# "PUTTING THE PARLIAMENTARY COMMISSIONER IN HIS PLACE": AN EVALUATION OF THE WORK OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

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**This thesis is dedicated to my parents, Jessie & Terry McMurtrie, and to Francis Coleman.**

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"Putting the Parliamentary Commissioner in his place: An Evaluation of the work of the Parliamentary Commissioner for Administration"

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## "PUTTING THE PARLIAMENTARY COMMISSIONER IN HIS PLACE":AN EVALUATION OF THE WORK OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

This work evaluates the role of the Parliamentary Commissioner for Administration [PCA] within the United Kingdom's administrative law system. This form of administrative redress was established by the Parliamentary Commissioner Act 1967. The encumbent of the office has to investigate 'maladministration' which has caused 'injustice' to the complainant. This test is established by the enabling statute. The actual procedure of the office is examined briefly. Some criticisms of the PCA system are also considered in this provision of background material.

A large part of the thesis considers the actual work of the PCA from 1967 to 1988. It identifies the types of administrative procedural error complained of to, and the remedies provided by, the PCA. This provides a full record of the work performed by the PCA.

Having established the functions that the PCA is performing, it was desired to examine them in a wider context. Another administrative law redress system, the courts, was chosen for comparison. The courts' function of judicial review is traditionally limited to questions of procedure. This provides a comparative base.

It was recognised, however, that a direct comparison between the two institutions could involve the imposition of either legal or administrative values on the study of the other institution. This would be undesirable. The methodological solution was to present a relatively value neutral list of acknowledged administrative procedural errors at the start of the thesis. This was named the Procedural Error Catalogue. It contains three general categories: Failure ot be Impartial; Imperfections in the Consultation Process; and Other Procedural Errors, covering the giving of reasons, and delay.

The work of the courts in the review of procedural error was then examined. A classification of such errors is presented.

In the evaluation of the work of the PCA within the system, it was found that two types of limitation could be identified. The first group was composed of internal limitations (self-imposed limitations) which the PCA placed on his own remit. The second group contained external limitations (superimposed limitations) which were placed upon the PCA's remit by outside sources such as the 1967 Act. The latter group is less easily remedied than the first. A change in the PCA's constitutional position may be necessary to remove some such limitations.

Within the United Kingdom system the PCA does cover similar types of error as the Courts. Duplication is prevented by a difference in the remedies available to

each institution. The PCA has also developed a process to remedy types of error not redressed by the existing system. The most notable is delay within the administrative process.

The PCA cannot provide a remedy to any substantive error (one relating to the merits of the decision).This in itself may be a weakness within the United Kingdom system, but the PCA should not be criticised for this. There are internal limitations which hinder the full development of the office. These could be easily remedied.

The final conclusion is that the PCA has developed into a useful office, which has established redress for previously neglected areas of administrative procedural error.

# CHAPTER ONE - INTRODUCTION

## SECTION I AIMS OF THE THESIS

The main overall purpose of this thesis is to evaluate the work of the Parliamentary Commissioner for Administration [PCA] within the administrative law system of the United Kingdom [U.K.]. The PCA's role, as defined by statute,is to investigate complaints of maladministration made against central government departments, the results of which have caused injustice to the complainant.(1)

Much of the work of academic writers on the PCA has centred around the limitations placed on his office. This thesis, however, will focus in the main on the actual work that he is performing. The main work on the PCA, by Gregory & Hutchesson, was published over fifteen years ago, and at a relatively early stage in the life of the office.(2) Whilst various reports, articles and evaluations have been written since then, no update, or similar form of work has appeared until recently. More recently there has been a renewed interest in the actual work the PCA is performing.(3) It must be stated clearly that this thesis has no upwardly mobile pretensions to be a replacement to the seminal work of Gregory & Hutchesson.

Rather it hopes, in its modest way, to continue in the spirit of that work and more recent studies in exploring in an empirical sense the work of the office in an attempt to understand what role the PCA is playing in the administrative review system.

To achieve this overall aim the thesis has been compiled in three parts. The first and main part of the work is concerned with outlining the categories of administrative error that the office reviews. The second part of the work evaluates this work in comparison with the other major review mechanism within the system (the courts). The third and final point seeks to present a clearer view of the actual work that the PCA performs, to examine whether there is a need for any changes in his role within the system, and in the process to provide a further insight into the PCA's definition of maladministration.

It is necessary to look to the actual work of the PCA to understand fully the role of the PCA within the U.K. administrative redress system. This therefore forms the major part of this thesis. The categories of administrative error reviewed by his office are investigated, as well as the remedies offered if maladministration is found. This provides insight into the PCA's own perception of his function, and whether he is imposing his own limitations on the range of complaints investigated.

Obviously, the office cannot be taken in isolation if the overall position within the redress system is to be established. The PCA's work must be seen in comparison with the work of the major source of redress for administrative errors, the Court system through the process of judicial review. It is important to discover whether the work is being duplicated within the system: do both mechanisms address the same types of administrative error, or does the PCA cover a different jurisdiction? Thus consideration is also given to the work done by the Courts in this field. This is done in order to place the PCA's work within the wider context of the U.K.'s administrative system.

To keep the thesis within manageable proportions, as well as to facilitate comparison between the institutions, it was deemed prudent to limit consideration to administrative procedural error. This seemed the obvious choice. The terms of the 1967 Act which established the office of the PCA effectively limits him to investigating matters relating to procedure, as he is unable to question the merits of a decision, without first finding maladministration.(4) The choice was reinforced by the fact that this is a similar basis to the traditional model of judicial review: Lord Brightman in **Chief Constable of the North Wales Police v. Evans:**

> **"Judicial review is concerned, not with the decision, but with the decision-making process. Unless**

**that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."**

This provides the common ground for a comparison of the work done on the review of such errors by each institution.

Thus, the structure of this study is as follows. Chapter Two gives a more detailed background to the office of the PCA; Chapters Three to Six then outline the administrative procedural errors identified by the PCA; Chapter Seven sets out an overview of the work of the Courts in relation to administrative procedural errors, and in effect constitutes the second part of the thesis. Thirdly, and in conclusion, Chapter Eight evaluates the findings of the preceding chapters, and widens the debate to consider some of the issues facing the administrative law system in general. Without anticipating the final section in any detail, one of the general underlying issues discussed is the ideas of J.D.B. Mitchell, expressed on the subject of the then, newly mooted 'ombudsman' idea, in the early 1960s.

Mitchell's attitude was encapsulated in the following epithet:

**"Remedies are to be found through law, not administrative palliatives."**(6)

Mitchell, however, was not advocating the use of the

Courts in their present form. He felt that a separate public law system was required to tackle the main grievances arising from the administrative processes. The ombudsman scheme proposed would not be able to do so effectively. Thus it was a danger, in that it would divert attention away from the real needs of the system. It has to be stated from the outset, that consideration of the need for a separate system is beyond the remit of this study. It is proposed, however, to consider whether the PCA has been the red herring that Mitchell predicted; and whether the Courts themselves remain lame ducks in the administrative law system.

This will be done by investigating whether any limitations on the PCA are self-imposed or superimposed. Self-imposed limitations are those placed on his function by the PCA's own interpretation of his role. Superimposed limitations are those which are placed by outside considerations. This includes his constitutional role as established by statute.

Thus the study will be complete, by placing the actual work of the PCA in the context of the system as a whole.

The remaining sections of this chapter discuss in more detail the approach and format of the thesis.

## Section II Methodology

One part of the general methodology has already been mentioned in Section I, in that the need to limit the study to the approach to procedural administrative error has been explained.

The thesis can be divided into two areas of empirical study: firstly, the work of the PCA; and secondly, the work of the Courts. Turning to the first part, it is true to say that the study of the case-work of the PCA is much more detailed than that of the Courts. Mainly, this is because there has been so little academic attention paid to his actual work, as opposed to his jurisdiction, or powers.(7) Such work as exists, is more than 15 years old, and was done at a time when the office of the PCA could be said to have been in its infancy.

Therefore a major study of all the published case-reports was undertaken. This comprises all the published cases from 1967 to 1988. Extracts are printed in the PCA's Annual Reports (from which most of the previous work was done). This limits the spectrum of cases available. As the cases included in the Annual Reports are selected for a different purpose, it was possible that relevant cases to this study might not have been included. Secondly, previous studies were not necessarily interested in the same areas of classification as this thesis. Certainly, many of the PCA's cases deal with matters such as

officials' rudeness, which are excluded from this study, but do form part of his case-load. This has to be emphasised, although the cases listed in the following chapters, form a very substantial part of the PCA's work, they are not intended to be a definitive study of all the types of cases that he investigates.

A third reason for such a detailed study, is the fact that successive PCAs have been reluctant to approach their task on anything other than a case-by-case basis. They shy away from anything smacking of precedent. Consequently in order to develop an overall picture of the work undertaken, resort must be made to the individual cases. A classification of the PCA's work would be a useful exercise in itself for the benefit of administrative law. Again the limitations of this thesis must be stressed. Classification of part of the PCA's work is undertaken, but it is by no means a complete catalogue of the PCA's workload.

It should also be noted that the purpose of recording the empirical work of the PCA in this way is to identify the types of procedural error with which he deals. It is of secondary importance as to how frequently each type of case arises. In the same way it would not be profitable to ask how frequently each type of judicial review case comes before the courts. The importance lies in the fact that the institution recognises a particular form of error, and how it responds to it, not in how many times it

does so. Therefore numerical analysis of this kind does not form part of the thesis

As to the work of the Courts in the area of judicial review, this is very well documented in a number of sources, so that it would be pointless to reiterate.(8) What has been produced, is an outline of the Courts' activities in relation to the matters contained within the catalogue of such procedural errors constructed to aid the analysis and comparison of the PCA's work. A major problem is, of course, that the Courts deal with a far wider range of decision-making bodies than the PCA - so to further the eventual aim of the thesis, particular emphasis has been placed on the cases before the Courts dealing with Central Government, and its associated bodies. This is a general aim, important cases and/or principles have not been excluded because they do not concern such bodies; but in the main, the overview is concerned with the Courts approach to **administrative** procedural error. This reflects the type of bodies within the jurisdictional remit of the PCA. Therefore comparison of the two bodies is facilitated.

In pursuing the second part of the research, the main problem which had to be overcome was that of how to compare the work of the PCA and the Courts. As stated, a common basis of review was not hard to discover, in the form of procedural error, in that both bodies are in the

main, concerned with this topic. However, the temptation may well have been to superimpose 'judicial' concepts, such as the rules of natural justice, on the PCA's work, which in its recognised 'judicial/legal' form might be an inappropriate standard, for the administrative orientated PCA.

The proposed solution was to create a separate list of what might be called 'administrative procedural error', drawing on a variety of sources in compilation, and thus avoiding the adoption of either a legal or administrative based standpoint. This catalogue could then be used as a comparison against which the work of the PCA and the Courts could be evaluated. From this assessment of their work against a common neutral standard, comparisons with each other's work could be drawn more satisfactorily.

The next section details the contents of this procedural error catalogue. However, before pursuing that topic, it is necessary to explain what approach has been taken to the study of the work of the PCA and the Courts.

## SECTION III COMPILATION & CONTENTS OF THE PROCEDURAL ERROR CATALOGUE.

### (a) Sources

In compiling the catalogue the first necessity was that it must be relatively neutral in its approach;

neither exclusively administrative based, nor exclusively judicially based so that it would serve as a valid touchstone for both institutions. This was to try to ensure that legal principles were not superimposed on administrative processes, and vice-versa.

