

## COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND

### Minutes of the meeting of the Commission held at Millbank Tower, Millbank, London SW1P 4QP on Tuesday 8 March 2005 at 11.00am

**Present:** Mr T Redmond (Chairman)  
Mrs P A Thomas (Vice Chairman)  
Ms A Abraham  
Mr J R White

**In attendance:** Mr N H Jones  
Mr N J Karney  
Mr M King  
Mr P MacMahon  
Mr D Nice (item 9)  
Mr A L Creech

#### 1. Matters arising from the minutes of 8 February Commission meeting

The minutes of the 8 February meeting were confirmed as an accurate record and signed by Tony Redmond, subject to an addition to minute 8 "Review of London support staff arrangements". The last sentence of paragraph 2 should read "However, it was emphasised that any changes Coventry and York proposed to *the structure of* their own support staff services would require the specific approval of the Commission."

There was one matter arising:

##### Minute 1: Special Reports

Jerry White said that he had spoken to a number of Local Authority Directors of Housing about the recently published *Neighbour Nuisance and Anti-Social Behaviour Special Report*, and feedback had been positive. However, lack of media interest in the Report had been disappointing. The Commission considered ways of increasing publicity for Special Reports and other publications. These included contacting complainants in advance who might be willing to be interviewed by the media about issues raised in the publication (Channel 4 had been willing to cover the *Decriminalised Parking Special Report* if a complainant had been available), and targeting conferences of professional bodies and organisations/timing publications to coincide with them. The Commission concluded that developing a strategy for effective marketing of these publications would be a key task for its new Head of Communications. Nigel Karney responded that this was well understood; the exercise to help select the appointee had been based on the marketing of a Special Report.

#### 2. Commission PIs: February 2005

CLA 1414 had been circulated. The following points were noted:

- The decreasing trend in new complaints continued in February. Given that, historically, complaints received in March tended to be relatively low, the Commission felt that it was now unlikely that 2004/5 would be a record year.
- Within this overall trend, complaints about Planning, Highways and Social Services continued to increase, as did Housing Benefit complaints against Westminster.
- Michael King reported that he had asked the research assistant to analyse the OJ complaint figures, to assess possible reasons for the discrepancy between the number decided by York compared with London and Coventry. A report would be put to a future Commission meeting.

#### **DEPs**

- Overall staff turnover had decreased.
- Peter MacMahon commented that times taken to decide complaints in the London office were affected by delays in allocating new cases to investigators because of workloads, although times remained above the targets.
- The number of reports issued by each of the offices was more comparable than in previous years. Peter MacMahon pointed out that a number of reports were in the pipeline in London and would be issued in March.

### **3. Budgetary Control Report: 31 January 2005**

CLA 1416 had been circulated. Tony Redmond said that the overall financial position was sound, with a deficit projected at the year end of £21,424. There were no significant variations in the budgets other than those identified and discussed at previous Commission meetings eg the underspend in salaries due to delays in recruiting staff.

The Commission noted the report.

### **4. Budgets 2005/06**

CLA 1417 had been circulated. The Commission considered draft budgets for 2005/06. These had been produced by the Deputies based on the assumptions agreed by the Commission at its February meeting, including forecast growth in complaints reduced to 3.5%. Nigel Karney said that the growth in the 2005/06 draft budgets had been kept to a minimum, and was largely confined to two areas:

- Pension contributions, which were increased at the minimum level of phasing agreed with the LPFA.
- Investigative staffing, with budget provision for an extra six investigators to deal with complaints growth if required.

The budgets included the changes to Corporate Services staffing, but the growth in external communications and policy and research would be largely achieved by secondments and these staff could be redirected to investigative work if a significant grant increase was not awarded in 2006/07. Equally, if the complaints workload did not materialise it was likely that other project work could be carried out by investigators.

