

**REPORT TO: POLICY AND RESOURCES COMMITTEE - 11TH DECEMBER, 2000**

**REPORT ON: MODERNISING THE COMPLAINTS SYSTEM – CONSULTATION ON PUBLIC SECTOR OMBUDSMEN IN SCOTLAND**

**REPORT BY: DIRECTOR OF SUPPORT SERVICES**

**REPORT NO: 765-2000**

## **1.0 PURPOSE OF REPORT**

1.1 The purpose of this report is to seek approval for a proposed response to the Scottish Executive's consultation document "Modernising the Complaints System – Consultation on Public Sector Ombudsmen in Scotland".

## **2.0 RECOMMENDATIONS**

2.1 It is recommended that the Committee approve the proposed responses in Paragraph 6.4 as the Council's response to the Scottish Executive's consultation document "Modernising the Complaints System – Consultation on Public Sector Ombudsmen in Scotland", a copy of which has been placed in the Councillors' Lounge.

## **3.0 FINANCIAL IMPLICATIONS**

3.1 If the proposal to fund Ombudsmen by a charge on the Scottish Consolidated Fund were put into effect there would be a reduction in the Council's revenue support grant.

## **4.0 LOCAL AGENDA 21 IMPLICATIONS**

4.1 There are no Local Agenda 21 implications arising directly out of this report.

## **5.0 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 There are no Equal Opportunities implications arising directly out of this report.

## **6.0 MAIN TEXT**

6.1 The Scottish Executive wish to set up a new complaints system which is specifically designed to suit Scottish circumstances in succession to the three separate offices of the Scottish Parliamentary Commissioner for Administration (who is responsible for investigating certain complaints of maladministration referred to him by an MSP and is soon to be known as the Scottish Parliamentary Ombudsman), the Health Service Commissioner for Scotland ("The Health Service Ombudsman") and the Commissioner for Local Administration in Scotland ("The Local Government Ombudsman"), along with certain other Ombudsmen in the Public Sector. They have therefore issued a consultation document "Modernising the Complaints System – Consultation on Public Sector Ombudsmen in Scotland".

6.2 Responses to the consultation document will be used by the Scottish Executive to prepare firm proposals, probably including a draft Bill, which will be the subject of further public consultation early in 2001. Ultimately, the proposals will be given effect by an Act of the Scottish Parliament.

6.3 Responses have been requested by 10 January 2001 on sixty questions.

6.4 Those with particular relevance to Local Government are as follows:-

Paragraphs 3.6 and 3.7 - Consideration is given to extending the Ombudsmen's remit to include discretionary decisions which are manifestly unreasonable, decisions in the process leading up to commercial contracts and transactions, for example refusing to invite a particular company to submit a tender, the internal organisation and management of schools, and staff appointments, especially in cases where an external applicant alleges that proper procedures have not been followed.

Proposed Response - As regards discretionary decisions, the fact that people aggrieved have recourse through the courts means that an extension of the Ombudsmen's remit is neither necessary nor appropriate. As regards decisions in the process leading up to commercial contracts and transactions, the internal organisation and management of schools, and staff appointments, it is not clear why the Scottish Executive and the Local Government Ombudsman think it appropriate to extend the Ombudsmen's remit here and, in the absence of sound reasons, there seems no need to depart from the status quo.

Paragraphs 4.5 and 4.6 - Consideration is given to whether complaints should be allowed to be made by anyone who becomes aware of a case of maladministration, rather than simply by the person directly affected as at present, and whether representatives should be allowed to complain, which is not possible at present unless the aggrieved person has died or is incapacitated through accident or ill-health from complaining himself.

Proposed Response - As regards allowing anyone who becomes aware of a case of maladministration to complain, the possibility of deliberate disruption of the work of the authority complained against together with the likely increase in workload for the Ombudsmen's staff if a screening process is introduced suggests that the present approach should be maintained. As regards allowing representatives to complain, in the absence of evidence that the present procedure is preventing or dissuading people from complaining effectively there seems no reason to depart from the status quo.

Paragraph 4.10 - Consideration is given as to whether complaints should require to be made within 12 months of the matter complained about as at present or if a longer time limit should be allowed.

Proposed Response - Twelve months should continue to be the time limit as investigations after that time period are not likely to serve a useful purpose and may in fact be impossible because of a lack of information.

Paragraphs 4.12 and 4.13 - Consideration is given as to whether Ombudsmen should have power to initiate investigations without a complaint having been made and whether authorities should be able to request an Ombudsman to carry out an investigation.

Proposed Response -	If some evidence arises during an investigation of maladministration by the Ombudsman outwith the remit of that particular investigation it seems reasonable for the Ombudsman to investigate that maladministration.
Paragraph 5.2 -	Consideration is given as to whether there should be more detailed legislative provision on procedures for investigation.
Proposed Response -	For the reasons the Scottish Executive gives there is no need for more detailed legislative provision here.
Paragraph 6.2 and 6.4 -	Consideration is given as to whether Ombudsmen should have more powers to gather evidence and whether such evidence should continue to be confidential.
Proposed Response -	For the reasons the Scottish Executive gives there is no need to give Ombudsmen more powers to gather evidence or to remove the provision preventing disclosure of such evidence.
Paragraph 8.3 -	Consideration is given as to whether Ombudsmen and/or the Scottish Ministers should be given powers to enforce the Ombudsmen's recommendations and to impose sanctions on an authority which fails to remedy an injustice caused by maladministration. They have no such powers at present.
Proposed Response -	For the reasons the Scottish Executive gives it would not be appropriate for the Ombudsmen to have powers to enforce their recommendations and impose sanctions. Rather, enforcement should be left to the discretion of the Scottish Ministers.
Paragraph 9.1 -	Consideration is given to Ombudsmen being elected by the Scottish Parliament, rather than being recommended for appointment by the Scottish Ministers after consulting with, for example, COSLA as at present
Proposed Response -	This would seem more democratic than the present system and therefore an appropriate change to make.
Paragraph 10.3 -	Consideration is given to funding the Ombudsmen by a charge on the Scottish Consolidated Fund, rather than a levy on local authorities as at present. This would necessitate a small reduction in local authorities' revenue support grant equivalent to the amount of the levy.
Proposed Response -	The Council sees no reason to depart from the status quo but would have no objection to the proposed change.

## **7.0 CONSULTATIONS**

- 7.1 The Chief Executive, Director of Corporate Planning, Director of Economic Development, Director of Finance, Director of Education, Director of Planning and Transportation and the Director of Personnel and Management Services have been consulted in the preparation of this report.

**8.0 BACKGROUND PAPERS**

- 8.1 "Modernising The Complaints System – Consultation on Public Sector Ombudsmen In Scotland" - The Scottish Executive - October 2000.

Signature .....

Date .....