Thus three main sources were drawn upon: a Resolution of the Committee of Ministers of the Council of Europe, entitled **'On the Protection of the Individual in relation to the Acts of Administrative Authorities'**(9); a Recommendation from the same body - **'Concerning the Exercise of Discretionary Powers by Administrative Authorities'**(10); and the JUSTICE Report, **Administration Under Law'**(11). The value-neutral approach is hopefully achieved by drawing on this mixture of legal and administrative sources, as no source in itself can be completely neutral of the viewpoint of the compiler.

The above reports were more concerned with the promotion of good administration, rather than the identification of bad administration. It was necessary therefore to invert some of their standards for the purposes of this thesis.

The second guiding principle was the need to define 'procedural', and then to identify those faults that could be so classified.

(b) The Definition of 'Procedural' Error.

'Procedural' error was chosen as the two review institutions (the PCA and the courts) are both limited to reviewing complaints regarding procedure, as opposed to being appeal bodies on the merits of the decision (though this is debatable at least as far as the courts are concerned(12)).

For the purposes of the thesis, the term 'procedural' does not include what might be deemed 'trivial' errors. For instance, rudeness of officials (so long as it is not an indication of bias against the recipient), or the incorrect addressing or designation on an envelope (again providing that this does not cause misdirection). These errors, whilst no doubt unpleasant or irritating to the recipient, and unnecessary and undesirable to the procedure, could not be said to seriously affect the quality of the decision-making process itself. For, as shall be seen, this is an important criteria for 'procedural' error.

Another category of error excluded from the definition, is that of errors affecting the jurisdiction of the decision-making body. Such errors are fundamental, for example, purporting to exercise a power which the body does not possess, or adjudicating on a matter not within its remit. The basis of the exclusion of this category is that they are initial errors, incurred before the

decision-making process is implemented, and as such renders any subsequent action invalid.

The usual comparison/contrast made with 'procedural' error is 'substantive' error. If 'substantive' error is taken as meaning error which touches on the merits of the decision, then it can be contrasted with 'procedural' error, which is only concerned with the process by which the decision was made. 'Substantive' error suggests that the decision itself is 'wrong' or 'bad'; and could also suggest that the process behind the decision was not necessarily at fault.

'Procedural' error, on the other hand, does not concern itself with whether the decision is the correct one in the circumstances, but merely with the decision-making process, if that is at fault, the decision itself may not be affected, but it has been reached by the wrong method; and as such must be received in the light of this finding. Thus the same decision reached by the correct procedure would be perfectly acceptable; whereas a 'substantive' error would mean that the decision would not be acceptable by any method of decision-making.

So much for the theory - for when classification of administrative errors is attempted, the practice is not so straightforward. The main problems occur with the distinction between 'procedural' and 'substantive' error. It has been suggested by Marshall that elements of both types occur in any one error.(13) Can a 'right' decision

ever be reached by a wrong method, if it is the right decision (a question of merits) why worry if the wrong process has been used; unless that suggests that in future cases the wrong process could lead to the wrong decision (surely a question of merits again?) Conversely, a wrong decision is not 'snatched from thin air' without some fault in the process, be it the identification of a perverse decision-maker.

Thus from the argument that there are elements of both types in every error, it can be argued that all errors can be reduced to 'procedural' errors. For instance, a decision that is considered to be unreasonable in the circumstances of the case, may be traced back to the fact that there is a poor/bad administrator in the process, who is responsible for the 'bad' decision.

However, having aired the possibility that all errors are procedural at source, the necessity of line-drawing for the purposes of the thesis, becomes apparent. Therefore, the criteria chosen is whether there is an error which can be clearly identified within the procedure. For example, the unreasonableness of a decision is often taken as a 'substantive' error, but where the unreasonableness can be traced to the omission of a material fact from the decision-making process, then a 'procedural' error can be identified.
An unreasonable decision with no omissions of fact, may be traced to a perverse decision-maker. If there is no

identifiable explanation for his bias (ie that could have been identified or suspected at the outset of the process) then it will be left in the province of 'substantive' error for the purposes of this thesis; though the argument could be made that the very presence of such an administrator, is a procedural error.

One important exercise in this line-drawing, was to classify the concept of 'proportionality'.(14) The concept can be neatly summarised as 'not using a sledgehammer to crack a nut.' Thus the action taken by the body must not be out of proportion to what they are trying to achieve, and thus adversely affecting peoples' rights to an unnecessary degree. This must necessarily involve the consideration of the merits of the case. Although the procedure used is in question, it is less central than the merits. Therefore, the concept is not included in the catalogue.

The catalogue is set out below.

(c) The Content of the Procedural Error Catalogue.

The catalogue has been divided into three main groups. The first group - Failure to be Impartial- deals with the necessity of objectivity in the decision-making process. The second group - Imperfections in Consultation Procedure - deals, as the name suggests, with the duty to consult affected parties. The third group is really an

umbrella for other forms of procedural error that can be identified, but do not necessarily lie within the first two groups, they have been grouped together for convenience.

(i) Failure to be Impartial

The need for the quality of impartiality within the administrative process is widely recognised. It includes not having a personal interest in the outcome of the process, nor a prior involvement in a situation, when a fresh approach is required. It also includes not doing anything that might be interpreted as showing favour to one side or party; or that might suggest that a prior decision has been taken or opinion formed, making the process redundant. For further classification this could be sub-categorised as follows:

(1) Intrinsic partiality. This covers the situation or possible situation where the bias or possible bias is apparent, (or should be) before the process begins. For example, where the administrator has a personal interest (pecuniary or otherwise) in the eventual outcome. The interest could be malign (corruption) or merely unfortunate coincidence. It also encompasses prior involvement in the situation where the requirements now demand an impartial approach. Both of which give rise to the possibility that outside considerations (irrelevant factors such as the personal interest or the prior

knowledge) will be taken into consideration. Thus a less than partial decision will be reached.

In dealing with administrative procedural error, it is essential to remember that complete impartiality is almost impossible to achieve in most cases. It is a 'judicial' concept which is inappropriate to be adopted here. Thus, consideration will be given to the 'acceptable' or 'legitimate' level of bias within the process eg. where a department has a stated policy or view on the matter,and an official of that department is making a decision on that matter, which may require consideration of opposing or alternative views.

(2) Spontaneous partiality. This envisages a situation where there is no intrinsic partiality at the start on the part of the administrator, but within the one individual case, the administrator has demonstrated partiality. This could be done in a variety of ways: (a) the use of irrelevant concerns or grounds in reaching the decision (other than the above category); (b) by the failure to ascertain and/or to take account of all the relevant grounds, (although attempts at second-guessing whether the relevant factor has been considered by reference to the outcome is a substantive concern).(15)

(3) Not treating like cases as like. This is a difficult category of procedural error, as the distinctions between the procedure and substance become blurred here.(16) The temptation to say case A was

materially the same as case B, but the outcome was different, is great, but yet that really amounts to looking at the merits of the decision. What must be considered was whether the same procedure was prescribed for similar cases, and whether the same procedure was adopted. If not, were there strong enough reasons for this inconsistency? Thus, if guidelines are publicly announced for a certain set of circumstances, it would be a procedural error if those guidelines were not followed. To allow for the administrative necessity of discretion, there could be sufficiently strong reasons for them not to be followed in an individual case, but basically there should be a certain amount of reliance placed upon them.(17)

However, to expect a specific **outcome** from those guidelines would be substantive. Procedural error can merely look at the expectation that certain procedures will be followed as stated, and review is concerned with the departure from these, without adequate reasons (questioning the validity of these reasons might be seen as substantive, but review should be concerned to prevent frequent departures from stated guidelines.) It can be safely stated that this is one area where the intermingling of the two types of error can be clearly seen.

(ii) Imperfections in The Consultation Procedure.

The main administrative purpose for consultation is to provide more information on which the decision-maker can act. The best decisions will be those taken with all the facts before them, so that the probability of unforeseen consequences is reduced. Errors in this area can be made at the outset, before the consultation process is under way (Intrinsic error); or it may occur during the process (Error within the consultation process).

(1) Intrinsic error. This covers situations where no prior notification is given of the fact that a decision will be taken until the process is complete. This encompasses failure to consult parties affected by the decision, where such consultation might be expected(18). It may be that there are cases, where the administrator should inform a party of the on-going process, without necessarily consulting the party or seeking his views. It is also necessary to establish which parties should be consulted; to decide what the criteria for consultation should be. The Committee of Ministers thought that parties whose rights, liberties, or interests were directly and adversely affected, should have the right to be consulted(19). The JUSTICE Report came down in favour of those parties particularly and materially affected(20). From the foregoing, it would seem that some form of specific interest is required for this right to be

bestowed; a general interest would not be enough to make it a right.

Having determined which parties to consult, the decision-making body must take all reasonable steps to notify those persons of their right.(21) The lack of qualification of this right would mean that the administrative process could be completely halted if the decision-maker could not contact one or more of the affected parties.

(2) Error within the consultation process. Once the consultation process has been instigated, there a number of possible procedural errors:

(a) the choice between written procedure or oral procedure;(22)

(b) failure to supply enough (not necessarily all) relevant information from which the affected parties can understand all the issues involved, and on which they can thus base a full reply, if they are requested by the party to so do;(23)

(c) if not covered by (b) the right to know the other side's case in full, and to be given the opportunity to comment on it (including cross-examination in an oral hearing);(24)

(d) the right to assistance in the preparation and presentation of the case (by a friend, a lawyer or other independent person).(25)

(iii) Other Procedural Errors

(1) Failure to give adequate reasons for the decision when required to do so. There are several reasons why an explanation of the chosen course of action should be given by the decision-making body. Without reasons, it is easy for the affected party to remain disgruntled and to become convinced that the matter has not been dealt with properly. It will also allow him to see whether he has cause to pursue the matter at an appeal level (if this is an option open to him). Finally, from the administrative body's own point of view, the necessity of providing a reasoned decision, means that decision-making is clearer, and the decisions will be better considered.

Thus the giving of reasons, at least on request, is considered to be important, and therefore failure to do so must be a procedural error.(26) There is, of course, an argument that as the reasons will touch on the merits of the decision, then such a failure is a 'substantive' error. However, as one of the purposes is to ensure that all factors have been taken into consideration, which is a procedural matter, then failure to evidence this, can be classified as procedural. Afterall, the requirement to give reasons, does not necessarily mean that they will be used to evaluate the merits of the decision, but merely to witness that the decision has been taken properly. Obviously, like any procedural error, a failure in this

area may point to the fact that the decision is an improper one.As a result of this, it follows that the reasons given must be adequate to understand the basis of the decision.(27) Resolution (77) 31 also suggested that in some cases it would also be appropriate to indicate the remedies available to the affected parties.(28)

(2) Failure to complete the process within a reasonable time. Delay is obviously a form of procedural error as it is the process that is being affected by the delay. Delay is an error as the parties affected by the possible decision are left in a state of limbo. Uncertainty and inconvenience are created by the delay, which may affect their ability to carry on their business or lives effectively.

However, the real problem lies in defining what exactly constitutes delay. What length of time amounts to a delay? The JUSTICE Report (1971) suggested that in performing a statutory duty, a period in excess of two months to complete the process, would constitute a delay, unless there were exceptional circumstances. If this was the case, an explanation must be given, and a decision reached as soon as possible.(29) The Recommendation of the Committee of Ministers on the other hand, favoured the more open definition of 'reasonable' time.(30) What was 'reasonable' in the circumstances would depend on a number of factors such as the urgency of the case (eg the

granting of a licence was mentioned as meriting swift attention); or the complexity of the issue. On the whole the latter approach must be the more realistic one; although the former is much more laudable, requiring only exceptional circumstances to justify slow procedure.