Nigel Karney drew the Commission's attention to a key element of the draft 2005/06 budgets - a substantial draw-down from the reserves of £351,100. When the Deputies considered the 2006/07 and 2007/08 funding positions, they concluded that the 2005/06 budgets should be viewed as "one off", because the draw-down from reserves could not be repeated in future years. It was therefore critical that the Government kept to its commitment of putting the Commission in 2006/07 back into the position it would have been in if it had been granted the full amount of its 2005/06 grant bid.

The following key points were made/agreed in the discussion:

- Given that this would be a difficult year in budgetary terms, the Commission considered that it would be essential for the actual workload/funding position to be monitored closely, so that investigator resources could be matched with the workload. The Commission therefore **AGREED** that the Deputies should monitor the position and provide it with regular reports during 2005/06.

**DEPs**

- Peter MacMahon pointed out a correction to page 3 of the paper in respect of the London team: increased accommodation costs were not linked to the reorganisation of support staff teams.
- The Commission noted the Equality and Diversity Working Group's request that high priority should be given to the BME traineeship project, and endorsed the way forward proposed in the paper: ie if progress can be made with PATH, to accommodate a single traineeship as a pilot. Peter MacMahon asked that as much notice as possible be given to the team involved in the project (if it goes ahead) to allow time for planning/preparation.

The Commission **AGREED** to approve the draft budgets for 2005/06 and to confirm the changes to the staffing of Corporate Services, as provisionally agreed on 14 September 2004 (minute 13).

## **5. Team workload forecast 2005/06**

CLA 1418 had been circulated. The Commission considered the report from the Deputies on the team workload forecast, as requested at its February meeting.

The Commission **AGREED** with the Deputies' recommendation, in the light of the forecast, that there should be no change in the Ombudsmen's areas. But that when Patricia Thomas retired later in the year, complaints about Lancaster City Council should be transferred from Coventry to York.

## **6. IT Strategy 2005/06, 2006/07 & 2007/08**

CLA 1419 had been circulated. Introducing the draft IT Strategy, Nigel Karney explained that this was in a similar format to the Commission's Business Plan, with a section on operating environment/external influences. Also, that there had been extensive consultation with users in drawing up the plan, including meetings with an OMT and the IT Strategy Group (ITSG), as well as a workshop of all the IT staff. A

representative of OPHSO (Mark Castle-Smith) had made a valuable contribution by sharing their plans for the future with IT staff and the ITSG.

In response to a question from Ann Abraham, the Commission noted that complainants have the facility to make their complaint on-line, and a number make use of it. Patricia Thomas commented that the completed on-line complaint form was difficult to read and should be improved by for example using different fonts/colours to distinguish complainants' comments. Nigel Karney said that he would pursue this.

NJK

The Commission **AGREED** to approve the draft IT strategy 2005/06-2007/08, subject to changes (where appropriate) to take account of the following comments:

- Para 5: Tony Redmond stressed the importance of involving IT specialists at an early stage in Public Value Agenda (PVA) projects. This would be an important part of the process, and, as the Strategy acknowledged, this had been a weakness in past Change Agenda projects.
- Para 7: The Commission endorsed the proposal for small-scale pilot activities undertaken under the title of "Pathfinders". Nigel Karney explained that bids from staff for technology innovations financed by the "Pathfinders" fund in each office would be submitted to the individual Deputies for assessment/approval.
- Para 8: Ann Abraham highlighted developments in OPHSO's use of new technology, such as improved telephony systems; a new casework management system; and increasing use of laptops. The Commission endorsed Ann Abraham's point that it was essential that the two organisations co-operate closely in this area and explore opportunities for joint development.
- Draft IT Development Plan 2005-08:
  - 1.1 security review: Michael King reported on feedback from link officer seminars, which made it clear that local authorities are enthusiastic about exchanging as much information as possible electronically. He suggested that the implications of this would need to be borne in mind in future reviews of the security of the Commission's IT systems.
  - 1.4 PC hardware: The Commission explored the circumstances in which (more costly) laptops would be issued to staff. Nigel Karney commented that this would not be a major rollout; provision of laptops would be carefully assessed and justified eg to facilitate desk sharing.
  - 1.9 voice recognition software: Nigel Karney explained that the trial of this software had only recently begun in York. But the results of trials in London and Coventry were sufficiently encouraging, based on assessment criteria developed at the beginning of the trial, to justify extending use of the software to other investigators who needed it.
  - 2.7 network access for home-based workers and desk sharers: Nigel Karney said that this was linked to a wider review of HBWs/desk sharers in the

