries than to those of government departments. The Government considers that NDPBs whose functions



are exclusively or predominantly commercial in character should not be brought within PCA jurisdiction.

#### Extension of Jurisdiction

9. The Government proposes to introduce legislation in due course to amend the Parliamentary Commissioner Act 1967 to allow the PCA to investigate actions which are not taken on behalf of the Crown, so as to allow the bodies listed in Appendix B to this White Paper to be added to Schedule 2 of the Act. Appendix B excludes certain bodies which were included in the Appendix to the Select Committee's report. The reasons for their exclusion are set out in Appendix C.

10. The Select Committee has proposed that all the functions of the Commission for the New Towns, New Town Development Corporations and Urban Development Corporations should be brought within the purview of the Commissioners for Local Administration (CLAs). The Government agrees that the functions of these bodies should come within the purview of an "ombudsman". But, in view of the responsibility of Ministers for their policies and funding, it would be more appropriate for the PCA to assume general jurisdiction. Two exceptions to this principle have however already been announced. Firstly, the housing functions of new town bodies will come within the jurisdiction of the CLAs, so achieving consistency with the ultimate position when those functions will become the responsibility of district councils. Secondly, the development control functions of the Urban Development Corporations will be within the purview of the CLAs since they correspond closely to local government functions. The resulting split jurisdiction between the PCA and CLAs should not present problems but the government undertakes to consult all the Commissioners before finalising the arrangements.

#### Enforcement of PCA Judgements

11. The Government has noted and accepts the Select Committee's view in paragraph 16 of their report that there is no need for Ministerial powers to order bodies whose day to day actions are not subject to Ministerial control to comply with PCA Judgements. The Select

Committee recognises that dismissal of a body's Chairman as a means of securing compliance with PCA judgements would be a sledgehammer but suggests that financial sanctions might be applied. While the Government considers withholding of funds is not to be undertaken lightly, it believes that the authority of the PCA should prove sufficient to secure an appropriate remedy.

#### Referral of Complaints

12. The Government has noted and accepts the Select Committee's view in paragraph 18 of its report that the method of referral to the PCA of complaints against non-departmental public bodies should be the usual one.

## THE ROLE OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (PCA)

The Parliamentary Commissioner for Administration investigates complaints referred to him by Members of Parliament from members of the public who claim to have suffered injustice as a result of 'maladministration' by central government departments and certain other authorities. Separate "ombudsman" arrangements apply to the National Health Service and to local authorities.

What constitutes maladministration is not defined in the legislation governing PCA's activity (the Parliamentary Commissioner Act 1967). Before pursuing a complaint PCA will satisfy himself that it relates to a body and area of activity which is within his jurisdiction, that there is some evidence from which it may reasonably be inferred that there has been administrative fault, that there is an apparent link between the alleged maladministration and the personal injustice that the complainant claims to have suffered, and that there is some prospect of his intervention leading to a worthwhile remedy for the complainant or some benefit to the public at large. Examples of maladministration which may give rise to injustice are undue delay in dealing with a case, failure to follow prescribed procedures or a misapplication of rules.

With certain exceptions, PCA may investigate any action taken in the exercise of a department's administrative functions. He may not question the merits of discretionary decisions taken without maladministration. Nor may he conduct investigations into matters where legal remedies exist, unless in the circumstances of a particular case he considers it unreasonable to expect the complainant to resort to such remedies. The 1967 Act gives PCA ultimate discretion to initiate, continue or discontinue an investigation.

Certain areas of administrative activity, listed in Schedule 3 to the Parliamentary Commissioner Act 1967, are at present outside PCA's jurisdiction. Some of these relate to the conduct of foreign affairs. Other significant exclusions include:

- a. civil and criminal proceedings;
- b. "personnel" matters; and

- c. matters relating to contractual or other commercial transactions (other than those concerning the compulsory acquisition of land or the disposal of land acquired compulsorily.)

The bodies subject to investigation by the PCA are listed in Schedule 2 to the Parliamentary Commissioner Act 1967. This at present extends only to central government departments and a few other authorities whose functions are exercised on behalf of the Crown. Most non-departmental public bodies are thus excluded from PCA's jurisdiction.