Total inactivity on the part of the decision-making body would also be an error.(31)

Delay can be divided into two main types, categorised as follows:

(a) Intrinsic delay: a situation where all such cases are being delayed ie they are all taking the same length of time to complete, and the delay is to be found within the entire system as a result of lack of resources, inefficiency and such like.

(b) Individual delay in a particular case: a situation where a case takes longer than normal due to non-routine delay in the system, such as the loss of a file etc.

## SECTION IV - CONCLUSION

In this introductory chapter the aims and structure of the thesis have been set out. The overall aim of this thesis is to evaluate the role of the PCA within the administrative system.

A large part of the thesis is concerned with identifying the work the PCA is currently undertaking. To

place this work in perspective, the PCA's work is compared with that of the Courts. Thus the final evaluation of his role is made.

This chapter has also addressed the methodology adopted, and explained how the any anticipated problems were met. This chapter's other purpose was to examine the solution to the one major methodological problem in detail. Thus the content and internal methodology of the General Catalogue of Procedural Error has been chronicled.

Primarily the catalogue is designed to facilitate the comparison of the Court System with the PCA by presenting an independent list of possible procedural errors. The argument against such the alternative - a direct comparison - between the two institutions is that the Courts are performing 'judicial' functions and the PCA is performing 'administrative' functions. This means that a common base is lacking, which the General Catalogue provides. This common base is the universally recognised errors in the administrative process. It is an attempt to identify what the redress systems are striving to remedy regardless of whether they adopt an investigative technique or an adversarial technique within their respective domains.

Thus the Catalogue is a working outline devised to form the guide and framework necessary for one part of this thesis. This must be stressed. It is in no way an attempt at a definitive list of administrative procedural

error. This would be well beyond the scope and remit of this thesis.

Having established the Catalogue, it is necessary to return to the first task, examining the work of the PCA. The Catalogue will be returned to in subsequent chapters, in the consideration of the empirical work of the PCA and the Courts.

Turning to the work of the PCA it might be helpful to present some material as to the PCA and his office, and as to how investigations are conducted before examining the reported cases handled by the PCA. The next chapter is concerned with this background material.

# CHAPTER TWO THE PCA - AN INTRODUCTION

This chapter provides general background information about the office of the PCA. First of all the origins and the history of the institution will be traced to establish why the office has developed. Secondly, the aims of the office will be investigated, from both an external and an internal viewpoint. The external viewpoint being that of the creators and promoters of the office, and the internal view is that of the incumbents of the office. Finally, the mechanics of the office will be described to explain how a complaint is handled when it is received. The aim of this chapter is merely to provide a background for the main thesis, therefore it is by no means a definitive account of these matters.

## SECTION 1 THE ORIGINS AND BRIEF HISTORY OF THE OFFICE

It is quite possible to trace the ultimate origins of the office of the PCA right back to the last century, although the office itself has only been in existence since 1967.

The position of the doctrine of the separation of powers, within the UK's unwritten constitution has made the control of the Executive an uncertain area. The Judiciary have always been reluctant to interfere in matters which they believe to belong to Parliament; and

certainly since last century Parliament's importance has been eclipsed by that of the Executive.

Last century a reasonable balance was maintained. Many administrative functions were performed by local government, central government confined itself to the economy and foreign affairs. Excesses, abuses of power, or mistakes by the local authorities could be reviewed by the courts. However, as the new century dawned, central government began to expand more into domestic affairs, more of local government functions became centrally controlled. Towards the later part of the last century, radical changes took place within the civil service, equipping it to be able to assume these tasks. Bureaucracy continued to grow and effect more people directly. The problems arose when the system produced complaints. Whose role was it to check the activities of this new form of Executive?

The courts stopped short, wary of crossing the divide of the separation of powers, unwilling to be seen entering the province of the Executive in the review of administrative decisions, and also unwilling to usurp what they saw as Parliament's function to check any abuses. Citizens were left with the stark choice, either the problem was a legal one that the courts would remedy, or else the remedy lay in the hands of the politicians.

The chance of a political remedy was not much comfort, when the realities of the situation were

examined. The citizen needed to interest a M.P. in their complaint. If no satisfaction was received by the M.P. from the department concerned, he then faced the task of trying to find a slot in the ever-diminishing Parliamentary time, in order to take the matter up with the Minister concerned. To get this far, the problem would need to be very serious, and probably have wider implications than the mere personal interests of the individual concerned. For it is true to say that the nature of Parliament had also been evolving during this period, and was now more party political in loyalties, and subservient to the Government.

So by the mid 20th. Century, the growth of complaints about administrative abuses, had brought the political redress system to a crisis point; the Judiciary seemed determined to ignore the problem, adhere to their interpretation of how far judicial review could extend, and neatly bat the problem back to the political arena.

Thus the short-term origin of the PCA is to be found in the late 1950s - a period of great turmoil in the field of British Administration, and thus for administrative law. As was outlined above, there was a general feeling that the Courts and the process of judicial review, were in some way failing to check the administration; and the judicial reply to this was that it was not their function, but Parliament's to check error within the process of administrative functions.(1) A number of cases of 'unjust'

treatment of citizens at the hands of Administration had been brought to the public's attention.(2)

The most notable was the Crichel Down Affair. The matter in dispute was whether a piece of land, compulsorily acquired by the Government, should be offered back to the heirs of the original owners. The whole episode contained many examples of maladministration. The claims of Commander Marten, and other local landowners were overlooked. As a result of this, the full facts were not before the Minister. A blinkered determination to continue with the planned course of action was also detected. It was widely recognised that it was the persistence and tenacity of Commander Marten which forced the Minister, Sir Thomas Dugdale, to commission an inquiry, which revealed the sorry muddle.(3)

In the aftermath, the Report of the Franks Committee was eagerly awaited. However, its remit only dealt with statutory tribunals and inquiries, and although the members of the Committee were aware of the problems in other areas of administration, and expressed their concern, their remit prevented them from addressing those problems.(4) Limited as the report was, nevertheless, its battlecry of **'openness, fairness & impartiality'** was adopted by lawyers and politicians alike.

At the same time a great deal of interest was being shown in the Scandinavian system of ombudsmen - an independent complaints authority, directly accessible to

the public. Soon the cries went up for such a scheme to be adopted in Britain. The Swedish ombudsman was invited over to this country, to inform the British public of the nature and purpose of his office - his mission appeared to meet with a lukewarm response.(5)

JUSTICE(6) took up the cudgels at this point, and subsequently issued the Whyatt Report(7). This recommended that an officer, modelled on the Scandinavian ombudsman should be established; it wished to provide 'a real Charter for the little man', placing emphasis on the fact that many citizens would have given up long before in their struggles with bureaucracy.

It has to be noted that not all academics were in favour of the introduction of an ombudsman in Britain. Many believed that only large scale restructuring of the system of administrative law in this country would aid the problem - other smaller scale measures were dismissed as piecemeal - and, some argued dangerous, as the temporary advantages would mask the need for major reform. Probably, the most able of these academics was J.D.B. Mitchell. who encapsulated the argument in the title of his essay -**'The Ombudsman Fallacy'**(8) This will be dealt with more fully in the concluding chapter.

Opposition was not limited to academics. The Government procrastinated. There were two interests at work here, - the parliamentary backbenchers, who saw the ombudsman as a threat to their traditional prerogative to act as trouble-

shooters to the voting public, in matters relating to the civil service. The second interest was the civil service, though their opposition, if it existed, and was articulated, has not been so well documented. There were many suggestions that the civil service had nothing to fear from such an institution, and that their Scandinavian counterparts had welcomed the opportunity it presented to vindicate them in many cases.(9)

The passage of what was to become the Parliamentary Commissioner Act 1967 was not always smooth. The debates of the time are illuminating for their discussion of the perception of the backbencher's role. The history of the Act has been well-recorded in other sources.(10) Suffice it to say that the ombudsman concept had metamorphosed into the PCA concept - gone was the idea of direct access for the public - instead there was to be a M.P. filter (albeit originally on a trial basis); gone was the wide-ranging jurisdiction of his investigations, - the PCA could only investigate named departments or bodies.(11) Most importantly, whilst independent of the Executive, the PCA was, as his title suggested, an officer of Parliament, modelled on the Comptroller and Auditor General, and the first incumbent of the office was in fact a former holder of that office as well.(12)

Sir Edmund Compton had been appointed PCA on 1st. September, 1966.(13) His duties began on 1st. April, 1967. His first report on the activities of his office set out

the process by which he alerted M.P.s to his role.(14) He also sought to clarify areas of his remit, such as jurisdiction and maladministration. Gradually, the idea of publishing anonymous accounts of his investigations was adopted. If the 1967 Act was the foundation stone, Sir Edmund Compton completed the foundations of the office, whilst remaining flexible as to its future development. Sir Alan Marre, another former civil servant, took over the mantle in 1971. During his term in office, he emerged as the role for the PCA today, with the first quarterly anonymised reports being published. It should be noticed that this practice (of publishing reports of all the cases investigated during the quarter) was continued until 1980, when Sir Cecil Clothier, with the backing of the Select Committee on the PCA, decided that these volumes were unwieldy, and most certainly unreadable and uninteresting to the layperson in general. (It is also submitted that lawyers found them hard-going). Sir Cecil decided on publishing quarterly reports containing selected cases, which appeared to him or to his staff, to highlight an important matter, or which illuminated the function of his office.(15)

The pattern of former civil servants occupying the office, continued with Sir Idwal Pugh, who replaced Sir Alan Marre in 1976. New ground was broken by the appointment in 1979 of Cecil Clothier - a barrister. It would appear that this was a successful development - it

was certainly perceived as such by the Select Committee, and also the PCA office staff as well. One of the reasons cited for this was that a legally-trained PCA answered the criticism of the lack of impartial legal advice within the office.(16) The practice was continued with the appointment of Anthony Barrowclough in 1985, and during his term in office the general feeling of those closely involved with the office was that this practice would continue. (This proved to be wrong with the appointment of Sir Anthony's successor at the end of 1989, W.K Reid, a senior civil servant in the Scottish Home & Health Department).

Criticism has also been made of the fact that the PCA's staff almost entirely consists of seconded civil servants. The situation continues.(17)

This means that civil servants are investigating other civil servants - yet recent PCAs have defended the system, stating that as a result of their own knowledge of administration, seconded civil servants are much sterner critics of their 'colleagues' mistakes, than any outsider would be. This may well be true, but it also means that a civil servant approach is adopted throughout, and an even better system of administration is not contemplated as a result. There is surely an argument for having a more equal split between seconded civil servants, and other persons such as lawyers, accountants, and private sector administrators, thus providing the best of both worlds.

The PCA's jurisdiction(18) has been the major source of criticism. Many commentators wish to see it extended. The JUSTICE Report **'Our Fettered Ombudsman'** listed several prohibited areas which they felt could be opened to the PCA.(19)

Commercial transactions of a Government department was one area, as were personnel matters relating to civil servants. The latter seems to be a strange suggestion - very few civil servants do not have recourse to their trade unions or at least their staff associations - private sector workers do not have recourse to an ombudsman so why should civil servants? Successive PCAs have feared (probably with just cause) that they could become inundated with requests for intervention, to the detriment of members of the public. Of course, it is not a sound argument to say that merely because the demand might be great, the opportunity should not be given. However, it is fair to ask whether this extension of jurisdiction would serve to further the role of the PCA. It is submitted that it would not for the following reasons.