context of the Public Value Agenda. Neville Jones would lead on this review with support by the Policy and Research Unit.

NHJ

- o 3.5 staff training: The Commission agreed that staff training in new technology was a priority, and considered that there was scope for developing further the current system of in-house training by eg amending trainers' Job Descriptions.

## 7. Human Rights

CLA 1419 had been circulated. The Commission thanked Peter MacMahon for an interesting and thought-provoking paper, which was timely given the introduction of the new Investigation Handbook from April 2005. Peter MacMahon said that the Commission's stakeholders were taking an increasingly pro-active approach to HRA issues, and it was important that the Commission responded to this development. The Ombudsmen said that they had noted from their monitoring of case files that there was a perception amongst some investigative staff that consideration of human rights issues was not part of their role. There was therefore general agreement on the need to reinforce the Commission's current guidance on the HRA amongst its staff. In particular, investigators needed to be equipped to respond to complainants/advisers claiming that the complaint involved a breach of HRA as well as maladministration (although it was acknowledged that any remedy arising from the consideration of the complaint may not be different as a result of considering HRA implications).

The following key points were made in the Ombudsmen's discussion about the draft HRA guidance:

- The Ombudsmen considered HRA to be an important/complex topic which merited detailed consideration by the Ombudsmen and Deputies outside the Commission meeting.
- The Ombudsmen considered that their approach to HRA should be developed in consultation with other bodies/organisations. The Ombudsmen discussed how this might be taken forward. Ann Abraham suggested that one possible model to adopt might be that of the recent law Commission seminar, chaired by Lord Woolf and involving a selected, expert audience, which proved to be conducive to structured thinking about the issues involved. Such a seminar could include BIOA/public sector ombudsmen, the Information Commissioner, the Children's Commissioner, lawyers, judges and voluntary/advice organisations.

### Next steps

The Commission **AGREED**:

- i That the Ombudsmen and Deputies would raise the current HRA guidance with their respective OMTs, stressing the importance of increasing awareness of the guidance amongst investigative staff and considering ways of doing this. (It was noted that Anne Whitehorn was updating the guidance in the light of recent case law.)

- ii A separate meeting of the Ombudsmen and Deputies would be arranged as soon as possible to “brainstorm” the idea of a seminar on HRA, along the lines discussed. At the meeting, the Ombudsmen and Deputies would also work up a discussion paper for the seminar, based on Peter MacMahon’s paper.

**OMBs; DEPs**

## **8. Complaints about the Ombudsmen**

CLA 1420 had been circulated. The Commission gave the following advice in response to Nigel Karney’s request for guidance on how it would want to deal with complaints about alleged misconduct on the part of Ombudsmen, so that internal/external guidance can be updated.

The Ombudsmen agreed that, in their recollection, all the complaints they had received from complainants about their conduct had been linked to dissatisfaction with the decision. Scrutiny of the merits of an Ombudsman’s decision was a matter of the courts.

However, the Ombudsmen also agreed that they should be accountable for misconduct; ‘malfeasance in public office’ is a statutory offence which is given increasing prominence in the courts.

The ODPM’s position was that they did not consider it appropriate, or have the resources, to look into complaints about an Ombudsman’s conduct. But the Ombudsmen considered that, in practical terms, ODPM would find it difficult to maintain this position in the event that they received a number of related misconduct complaints (for example alleged abusive/racist behaviour).