NON-DEPARTMENTAL PUBLIC BODIES  
TO WHICH IT IS PROPOSED TO EXTEND PCA JURISDICTION

Ministry of Agriculture, Fisheries and Food

Agricultural Training Board  
Agricultural Wages Committees (England)

Office of Arts and Libraries

Arts Council of Great Britain  
British Film Institute  
British Library  
Crafts Council  
Museums and Galleries Commission  
Registrar of Public Lending Right

Department of Education and Science

Central Bureau for Educational Visits and Exchanges  
Agricultural and Food Research Council  
Economic and Social Research Council  
Medical Research Council  
Natural Environment Research Council  
Science and Engineering Research Council

Department of Employment

Industrial Training Boards

Department of the Environment

Countryside Commission  
Council for Small Industries in Rural Areas  
Development Commission  
Historic Buildings and Monuments Commission  
Housing Corporation  
New Town Development Corporations  
Commission for the New Towns  
London Docklands Development Corporation  
Merseyside Development Corporation  
National Heritage Memorial Fund  
Nature Conservancy Council  
Sports Council

Foreign and Commonwealth Office

British Council  
Institute of Development Studies

Department of Health and Social Security

Central Council for Education and Training in Social Work  
Medical Practices Committee

Home Office

Commission for Racial Equality  
Equal Opportunities Commission  
Police Complaints Authority

Northern Ireland Office

Police Complaints Board for Northern Ireland.

Scottish Office

Countryside Commission for Scotland  
Crofters Commission  
Edinburgh New Town Conservation Committee  
Highlands and Islands Development Board  
New Town Development Corporations  
Red Deer Commission  
Scottish Medical Practices Committee  
Scottish Special Housing Association  
Scottish Sports Council  
Scottish Tourist Board

Department of Trade and Industry

Co-operative Development Agency  
English Tourist Board

Department of Transport

General Lighthouse Authorities

Welsh Office

Agricultural Wages Committees  
Cwmbran Development Corporation  
Development Board for Rural Wales  
Sports Council for Wales  
Wales Tourist Board

NON-DEPARTMENTAL PUBLIC BODIES LISTED BY THE SELECT COMMITTEE WHICH  
ARE EXCLUDED FROM APPENDIX B

Sea Fish Industry Authority

In awarding grants the Authority is acting on behalf of Ministers responsible for fisheries in the exercise of their administrative functions. In the Government's views these functions are, by virtue of section 5 of the Parliamentary Commissioner Act, already within the jurisdiction of the PCA. Specifically to extend PCA jurisdiction to the Authority itself is therefore unnecessary.

Community Industry

CI is a voluntary body with which the Department of Employment has a contractual arrangement to provide work experience for disadvantaged young people. CI's relationships with citizens are exclusively contractual or personnel ones and so outside PCA Jurisdiction.

Remploy

Remploy is a trading company with no executive or administrative functions other than contractual and personnel relationships.

Wages Councils

Agricultural Wages Board for England and Wales

Scottish Agricultural Wages Board

These bodies decide on minimum wages and other terms and conditions of employment. The bodies' decisions are in their nature discretionary. Such potential for maladministration as exists relates to the administrative and executive functions of the staff who support them. These staff are civil servants employed by the Department of Employment, MAFF and the Scottish Office and as such are already subject to PCA jurisdiction.

### British Board of Agreement

The Board's relationship with manufacturers whose products it assesses at their request, with a view to award of an agreement certificate, is a contractual one and so outside PCA jurisdiction.

### Attendance Allowance Board

The Board exercises the quasi-judicial function of deciding the medical conditions for receipt of attendance allowance. The Board has no administrative functions, these being exercised by DHSS staff and so already within PCA jurisdiction.

### Occupational Pensions Board

The Board exercises a quasi-judicial function in determining whether occupational pension schemes may be certified as "contracted-out". In conducting formal hearings of appeals against these determinations it is subject to the oversight of the Council on Tribunals.

### Criminal Injuries Compensation Board

The Board is a quasi-judicial tribunal. Consideration is being given to putting the Scheme administered by the Board on a statutory basis and subjecting the Board to the supervision of the Council of Tribunals.

### British Technology Group

#### Scottish Development Agency

#### Welsh Development Agency

The components of the BTG, the National Enterprise Board and the National Research and Development Corporation, operate exclusively commercially, exercising discretionary judgements. The Agencies perform a range of functions concerning economic development and environmental improvement; they pursue these functions by means of an integrated entrepreneurial approach, promoting and responding to commercial opportunities on the basis of discretionary judgments, operating wherever possible in partnership with the private sector. These bodies' procedures are responsive to commercial considerations



and it would inhibit their effectiveness to subject them to standards of administrative procedure appropriate to government departments or other regulatory agencies.

#### Civil Aviation Authority

The CAA is a nationalised industry. Its air navigation and air traffic control services are trading activities run on nationalised industry lines and in relation to these activities the CAA should be treated on the same basis as other nationalised industries. In addition the CAA does have regulatory activities but these are subject to scrutiny by the Council on Tribunals.

#### Post Office Users Consumer Council

#### Post Office Users Councils of Scotland and Wales

The functions of these bodies are similar to those of other nationalised industry consumer councils excluded from the Select Committee's list. They have no executive or administrative functions which directly affect citizens.

#### Monopolies and Mergers Commission

The MMC's function is to advise Ministers on matters within its terms of reference. It has no executive or administrative functions. Its findings are published in full and open to judicial review.

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