Disputes between civil servants and their superiors relate to the relationship between master and servant, and therefore belong in the remit of employment law. There must be few cases that involve 'maladministration' as it is understood. Even if there are such cases, it is possible that they could be caught by the provisions of the Act, particularly if they raised wider issues.

Finally, if there is a need for an independent investigation, surely it would be better to set up a separate ombudsman system for this purpose. This proposal has been mooted to deal with problems arising within the armed forces. (Another area excluded from the PCA's jurisdiction).

The PCA's jurisdiction has been extended twice since 1967, first of all in 1981(20) with the inclusion of consular affairs, and secondly in 1987(21) with the inclusion of a number of quangos. All were relatively non-controversial extensions of his jurisdiction. It is a fair comment that unless the PCA, and the Select Committee are in favour of such an extension, it is unlikely to succeed. The PCA does push the interpretation of his jurisdiction in the background. For instance, there has been a long-running saga of line-drawing with the Lord Chancellor's Department as between the department's judicial (non-PCA) functions, and its administrative (PCA) functions.The PCA's office felt that the processing of cases before they reach the stage of the actual court hearing comes within the PCA's remit, the LCD denied his jurisdiction here, and stated that this was a judicial process. The argument appeared to have reached stalemate.(22) Then in early 1990, the new Lord Chancellor, Lord Mackay announced that this area would now be open to the PCA's jurisdiction. It would appear that it took a 'new broom' to break the deadlock.

However, it is submitted that the view that the extension of his jurisdiction is the way forward for the PCA are misconceived. It will be argued in the following section that the extension of jurisdiction is worthless, until the PCA makes full use of his existing powers. These powers are not those concerning his jurisdiction, but his definition of **'injustice and maladministration'**

## Section II AIMS OF THE OFFICE OF THE PCA

As has been previously stated, the aims of the PCA system as introduced by the 1967 Act, were somewhat different from the ombudsman principles mooted before the enactment. It is proposed only to outline the aims of the PCA system, as it is the basis of this study.

The aim of the PCA system is clearly stated as follows: **to investigate 'injustice caused by maladministration by a government department'**, within certain restrictions set out by the 1967 Act. The PCA can only investigate cases referred to him by a M.P.;(23) he can only investigate cases referred to an M.P. within 12 months of the complainant becoming aware of the matter, unless the PCA believes that the situation warrants the use of his discretionary powers in this area(24); he cannot investigate a matter for which the complainant has

a legal remedy, again subject to his discretionary powers(25). The remedy can be by means of a tribunal, or an appeal to the courts, it can also mean judicial review. The PCA's use of discretion will depend on the circumstances of the case, particularly in relation to the complainant. If the complainant is unlikely to be able to afford recourse to such remedies as judicial review, then the PCA may take up the investigation.(26)

As we have seen the first major test is whether the department complained of, is within the PCA's jurisdiction.(27) If it is outwith the list, the complaint is returned to the M.P. with a letter of explanation. In fact, this is the procedure adopted in most of the cases of rejection outlined above.

The PCA is also not allowed to investigate a discretionary decision taken in the absence of maladministration.(28) This was a major cause of complainant during the various stages of debate on the Bill.(29) Many people expressed the view that the need for the power to question arbitrary decisions went to the root of the ombudsman principle. The suggestion is that such powers would allow the PCA to question arbitrary and manifestly unfair decisions, taken in the appropriate administrative manner - ie to look to the merits of the decision, and become a sort of administrative appeal court.(30) It would seem that another desire was being articulated, that of the need for an administrative appeal

court. It is still being articulated, as the PCA is kept busy either by rejecting complaints openly seeking him to perform such a role, or else rejecting spurious complaints about alleged procedural defects in the administrative process.

However, the definition does not preclude discretionary decisions being investigated if they are the product of maladministration. This leads to the question - what is maladministration? For if maladministration covers the fact that the decision is perverse, than there is no problem. However, the concept of maladministration means many things to many minds. The trend of evasiveness in this area originated with Richard Crossman, when he spoke of its definition in the House of Commons:

> "... We might have made an attempt.... to define, by catalogue, all of the qualities which make up maladministration, which might count for maladministration by a civil servant. It would be a wonderful exercise - 'bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on. It would be a long and interesting list." (31)

Already arbitrariness and perversity are mentioned. It may be true to say that early PCAs were cautious in this area.(32) It is also true that from an early point, there was a suggestion that maladministration could be more

loosely interpreted than had at first been thought. The Select Committee on the PCA, always ready to see wider horizons for their charge, first mooted this idea in 1967/68. Here the members introduced the concept of the 'Bad decision'. The Committee suggested that if the PCA found " a decision which, judged by its effect upon the aggrieved person appears to him to be thoroughly bad in quality, he might infer from the quality of the decision itself that there had been an element of maladministration in the taking of it and ask for its review."(33) They later urged him to use this power in 'borderline cases where in his judgment clearly wrong decisions had been taken."(34)

Geoffrey Marshall was one, if not the first, commentator to see the potential for interpretation that 'maladministration' offered. His 1973 article raised many points about the concepts of maladministration and injustice and whether the two could be separated; as well as questioning whether the PCA was in fact limited to reviewing procedural error.(35)

Sir Cecil Clothier has stated that he sees maladministration as " any departure from what the average reasonable man would regard as fair, courteous, efficient and prompt administration."(36) This is perhaps somewhat less challenging than some of the above sentiments, but 'fair' covers a multitude of sins - and a perverse decision could not be described as fair.

Anyway procedural errors can be difficult to delineate from substantive errors, a system which allows a perverse, or at least an inappropriate decision to be taken, could not easily be described as procedurally sound, even if the error is not obvious. A decision-maker may be incompetent, in that he lacks the imagination to envisage the effects of his decision, surely a system with an ineffective decision-maker is procedurally flawed, at least in the one instance. There is a counter-argument to this which suggests that the merits of the case are being considered in the study of the effect of the decision, but certainly in relation to the PCA this is inevitable, as his remit demands that there be 'injustice' stemming from the 'maladministration' - thus at the same point the merits of the case must be studied to identify the injustice, or lack of it. For the PCA has been known to declare that there has been maladministration, but no injustice has been suffered by the complainant as a result.(37)

With reference to the above, it is submitted that JUSTICE's suggested formula set out in their 1977 Report, 'Our Fettered Ombudsman' is a mere tautology.(38)

SECTION III THE OFFICE IN ACTION - THE PROGRESS OF A COMPLAINT.

The complaint should arrive in the PCA's office from a Member of Parliament. If it has come direct from the complainant, the office will forward it to the complainant's constituency M.P., enquiring as to whether he wishes to refer the complaint back to the PCA.(39) On arrival the complaint is sifted by the Screening Unit. If the complaint is not sufficiently detailed, it will be referred back to the M.P. for further information, this will usually be accompanied by an indication of its prima facie chance of success. At the Screening Unit the complaint has to pass the jurisdictional, time limit, and other tests, before proceeding. If the complaint fails one of these tests, and the PCA decides not to exercise his discretion on these points, (if available), then the complaint is returned to the referring M.P. with a covering letter, explaining reasons for its rejection.(40) If the complaint is accepted for investigation, a letter is sent to referring M.P. also, telling him of this decision. Both types of letter will be drafted by the Screening Unit, and forwarded via the Deputy Commissioner, to the PCA himself for approval and signature. If the complaint is accepted, a statement of complaint is prepared by the Screening Unit. This will contain the salient points of the complaint, the M.P.'s letter, and

any enclosed material.

From the Screening Unit, the complaint is passed to one of the Investigation Units. In 1988, there were three investigation units, headed by a director.(41) Under the director is the principal officer (Grade 7 on the civil service scale) and under him are three investigating officers (Higher Executive Officers on the Civil Service Scale).(42) The three investigation units are divided between subject area/departments, in the following manner: firstly, matters relating to the D.H.S.S. (as it was); secondly, those pertaining to the Inland Revenue and Customs & Excise; and lastly, a more 'generalist' unit, which will deal with such departments as the Home Office (prisons and immigration matters in the main); Department of the Environment (mainly planning appeals), the Department of Employment, and the Manpower Services Commission [M.S.C]

The investigation process is started by a copy of the complaint being sent to the Permanent Secretary of the relevant department.(43) Quite often, this will be this official's first notice of the matter in hand, and he/she will be willing to accept their department's responsibility and discuss remedies with the PCA. However, the PCA's investigation does not stop this point. Obviously, this is to ensure that there is no undetected maladministration in the events surrounding the complaint.

The investigating unit will then call for the

departmental papers relating to the case. They will also take statements from those involved. If there is conflicting evidence from the department as per the complainant's account, the investigating officers will interview the complainant, and put the department's case to him for his comments.

In relation to obtaining papers, the PCA has wide statutory powers, and benefits from the fact that public interest immunity cannot be claimed by the department.(44) The only papers that the PCA might have difficulty in obtaining are Cabinet papers.(45) The PCA is also empowered to receive evidence on oath from witnesses, and compel them to give such evidence. However, these are rarely used as the PCA prefers to keep matters informal, and pursue an inquisitorial investigation.(46) At this point, a draft report will be formed. This is filtered up through the hierarchy to the PCA. It has been the stated policy of successive PCAs to be involved personally in all cases, the PCA will read and review all cases wherever possible.(47)

There is an established practice to send the final draft of the report to the Permanent Secretary of the department concerned.(48) He/she will ascertain that the facts are correct as far as the department's account is concerned, and they have the opportunity to comment on the balance of the report. It is also the first time that the Permanent Secretary will have knowledge of what remedy is

being suggested as appropriate in the case, and he/she can comment on this. It has been seen that the department may present the PCA with acceptable reasons as to why this remedy is inappropriate, and the PCA may modify his recommendations accordingly. This also means that when the report is published and sent to the referring M.P., the PCA is able to record whether or not the department has accepted his proposed remedy. The report is sent only to the M.P. involved, not to the complainant, although, the office does include a copy, which the M.P. can pass onto the complainant, if he so desires.

The lack of involvement of the complainant in the process will have been noted by now. The 1967 Act makes no provision for the complainant to be an active participant in the investigation process, in that there is no requirement for the PCA to check that all the information the complainant wishes has been placed before him. The retort to this point, is that if the PCA or his staff feel that there is a need to seek further information from the complainant, then they will do so. However, for an organisation that sets great store by their belief that many complainants are satisfied by the chance to air their grievances to an independent system, it would surely be open to them to adopt a procedure whereby the M.P. is requested to verify that the complainant has fully stated their case - it is afterall possible that the complainant has only outlined the major points of their problem to the

M.P.. As has been suggested, this may produce superfluous points, but surely, the office is capable of sifting this out. It is a small gesture, but may well make the complainant feel less abandoned.(49)

An even more glaring omission is the fact that a draft copy of the final report is sent to the department concerned, but not to the complainant. There appears to be no clear statutory requirement for this to be done. Therefore, there is no reason why the practice of sending the complainant a draft copy (via the referring M.P., if necessary) should not be adopted; certainly if the Select Committee were to approve such a development, there could be little objection, as the PCA is given leave to conduct his investigations as he sees fit.