The Ombudsmen considered how “misconduct” should be defined, and agreed that this should include circumstances where an Ombudsman might be convicted of a criminal offence, or where an Ombudsman becomes incapable of performing a role because of ill-health/incapacity. The Ombudsmen considered that misconduct of an individual Ombudsman was of relevance to the rest of the Commission as it had implications for the office of Ombudsman and the execution of the Commission’s statutory role.

Ann Abraham said that, in her view, it was legitimate to expect and plan for complaints about the conduct of ‘quasi-judicial’ officials such as ombudsmen. She pointed out that an ombudsman would shortly be appointed to deal with complaints about judges’ misconduct. Also that, as part of the OPHSO board’s governance statement, fellow executive committee members have an explicit duty to report any instances of her misconduct to the Public Administration Select Committee to which she is formally accountable. By analogy, Ann Abraham suggested that it would be reasonable/appropriate for matters of concern about the Ombudsmen’s conduct to be reported to the body that appointed them ie the ODPM Minister, who recommends their appointment to the Queen.

### **Next steps**

The Commission **AGREED** to establish a protocol to cover the handling of complaints about the Ombudsmen’s “misconduct”, as defined in the discussion. The protocol should include the following elements:

- A reiteration of the point that there is no question that any complaint relating to the merits of the Ombudsman’s decision can be referred to the ODPM: this is a matter for the courts.
- Allegations of misconduct on the part of one of the Ombudsmen should be brought to the attention of the Commission by one of the other Ombudsmen/ Deputy Ombudsman to whom the allegation has been directed, where they consider that this allegation is justified/supported by evidence.
- The allegation/supporting evidence would then be considered by the Commission, which would reserve the right, where it considered this to be justified, to refer the allegation to the ODPM Minister for consideration.
- The protocol should emphasise the importance of the Deputy Ombudsman’s role in this process: they would be effectively acting as “whistleblowers” in cases of Ombudsman misconduct.

The Commission **AGREED** to request Nigel Karney to prepare a draft protocol for consideration at a future Commission meeting.

NJK

## 9. Local Settlements

CLA 1425 had been circulated. The Commission considered the results of David Nice’s study of a 10% sample of local settlements decided in the first six months of 2004/05, which showed that a significant proportion of local settlements (29%) did not involve a finding of fault.

The Commission therefore **AGREED** that it would not be accurate to include local settlements under the heading “complaints upheld” in the statistics supplied to councils with the Annual Letters.

The Commission then considered various options for amending the simplified heading which would include local settlements, including David Nice’s formulation ‘satisfactory outcome for complainant’. The Commission **AGREED** to keep the current heading, accompanied by an explanatory note setting out the definition of a local settlement.

HJY

## 10. Annual Letters

CLA 1421 had been circulated. The Commission considered the results of the consultation exercise with councils about proposed changes to the 2005 Annual Letters, and plans to make the Annual Letters more widely available.

In the light of these results, the Commission **AGREED** to make the following decisions:

- i Not to change the headings for the complaints statistics supplied to councils with the Annual Letters (minute 9).

ii From 2006 onwards, to place the Annual Letters on the Commission's website, and release letters directly to the Audit Commission, four weeks after councils have received them.

iii To re-issue Annual Letters if councils point out factual inaccuracies which are agreed.

**HJY**

**11. Special Leave 2004**

CLA 1422 had been circulated. Nigel Karney pointed out that the number of days of study leave shown for Corporate Services on the return was understated: this would be corrected.

**NJK;MLH**

The Commission noted the return.

**12. Sickness absence: December 2004 quarter**

CLA 1423 had been circulated. The table showing the quarter's results was wrongly headed "July-September 2004".

**MLH**

The Commission noted the analysis.

**13. Confidential business**

There was one item of confidential business, concerning an individual staff member (CLA 1424). A separate confidential minute was taken of the Commission's decision.

**14. Date of next meeting**

The next meeting will be held at **9am** on Tuesday 12 April 2005 at Millbank Tower, London.