The office is reluctant to adopt such a procedure. There are a number of reasons given for this reluctance. The first being that the complainant is criticised very rarely in the report, whereas the departments are frequently criticised, and thus the complainant needs no opportunity to defend himself. If a report does not uphold the complaint, Sir Anthony Barrowclough for one, did not feel that it was part of his job to be critical of the complainant. Only if it is felt that the complaint was 'trumped up' will the PCA be moved to criticize the complainant. In such a case, it is probable that the complainant would be send a copy of the report for reference, though his comments might not be sought.(50) In

many cases, however, the PCA may be critical of a third party involved in the proceedings, this occurs most frequently in tax cases, and the third party may be a solicitor, or an accountant. In these cases, a draft report would be sent to the third party involved, asking for their comments.

In this justification, one obvious point is missed, the report is sent to the department, regardless of whether it is critical of them or not.

The office also contends that this is an opportunity to ascertain that the facts are correct as far as departmental actions are concerned. The office claims that this prevents the embarrassment of a recalcitrant department appearing before the Select Committee,(51) and the department being able to prove that the PCA had got his facts wrong. Thus, they claim, they would lose the moral ground.(52) Presumably, it does not matter as much to them, that the facts may not be correct as per the complainant's actions; as the complainant will not normally have the opportunity to embarrass the office.

Finally, the office maintains that most of the case-history is documented as departmental files, and thus through this medium, it could be established what **had** happened, so that there was 'relatively little factual doubt'. If there was a conflict of opinion as to the facts, this may well have been settled before the complaint arrived at the office, through the earlier

exchanges between the department and the complainant. So, at that point the departmental account would have been put to the complainant, and he would have had an opportunity to comment on it.

If this had not occurred, and the conflict persists, or becomes apparent for the first time, and the disputed facts appear to be material to the case, the PCA's staff would approach the complainant and seek his comments on the department's case.(53)

The last reason given is that such an approach to the complainant, seeking his comments on the draft report would be a useless and time-wasting exercise; in that if the report did not uphold his complaint, the complainant would simply reiterate the facts of his case again, not accepting the ultimate conclusion of the report, and adding nothing to the some total of knowledge. It has to be said that on occasions, the department's comments amount to a denial of responsibility, and a reluctant acceptance of the decision (without prejudice) in the nature of a costly P.R. exercise - so such a criticism can work both ways, though perhaps the department is less likely to seek to prolong the investigation. It is felt that unsucessful complainants, disappointed at the outcome, will then claim that the procedure was unfair, because they were not asked for further relevant information, which they could have provided. The office believes that very little of the new information, will be

relevant - so it is not worth seeking.

The office is always ready to receive new information, and decide whether it is relevant to the case. If it is, they will reopen their investigations, and as far as the PCA is concerned a case is never really completely closed, unlike the finality of some court proceedings. Undoubtedly, this latter fact is beneficial to the complainant; however, the whole procedure begs the question, why not ask whether there is any further information which the complainant wishes to add - if it is irrelevant, then the office can disregard it, but it must make more sense to make that decision whilst the case is current, rather than take that decision later on, say a month or two later, when the complainant receives his copy of the report from his M.P.. If as the office claims, new information is always considered, then why not do it as part of the original procedure? Perhaps the fear that every complainant will respond, instead of one or two brave souls who respond after the report is published. In response, it is mostly likely to be the persistent complainants (whom it is accepted, are blindly convinced of the justice of their cause) who will continue to complain. Most people would accept the (believed) finality of the report, and dismiss the procedure as further evidence of the faults in the Administration.(54) So, it is submitted, that the office could be encouraging the professional complainants by this attitude, rather than

helping the more timid complainant, state his full case.

It was stated that there are often inquiries from complainants as to the appeal system from the PCA.(55) - it is submitted that this is hardly surprising. It is not a question that the PCA should be seen as the citizen's defender - it is accepted that this is not his constitutional role. However, the overall appearance of the investigation process appears to be weighted to giving the department all the opportunities for comment, and it is cause for concern that the PCA relies on the departmental files for the case-history in total, and not just for the department's side of the case.

If the department refuses to accept the remedy suggested, the published report will conclude that there has been 'an injustice as a result of maladministration which has not been remedied' It is within the PCA's power to issue a separate report to Parliament highlighting this injustice.(56) The usual procedure is for the matter to be reported to the Select Committee. The Committee can then decide whether to call evidence from the department, usually from the Permanent Secretary but also conceivably from the Minister, as to why the department have refused the remedy recommended. They in turn can report on their findings.(57)

The Select Committee also monitor and support the PCA and his office. He will be called to account for his performance in the office. For example, the Select

Committee has also regularly shown concern at the length of time investigations take. This has become a matter raised regularly, and the PCA is seeking to reduce the average time taken.(58) The Committee will also raise questions about matters contained in the PCA's Annual Report. The PCA is then expected to consider and act upon the comments and suggestions of the Select Committee.(59).

This chapter has attempted to provide a brief history of the office of the PCA. Under examination, criticism has been made of certain aspects of the adopted complaints procedure. Most importantly for this thesis it has been noted in Section II that there is a wider interpretation of his statutory powers available to the PCA, should he choose to adopt it.

Having discussed the work of the office in general terms, the thesis will now move on to consider the specific work of the PCA in relation to the three categories of administrative procedural error as defined in the General Catalogue. Chapter Three will deal with the PCA's approach to impartiality.

## CHAPTER THREE THE PCA AND THE DUTY OF IMPARTIALITY

This Chapter considers the PCA's approach to procedural errors which lead to the general charge of impartiality. The variety of cases can be divided into Victimisation; Inconsistency; Bias in the Decision-Making Process; and Inherent Bias. Each section illustrates the types of complaint the PCA receives and his approach to each type of complaint. His criteria for identifying maladministration or procedural errors are explored. The approach of this Chapter, and of Chapters Four and Five, is expansive in the hope of illuminating the work the PCA is actually carrying out, and the nature of the complaints the office receives.

### SECTION I - VICTIMISATION

This particular category stands on its own, as it is difficult to relate to the other categories of Inconsistency and Bias. It forms a large part of the PCA's work in this area, but usually the mistake is not as serious as first alleged. It is given a separate category as it is very much a part of the PCA's consideration of this area as a result of the high instance of this form of complaint.

It could be seen as a form of procedural error on the

basis that the complainant has not received impartial or equal treatment, without good administrative reasons. However, most alleged cases prove to be unfounded under the PCA's investigation.

Victimisation, harassment, or persecution is a common form of complaint of impartiality. Many complainants give no possible reason for their alleged persecution. Such cases can be divided into two main groups, 'victimisation' that the complaint perceives to be harassment, but which in fact is normal administrative procedure to which the complainant objects personally. Secondly, 'victimisation' can be unfortunate treatment which has arisen through administrative error, but where there is no malice towards the complainant.

The PCA does not accept that normal departmental practice amounts to persecution, as is often claimed.(1) Pursual of unpaid tax often causes complaint. An example is one case where a husband claimed that he was being harassed to pay tax. He felt that he should not be asked to pay the legally due tax as he did not have the means to do so, and he was of the opinion that his wife should not be expected to use her savings to pay the bill. The PCA stated that he would have to accept that the tax was due.(2)

Similarly, the necessary procedures for dealing with the claims in the DHSS & the Department of Employment do not as far as the PCA is concerned (if exercised normally)

amount to persecution.(3) For example, unannounced visits to the claimant's home do not constitute harassment or victimisation.(4)

Some 'victimisation' complaints are in fact other forms of procedural error eg. delay. Here the PCA is concerned by the error, but is quick to point out that it is not actually victimisation(5)(though sometimes he comments that he can understand the complainant's suspicions).(6)

Excessive zeal on the part of officials has to be guarded against - this is a fault in itself, but Sir Alan Marre was unwilling to classify it as victimisation in the absence of malice:

> "In the exercise of such duties, individual Investigation Officers must obviously be diligent in following up any evidence or suspicion of irregularities. But they have an equal obligation not to usurp the functions of those whose duty it may be to establish where guilt, if any, lies and to take action, whether by court proceedings or otherwise, to prevent or punish misdeeds. It is no part of the duties of an Investigation Officer to decide guilt and he must clearly be aware of getting, as it were, carried away by the enthusiasm of the chase and of beginning to assume, or even

give the impression of assuming, guilt.....
But I do not think Mr D was motivated by any
malice. I have found no evidence to support
the contention that he either positively
alleged the complainant's guilt or
specifically urged a prosecution."(7)

This is also a consideration when dealing with complaints about the Inland Revenue. Many of the complaints regarding the Inland Revenue concern a persistent investigation into the taxpayer's affairs. This poses the problem for the PCA as to when this type of investigation is warranted by the state of the taxpayer's affairs, and when it has overstepped the mark. On many occasions the complaint simply stems from the taxpayer's annoyance at being subjected to scrutiny, however, as the PCA frequently has to point out, this is required by legislation, and the Inland Revenue is simply ascertaining that the correct amount of tax, legally due, has been collected.

During his investigation, the PCA and his staff will check that the procedure was necessary, and that there was sufficient reason to continue the investigation.(8)

It follows that the PCA's investigation may conclude that there have been no irregularities in the department's procedure. Otherwise the charge of victimisation in Inland Revenue cases is usually shown to be a charge of delay and prolonged inquiries, and while this may amount on

occasions, to maladministration of another kind (eg delay), it is not one of victimisation.(9) Although in one case, the PCA felt that the investigation had been too protracted, as it had continued too long after the supporting evidence had collapsed.(10)

Complaints are sometimes accompanied with reasons for the alleged victimisation. These are rarely found to be substantiated. The 'reasons' include, a vendetta against the complainant for being outspoken in her criticism of V.A.T.(11); victimisation because she went to a naturopath and not an N.H.S. doctor(12); discrimination because he had served a prison sentence(13); allegations that the Home Office, along with local authority workers and the electricity board were united in an oppressive campaign aimed at breaking up a prisoner's family(14); and many more in a similar vein(15).

Complaints of discrimination because of race have been placed before the PCA.(16) None of these has been proved to the PCA's satisfaction, and in fact one case provoked Sir Cecil Clothier to criticise the complainant severely after he had made an allegation that there were 'Nazis, fascists and Powellites' within the prison system. He commented:

> "I have gone in some detail into these allegations about racial discrimination because charges on this topic are serious when made against any public authority but

especially when made against those responsible for prisons, where any injustice may be less visible to the public eye. However, from the evidence that I have seen, including the report of my officer who interviewed the complainant, I am not satisfied that any of the allegations are well-founded, and I am even doubtful whether they have been made in good faith. On the contrary, I consider that the prison authorities have done their reasonable best in difficult circumstances to treat him fairly, and that he for his part has used the fact of being black as a device for justifying his own misbehaviour and for provoking situations about which to complain."(17)

In general, the PCA is unwilling to attribute difficulties to anything more than administrative competence - it would be very difficult for him to prove more sinister motives.(18) In all the cases dealing with this area, only in one did the PCA feel that he could not explain the lack of attention that a prisoner received. The implication was that the fact that there could well have been 'victimisation' as a result of the prisoner being a sex offender, could not be ruled out by the PC, as no adequate explanation had been offered.(19)

In summary, 'victimisation' could be described as harassment directed towards one individual. However, it is never usually a successful complaint in this form, despite the number of complaints who use this term in their submissions. Quite often the fault, if any, should be classified as delay.

## SECTION II - Inconsistency

### (a) Inconsistency between Cases

The first administrative form of inconsistency that concerns the PCA, is where one case is not treated in the same way as similar or identical cases.(20) However, there is a danger, which the PCA appears to recognise, that strict implementation of this principle, may fetter another desirable administrative principle, ie discretion. Therefore, when confronted with this complaint, the PCA's procedure is to ascertain whether there were good reasons for this distinction.

When first confronted with this complaint, the PCA will ensure that the cases are in fact identical, or close enough for comparison. In quite a number of cases, he will discover that the cases are not in fact as similar as they would appear to the complainant, and the matter is not taken any further.(21) For instance, in one case the

complainant suggested comparison with other cases, where financial assistance had been granted; however, the PCA discovered that one criterion used was the number of flying hours experience, and in comparison, the complainant had much less experience in this respect.(22)

In one case there was a distinction which technically justified the situation - the complainants were local authority sub-tenants, and the tenants that received compensation were tenants of the department. However, the PCA felt that the implication of this rule was harsh, and that the department should compensate the complainants:

> "I have made clear to the Department my misgivings about the application of their practices as it affected the complainants in this case - though I appreciate that there are other factors and indeed other departments to be considered in contemplating any change in practice to avoid similar difficulties arising in the future. I naturally scrutinize with special care any suggestion that maladministration is to be found in a Department's established practices which have stood the test of time and earned the approval of Ministers. But there have been occasions when my predecessors, with the endorsement of the Select Committee on The Parliamentary

Commissioner For Administration, have enquired of a Department whether they have reviewed their established practices when it appeared that these bore harshly on individuals. I decided to follow that example on this occasion and therefore I asked the Department whether they had reviewed or would be prepared to review the practice which gave rise to the substance of this present complaint - especially as my investigation had suggested that the practice had not originally been formulated with the circumstances of local authority sub-tenants in mind."(23)

This is a good example of the PCA exercising his 'bad rule' powers, and illustrates that although there may not be a procedural error per se, the PCA may still feel that a department could do better in administrative terms; ie the PCA is not necessarily limited to procedural error. It should be noted that this is not a common occurrence.

In other cases, the circumstances may be comparable, yet the PCA will not find maladministration if he is satisfied with the department's reasons for the inconsistent treatment.

Examples of reasons acceptable to the PCA include a change of policy. In one case, the complaint was about the Foreign & Commonwealth Office's policy of not paying

repatriation costs. The complainant's grievance was that although he was being made to pay his costs for repatriation from Pakistan, the Department were not seeking to recover costs from those people repatriated under similar circumstances from Cyprus. Sir Alan Marre concluded:

> " I have reported in previous cases I have investigated that the Department's general policy in seeking to recover repatriation costs, and retaining passports meanwhile, seems to me a sound safeguard for the protection of public funds; and it has been explained to Parliament on a number of occasions. As a very exceptional measure, in the circumstances of the 1974 evacuation from Cyprus the Department, with Treasury agreement, decided to depart from this policy. But this isolated exception does not seem to me to carry with it any obligation to abandon their long-standing practice of seeking to recover repatriation costs and retaining passports, either generally or in relation to the complainant's case."(24)

Also if the outcome of the case used for comparison was the result of a mistake on the part of the department, or the result of an ex-gratia payment, the PCA will not support a claim for similar treatment.(25) For example, a

complainant alleged that other colleagues had received repayment of tax paid on retirement testimonials, whereas she had not. The tax had been repaid in error. Sir Alan Marre explained why he did not support her claim, in that it would not be acceptable to compound an error, by repeating it for consistency's sake in similar cases.(26)

The PCA adopted the same approach in a slightly different set of circumstances. The complainant was aggrieved that H.M. Customs & Excise had refused to refund purchase tax paid on toffee apples, despite a High Court ruling that toffee apples were not subject to purchase tax. Sir Alan Marre explained that some refunds had been made under departmental guidelines for such situations, if the tax had been paid voluntarily and without query, no refund was made. The department's approach was backed by legal authority, and the PCA could find no special reason why the complainant's case should not be dealt with under these principles.(27)

In a more specific example Sir Anthony Barrowclough felt that there was a suitable distinction between a private company (the complainant) and a publicly-funded, non-profit making organisation, so that the department were free to mention the latter, if members of the public asked about the services they provided. Although, he added reservations about the department mentioning the public organisation in leaflets issued by the department.(28)

There is recognition by the PCA that a certain amount

of inconsistency is inevitable in the operation of a discretionary policy. Sir Cecil Clothier expressed this in one case:

> "....But I accept that if Inland Revenue were less than fully consistent in applying the statute to all agencies to which it should be applied, those to which it was applied could reasonably claim to be sustaining an injustice. This injustice would not be caused by their being required to observe the law, but by being subjected to unfair commercial competition by those who should be, but were not being, required to do so. Such unfairness is, alas, something which is not wholly avoidable in either this, or many another, area of public administration. What is important, however, is that it should not be brought about, or made worse, by any avoidable administrative failure on the part of a government department to ensure full and fair application of the law or rules."(29)

One on-going complaint was that concerning the issue of tax-exemption certificates within the construction industry(30) One form of the certificate involved less formalities than the other, but as such was supposed to be issued only to very large construction companies. However,

some smaller companies received them, and this put them in a better position to find work than similar companies with the more formal certificate. The complaint was partly that these other companies had received them, but not the company in question, yet, they were all similar in size and nature. The PCA commented:

> "Clearly, if Inspectors are given the power to exercise their discretion in deciding applications there are bound to be cases from time-to-time where, in similar circumstances, one Inspector may reach a different decision from another."(31)

The PCA accepted that the exercise of discretion may well throw up anomalies, but the regulations should be applied as uniformly and consistently as possible - this had not happened in one case between the two tax offices concerned. As has been seen, the PCA does not accept that an error should be repeated in such circumstances, and here, he stated that it was not justifiable to grant the more favourable licence, merely because other companies had been granted them incorrectly.

Another example concerned a company which complained that the department had never previously enforced the implementation of their import licence quotas inflexibly. The PCA emphasised that there was no maladministration involved, however the department allowed the company the concession again. Sir Idwal Pugh stated:

"But the Department do their best to administer import licensing policy with fairness and flexibility and minimise inconvenience to individual importers... This can cause an importer always to expect flexibility to be exercised in his favour and I think that this is what the company have come to expect in view of their repeated success in obtaining alterations in the terms of the licences granted to them in accordance with their requirements...."(32)

However, inconsistency without a justifiable reason will attract criticism from the PCA. In another case, shipping agents complained that they could not compete with shipping agents at another nearby port, as a result of those agents being granted the use of radio channel frequencies which the complainants had been refused. The Radio Regulatory Department of the Home Office realised that there had been a mistake in granting the use of the channels, but decided it would be too damaging 'to all parties concerned' to revoke these licences, but resolved not to issue any further licences for the use of these channels.

The PCA found the complaint to be justified, and issued a fairly strong-worded criticism:

" It seems to me that the Home Office's sense of fair-play was subordinated to their

wish to avoid the embarrassment of revoking the licences: instead of seeking to resolve the problem they simply hoped that it would go away. The Home Office's handling of matters justifiably raised the accusation of discrimination and merits my criticism. Uncomfortable though it might have been, the Home Office plainly ought to have reopened the question of the Port X agents' licences as soon as they realised that a mistake had been made in issuing them. They would then have been seen to be acting fairly and the position of the Port X agents would have been regularised much sooner."(33)

(b) Inconsistency within one case

This category involves misleading or inconsistent advice being given to the complainant, so that they believe the process or its outcome to be different from what it is.(34) Or where the department fail to honour a previous undertaking without good reason.(35) This is an area where the 'case-to case' basis of the PCA's work is quite evident. However, some general patterns can be established.

A large number of cases go unresolved as the PCA is unable to ascertain whether or not the incorrect

information in fact was given by the department concerned.(36) It is here more than anywhere else, that the possibility of the institutionalism of the PCA is apparent. He seems to require a high standard of proof from the complainant to allow him to take the complainant's word against the department's. For instance, he rejected the evidence of a witness to an interview, on the grounds that the witness and the complainant had subsequently talked about what had happened at that meeting.(37) It is suggested that almost anyone who discovered that the department now appeared to be telling them something different, would have asked the witness, if they had been mistaken, before rushing off to complain to anyone, let alone the PCA!

The barrier that is presented to the complainant in this situation, is illustrated in this extract from a case:

> "Before making use of their extra-statutory powers to waive or remit duty or tax on the ground that public faith has been pledged... Customs require to be satisfied that the advice said to have been given was in fact given. They have considered the evidence available to them in this case and they have told me that, while they accept that the complainant misunderstood the position, they take the view, on the balance of

probabilities, that the misunderstanding was not due to a mistake by a member of their staff."(38)

The PCA's criteria will be examined more closely.

How soon (or late) after the event the allegation is made is a factor - if a while afterwards, the PCA is less likely to believe the complainant.(39) Also a negative consideration is whether the complainant had any correct information to the contrary in his possession.(40)

Another important factor in the PCA's consideration is whether it is likely that the advice or information allegedly given, was in fact tendered. The argument goes that if the advice is so fundamentally wrong, it is more unlikely that a member of the department would have given it. As Sir Alan Marre phrased it in one case:

"but it seems to me unlikely that that office would have given him information so totally at variance with the facts known to them as is suggested by the complainant's recollection."(41)

Factors that will assist in proving that the department is responsible for the incorrect information, include the information remaining uncorrected by the department,(42) and any written material which supports the complainant's case including misleading information leaflets.(43) Sometimes the PCA will merely be impressed with the complainant's account of events, eg Sir Cecil

Clothier was impressed by "the very clear recollection of events recounted to my officer by the wages clerk and the complainant."(44)

In cases where there is no conclusive evidence, the 'benefit of the doubt' is sometimes given to the complainant. This is occasionally done by the department, regardless of whether the PCA feels that they are responsible.(45) On other occasions the PCA recommends this course of action.(46) His criteria for this course of action are not always clear, but some of the factors below may be involved - ie even if the misleading advice is not proved from the department, the benefit of the doubt may be given if financial hardship results.

A change in government policy which causes inconsistency, will not be challenged, or remedied by the PCA. Sir Idwal Pugh stated this:

> "It is not open to me to question Government policy. But I do not think he could have reasonably have expected the Bank of England - or anyone else - to forewarn him of the impending change, although I appreciate that he might have acted differently had they done so."(47)

Mention was also made of the fact that such decisions involving financial transactions, could cut both ways, in that there might be times when the situation would be advantageous to members of the public.

If the department had no duty to provide advice to the complainant, the PCA is less likely to hold them responsible for the incorrect advice, or the lack of it. For instance, the IR is not expected to advise the taxpayer on the best way to minimalise their tax bill(48) nor are the departments responsible for welfare benefits expected to advise their clients on the best package(49); nor is it maladministration for the department responsible to omit to ask a client to apply for a pension, as this is a voluntary arrangement and not a duty.(50) However, the PCA has criticised a department for not informing a complainant of his eligibility to help from a scheme.(51)

If there is a duty, failure in it by the department may amount to maladministration - Sir Cecil Clothier:

> "In such circumstances failure to fulfil the obligation to give positive direction may be treated in the same way as misdirection."(52)

The department must answer accurately questions put to them by the public:

> "But although they have no duty to the taxpayer to advise him on tax planning matters they do have a responsibility not to mislead him by giving inadequate answers to questions put to them, particularly where the impact of those inquiries should be plain to the tax office themselves."(53)

The department will not be blamed if the answer they give does not cover the complainant's particular circumstances, if the complainant does not give specific details.(54)

Nor will the department be blamed if the advice was correct at the time it was given, if circumstances beyond their control changed the outcome.(55)

If the department is not responsible for the misinformation, the PCA may still feel that it was their responsibility to correct the mistake.(56) This seems to depend on the circumstances of each case.(57)

The different interpretation by the complainant must be a reasonable one.(58) Also if their has been fault on both sides the PCA will not hold the department responsible, for instance in one case the department had misled the complainant, but he had misrepresented his circumstances to them.(59) If the misleading advice had no effect on the eventual outcome of the case no further action will be taken.(60)

If the misleading advice or information is established as originating from the department, the PCA will not always suggest a remedy other than an apology or assurance that steps are being taken to ensure that the situation does not recur.(61) The following extract shows the reaction the PCA sometimes receives from departments, in this case Sir Anthony Barrowclough wished the department to amend the wording in a document:

"However, the Chairman said that (despite his foregoing comments) he entirely accepted that if I felt that the text of an extra-statutory concession was seriously ambiguous, that was in itself a virtually conclusive argument that the drafting needed to be reviewed and improved."(62)

Sir Idwal Pugh set out the criteria he used in deciding what remedy was appropriate:

"I criticize the serious error made in the advice given to the complainant. But I take the view that the giving of incorrect advice by the Department does not automatically place them under an obligation to pay financial compensation: each case has to be considered on its merits. In this case the Department have admitted their error, but do not consider that the complainant has made good his claim that he is worse off as a result of what happened. I accept this. There can only be doubt as to what the complainant would have done had he known his true liablity."(63)

His first move is to study whether the wrong information changed the outcome of the process. This is well illustrated by a series of complaints brought before him, concerning incorrect information given to married

women as regards their national insurance contributions.(64) The Department's policy in these cases was not to grant a remedy, if at the time of the incorrect advice, a woman would not have qualified for her own pension, regardless of the advice she was given by the Department.(65)

If contributions have been paid in these cases, they are refunded.(66) However, if they could have qualified, but were misled into not paying full contributions, then, if possible, they will be allowed to 'make-up' the necessary contributions.(67) In one exceptional case, where in fact the wife did not qualify, Sir Alan Marre suggested that she should be compensated for the private pension she would have invested in, if she had been correctly advised; his reasoning was based on the fact that he was convinced 'beyond reasonable doubt' that the wife would have taken out such a pension, if she had not been incorrectly advised; and her husband's argument that repayment of contributions would not compensate for the loss of the private pension.(68)

The above extract also highlights two other factors which the PCA considers, firstly, whether there was a financial loss, resulting from the incorrect information; and secondly, whether the complainant's subsequent actions were based on this information. These points will be discussed in more detail in Chapter Six.

However, if these can be established, then the

compensation will be paid. The sums involved can be quite considerable. For instance, Customs & Excise made an error as to the liability to tax of a new product, developed by a company - the company suffered losses when the mistake was discovered. Sir Alan Marre accepted that although the company had thus had advantages over their competitors, at least for a time, the company would not have started the venture, if the true position had been known. Compensation to the value of £6000 was agreed.(69)

In another case involving Customs & Excise, the department miscalculated the duty that would be payable on a drink product called 'snakebite' the company went into production, only to be informed that the duty payable was much higher than they had been told. They could not be allowed to continue paying a lower rate, but the PCA decided that they should be compensated for £30,000 expenditure involved.(70)

Another case where the PCA had considerable sympathy with the complainant, as a result of the undoubtedly poor administration on the part of the department:

> "In my view the complainant with his articulate and carefully-worded letters, had made every effort to establish his probable pension position from OVB[Overseas Branch] and I consider it reasonable for a UK national to rely primarily on advice given to him by a UK authority. He was given no

warning that the advice should not be taken at face value and it is not surprising that he based his calculations and decisions on what OVB said. On five separate occasions he had received advice in writing that he would be entitled to a supplement to his pension and he had no reason to doubt his position. That he received apparent confirmation from the French authorities does not in my view lessen DHSS's responsibility in the matter....

In response the Principal Officer told me that he accepted that, although the complainant had not lost any benefit to which he had a statutory title, the additional amounts which he had been led to expect were sufficient to have influenced his plans for the future and that the DHSS had some responsibility for the financial position in which he found himself."(71)

Other examples of successful complaints include having the cost of a television licence refunded to a complainant, after she was told, incorrectly, that she could 'cash it in' if unused; the complainant had been waiting for the delivery of a 'television for the blind' which did not require a licence(72); and in an another case, a complainant was granted remission on the tax paid

on £500, which he had brought into the UK, after assurances from the IR that it would not be subject to tax.(73)

As can be seen, the PCA does tend to take a dim view of inconsistent handling of a case, in one case, where a complainant had been informed by one inspector of the alterations to his plans necessary to make them acceptable for planning permission; another inspector rejected the amended plans; the PCA warned that such inconsistent decisions were undesirable.(74) However, as seen in cases of inconsistency between cases, there may be distinguishing reasons for the inconsistency.The PCA accepts that the exercise of discretionary power by different individuals may produce different results, as illustrated here:

> "But it does not follow that, because in this case a Head Office official and an Inspector in a different tax district (who had access to more recent information about the company's turnover) came to a different decision, the original Inspector was guilty of maladministration in reaching his decision."(75)

It will also have been noted from the above examples, that as in the previous heading, the PCA will not expect the department to be held to a decision which is in contravention of the law or regulations.

Finally, the PCA' dislike for this kind of error is illustrated in this quotation:

> "[I]it is indeed fortunate that his eligibility under those regulations enables the Department to provide such a remedy. Had that not been so, my criticism of their deficiencies in handling the father's enquiries would have been in much stronger terms."(76)

## SECTION III - Bias in the Decision-Making Process

This section deals with incidents which may suggest partiality, that occur during the actual decision-making process. Such bias is usually caused or allegedly caused by an act or omission on the part of the decision-maker. The borderline between this and bias inherent in the decision-maker is the category of collusion. It is included in this section on the basis that there is no apparent reason for the partiality at the outset of the process.

### (a) Collusion

The PCA rarely upholds a complaint of collusion between a department and the other party. There may be action that was considered unwise but not enough to support collusion. For example, it was thought by the

complainants that the Department of the Environment had been swayed by the Borough Council, and as a result had not considered the County Council's objections. Sir Idwal Pugh commented:

> "Nevertheless, it seems to me that the Department, having enquired about the County Council's views and had been told that a copy of those views was being sent to them by first-class post, might well have waited for their arrival before finally deciding not to intervene. This would have done much to remove later suspicions that the Department were unduly influenced by the Borough Council in their consideration of the proposals."(77)

Many of the cases are expressions of disappointment at the outcome of the process.(78) A slightly more serious incident occurred when a Ministry Representative stayed behind with a panel, after the complainant was asked to leave, and the same representative had lunch with the panel afterwards. The PCA expressed an opinion that the complainant had perhaps misjudged the standards to be expected from the tribunal.

> "It seems to me that some of the complainant's misunderstanding about the procedures and functions of the panel arose from an erroneous impression that this was a

quasi-judicial appeal procedure. The Ministry have explained to me that in fact the panel system is a non-statutory procedure, introduced at their own discretion in the interests of visibly more informed administration, under which farmers may make representations against an official ruling before a panel of practical farmers acting as advisers to the Minister, and that the panel does not act as a statutory referee between the Ministry and the applicant."(79)

But he had previously stated:

"My investigation has satisfied me that there was nothing improper in the DEO's [the Ministry's representative] remaining with the panel after the complainant and his wife left the room: the panels often need to seek advice from the Ministry official on the regulations and matters of fact relevant to them, and I can see the need for this. But I can quite understand why the complainant became suspicious, especially as he had been told in the letter from the Ministry informing him of the administrative arrangements,that the panel would deliberate in private. In fact the DEO concerned on

this occasion evidently himself felt that he should leave with the complainant and his wife, because he had to be asked specifically by the panel to stay behind.

Although I am satisfied that the complainant's case was in no way prejudiced by what happened, I do think that this practice is open to misinterpretation. I am glad to report that the Ministry themselves now recognize this and have since discontinued it, amending departmental instructions accordingly."(80)

In another such case, the complainant alleged that the Department had come to a secret arrangement with the owner of another property. The suspicion arose mainly due to procedural faults such as lack of communication, and using a procedure for cpo which did not give a statutory right of objection. The PCA concluded:

"But when procedures which have been laid down to ensure fairness and openness are not properly carried out, doubts must remain whether all interests have received fair and equal consideration..... But the fact remains that it cannot be said beyond all conjecture that the decision on the Compulsory Purchase Order affecting him was

reached with the absolute impartiality, which good administration requires."(81)

(b) Unfair Advantage

A common complaint is that during a planning appeal site visit, the inspector viewed the site from a point unfavourable to the complainant's case/favourable to the other party's case, to the complainant's disadvantage. In one case, the complaint was that the site had not been viewed from the complainant's property; Sir Alan Marre's report recorded the following:

> "In discussion with my officers the inspector conceded that, from the point of view of justice not only being done but being seen to be done, there was a case for an inspection from the complainant's property. ....
>
> ...But having examined all the evidence and considered his explanation of a number of points, I am not persuaded that his failure to view the site from those properties of itself prevented him from making a reasonable assessment of the merits of the case. In the circumstances I do not feel entitled to question the appeal decision."(82)

On the whole, the PCA does not usually find grounds for criticism in these types of complaint.(83)

Other complaints allege that the aggrieved party was put at a disadvantage by the inspector's conduct of the inquiry. For example, a complainant alleged that the inspector had allowed insufficient time for his case, and he claimed that he had concerned with the arrangements at the time as "he was afraid of antagonising the inspector, who had shown various signs of impatience and irritability over the time he was taking to present the company's case and cross-examine the council's witnesses." However the PCA concluded:

> "The complainant is clearly unwilling to accept that his shopping centre should not be allowed to continue and his complaint to me is, in essence, that the appeals that were made to the Secretary of State against the Council's enforcement notices did not receive a fair and proper hearing. Having carefully studied all the evidence, I report that I do not consider that this was so. I do not find that the inspector conducted the inquiry into the appeals in a way that was prejudicial to the complainants' case and I consider his report was a fair one and his conclusions were an impartial and honest appreciation of the situation as he saw it.

I have also found no evidence of prejudice in the Department's consideration of the appeals or any shortcomings in their handling of the case, apart from the unfortunate administrative shortcoming over the issue of the decision letter - a human error which did not bear on the decision itself and for which the Department apologised at the time."(84)

Departmental action sometimes does come in for criticism from the PCA. For instance, in one case, consultations and hearings were afforded to developers, and not to other parties objecting to developers' proposals. Sir Alan Marre commented:

"But in this case they did give the developers the opportunity of explaining their case orally to them and their professional officer. And when contrary views are held by two interested parties in a matter on which a discretionary decision must be made, and when the interpretation of the facts may be a matter of judgment, then it seems to me that each party should have equal opportunity to present their case to those making the judgment. While I accept that the Committee's letter of 8th. September, 1972 did not advance new

arguments, I think it could have been interpreted as an indication that they thought they could explain their point of view better orally than in writing. And, as the developers had had the opportunity to do that, I think it would have been appropriate if the Department had at least offered the Committee an equal opportunity of putting their case to them in London before finally making their decision."(85)

In another case, the Department relied on the view of one parties (the local authority) when making administrative arrangements for an inquiry. Sir Idwal Pugh stated:

"...By relying on the attitude of the Council, there is a danger that the Department will not know the full story. I think that was the case here... The Department clearly acted on the information they had, but I think they should have obtained the Council's views on the request for the postponement in writing. They might well have obtained a more accurate account of the current local position had they done so....

....At the same time it should have been clear from the extent of the damage to the

listed building that the remaining fabric was at risk from the elements and vandalism. In all these circumstances it seems to me that the Department should have had exceptionally good reasons for agreeing to a second postponement of the inquiry. But I have found they rested on the local authority's attitude and agreement."(86)

(c) Consideration of all Relevant Factors

Many of the complaints to the PCA allege that not all of the complainant's representations were considered; or that the department did not have the full facts before them. The PCA cannot look at the merits of a decision taken without maladministration. Sir Cecil Clothier expressed well the distinction that the PCA must draw:

"As I have said at various points in the preceding paragraphs the question is not, were the right **decisions** taken? It will always be possible for people to argue after any event of this kind that different decisions would have led to better results. But that is not an argument into which I am prepared to enter. I have to consider whether the administrative steps leading to

those decisions were adequate and proper, and whether the administrative actions taken to implement such decisions were appropriate."(87)

In other words, a decision was taken without all the relevant facts being considered. This forms a part of the bias spectrum as it means that one side's representations/case are/is incomplete.

The other facet of this category, is where irrelevant factors (ie information that is unnecessary to make an impartial decision) are taken into account when reaching a decision. This is not a problem that the PCA appears to encounter often.

In one case, the Department had insisted on a full medical examination, which the complainant was reluctant to undergo, the Department subsequently decided that they could have proceeded without insisting on this examination.(88) The department applied procedure for the disposal of land which was not appropriate to the circumstances of the case in question in another example.(89) One of the earliest (and most famous) PCA cases dealt with this, in the time of Sir Edmund Compton. This concerned compensation paid for internment in the Sachsenhausen concentration/prison camp. After a detailed investigation Sir Edmund declared:

"[I]n my view the original decision was based on partial and largely irrelevant

information, and the decision was maintained in disregard of additional information and evidence,..."(90)

The Department had relied on information from a source, which was known to be limited as to the conditions in **all** parts of the camp.

Some factors which may appear to be irrelevant/inappropriate, may be deemed to be relevant in that consideration of them is unavoidable. For example:

> "As for DOE, I am generally satisfied that the application was considered in accordance with the Department's procedures. In the light of the submission that was made to the Minister of State I am not sure that the merits of the case were totally excluded from the consideration given to the question whether the application should be called in. It is indeed difficult to divorce entirely questions of merit from questions of procedure in such cases."(91)

Returning to the consideration of all relevant facts, some complaints are formulated in these terms, others are just general grievances. In the latter cases, the PCA will make a point of ensuring the decision was taken in the knowledge of all factors and considerations. As has been said a large number of decisions in this category are found to have been competently decided.(92)

The requirement can be qualified by administrative expediency: in one case the PCA decided that the department could have made further inquiries, but he judged that the expenditure would not have justified the small amount of information that might have been gained.(93)

The fact that new information comes to light later on, even during the PCA's investigation,(94) will not mean that the original decision will be deemed to have been taken without all relevant facts being considered.(95)

In some cases, the PCA may discover that not all the facts were before the decision-maker; however he will not suggest reconsideration of the decision, unless he deems the factor to have been material. His guideline for this appears to be whether this factor, if known, would have affected the outcome of the decision.(96) For example in one case, not all the facts about complainant's financial circumstances were before the Inland Revenue in deciding to collect tax due, without the period of grace requested. The PCA reported:

> "Following my representations, the Department have reviewed the position and confirmed that they would not, in any event, have regarded the information supplied by the complainant as evidence of 'real financial hardship' in the present context"(97)

Within the cases(98) where the PCA decides that material facts were not taken into consideration, there is a variety of groups. One such grouping is the cases where the information was actually available to the department, but they failed to use it.(99) In one such case, the IR failed to realise that a man had been given a married man's tax allowance previously. If they had used this information, provided by the man's oral and written representations, the claim could have been resolved more quickly.(100)

In one very unfortunate case, Sir Idwal Pugh seemed satisfied with the Department failing to use information available to them, and suggested that it was up to the complainant to draw the Department's attention to it:

> " When the Department informed the local education authority in 1974 that the complainant was not recognised as a qualified teacher, they had in their records information that would have enabled them to have given a different decision. The fact that they did not do so can attributed to the practice they follow when a local education authority ask them whether the qualifications claimed by an applicant for a teaching post entitle him or her to qualified teacher status. This practice, which is dictated by considerations of

administrative economy, is one that I do not consider I would be justified in criticising, since it should produce no ill effects if the request to the Department provides all the relevant information in the first place. In the complainant's case it did not; and it was only when she herself told them she had successfully completed the course that they decided to grant her qualified teacher status. It is most unfortunate that the complainant subsequently lost her job at the school in London and has not yet been able to obtain comparable employment elsewhere. but the Department did not themselves take the decision to terminate her employment; nor were they responsible for her failure to obtain another teaching post. In all the circumstances I do not think it can be said that they were to blame for the situation giving rise to her complaint."(101)

Failure to make adequate inquiries, and thus not having all the information before them in making the decision, is considered to be worthy of criticism by the PCA.(102) In one case investigated by Sir Anthony Barrowclough, the DHSS did not make enough inquiries before condemning meat as unfit for human consumption and

causing a loss to the complainant company.(103)

In other cases where the facts are before the department concerned, they may not have given 'the proper weight' to one or some of the facts ie they have misinterpreted their importance to the decision-making process. For example, in a war pension case, the Department did not place enough emphasis on the fact that although there had been a medical recommendation to return to service, this had been on a trial basis only.(104)

Alternatively, too much emphasis may be placed on a fact which is not so important as others. In an another war pension case, the PCA found that too much importance had been placed on statements made by the complainant whilst he was in an unstable state of mind.(105)

It may be that the department based its decision on an erroneous fact. A decision on the date for the complainant's eligibility for parole, was not in accordance with the statutory provisions, on the discovery of this, all affected cases were reviewed along with the complainant's.(106)

Others simply involve the department not having all the facts before them, for a variety of reasons. Quite a few cases deal with war pension claims, where information has been overlooked, or not presented,(107) eg one decision was taken without a full medical examination.(108) Cases which are illustrative of what is considered material factors include one concerning the

Department of Education & Science decision not to intervene in a dispute over the placement of a child in a particular school, between a LEA & parents; Sir Alan Marre discovered that the initial decision was taken in ignorance of certain salient facts:

> "Yet at this stage they had not obtained any detailed information about the numbers at the town school or the journeys that would be involved, and had no information as to the parents' attitude to the offer of a place there. At that stage therefore in my view the Department had insufficient evidence to come to a considered decision. I find therefore that the decision conveyed in their letter... was taken with maladministration, and I criticise it accordingly."(109)

Secondly, Sir Idwal Pugh dealt with a claim that a planning inspector was not aware of the fact that the Secretary of State had designated the area as one of 'outstanding architectural or historic interest'. He refuted the departmental claim that it would not have affected the outcome, so was therefore not material:

> "The failure to consult caused the inspector to come to a decision which could not be said to have been made in the knowledge of all the relevant factors. And

that is maladministration."(110)

Other cases include one that Sir Cecil Clothier investigated, he found that the Home Office had overlooked a power available to them, when reaching a decision as to whether Prison Rules allowed a prisoner to wear his own special shoes.(111) In another case, he held that a 'decision was based on an incorrect foundation of fact' as the department had ignored the fact that crop rotation would mean that the fields would appear different each year.(112)

## SECTION IV - Inherent Bias

This category deals with bias or possible bias that should have been obvious from the start of the process. The definition points to the decision-maker as the source of the bias; although this usually means the individual concerned, some mention will be made of departmental bias as well. There are a number of ways in which personal bias may manifest itself.

### (a) Previous Involvement In The Case Or With The Parties.

Previous involvement with either, the parties, or the case itself, means that the decision-maker is not coming to the process with an open-mind. There are obvious limits

to this principle, after all government departments deal regularly with local government authorities, but may need to adjudicate in a dispute to which they are a party. However, involvement on a more personal level, may give cause for concern.

Necessity can often excuse situations of this kind. In one case where a technical assessor was needed in a highly-specialised field, Sir Alan Marre accepted that most of the suitable candidates would be aquainted with the work of one of the parties at the inquiry; and a further point was that the inspector should be able to make allowances in his report for this particular consideration. The PCA noted that the department had sought recommendations for the post from a variety of organisations; and although he felt that the department might have probed more deeply because of the narrowness of the field, he did not think they had acted without reasonable care.(113)

Necessity aside, the PCA is unlikely to accept that previous altercations with a department, will make that department predisposed against the complainant. For example, Sir Alan Marre stated that he had "found nothing to support the complainant's belief that the inspector or the Department were biased against him because he was 'awkward customer'"(114)

Sometimes previous involvement can be seen as helpful. In one case, a consultant had examined the

complainant, the consultant had been involved previously with this case, and the complainant alleged that this made him prejudiced. Although partly swayed by the complainant's conduct prior to the complaint, the PCA also appeared to believe that the additional knowledge could be beneficial to the administrative process.(115)

However, Sir Cecil Clothier suggested that in such cases the additional information should be balanced with a report from a neutral source. In a separately-issued report, he conducted an investigation into a review of a conviction for murder. The Scottish Home and Health Department had commissioned a report on the effect of the newly discredited evidence, as regards the outcome of the trial, from the prosecuting counsel in the case. Sir Cecil felt that if such a report was necessary, it should not have been relied upon on its own, and that a report from an independent source should have been sought in addition.(116)

In a number of cases the PCA has expressed dissatisfaction with the arrangements in the case. A sliding scale of fault can be discerned - for instance, at one end, the PCA may have felt that there was nothing inherently wrong with the department's practice, the complaint lies in the fact that they did not realise that it might be unsuitable in the particular case. In one such case, the complaint was that the inspector appointed to a public inquiry, was personally acquainted with many of the

officials from the Urban District Council [UDC] (one of the parties to the case) as a result of his previous employment in a neighbouring borough. Sir Alan Marre discussed the possibility of bias as follows:

> "The Department's legal advice is that there must be a reasonable suspicion or perhaps a real likelihood of bias before a decision will be quashed by the courts on this ground. And they take the view that, while a close personal friendship might give rise to a suspicion, depending on the circumstances, an acquaintanceship or professional relationship would be unlikely to do so in the absence of any direct community, or conflict, of interest between judge and party in the subject matter of the case.....
>
> I think that it was unfortunate, however, that the Department were not aware of the proximity of the site which was the subject of the compulsory purchase order either to the area in which the inspector had previously worked as Town Clerk or to his home. The Department have told me that in such cases they tend to exercise caution and, if in doubt to appoint another inspector. In view of the particular

inspector's association with the area (if not the particular district), I think that it might well have been prudent for them to have appointed a different inspector in this case.

But I see no reason to criticise the inspector's conduct of the inquiry....."(117)

Other cases may attract criticism, but if the department have acted correctly under their rules, the PCA may be more reluctant to do so. For instance, a complainant alleged that having the same chairman preside at each of his appeals did not allow his case to be decided impartially. The PCA found that there were no grounds for disqualifying the chairman, and the department did not think that his role could be seen as influential, in that he does not take part in the medical examination, nor does he take part in the discussions of the Board that he chairs. Sir Idwal Pugh, however, understood the complainant's feelings:

"I can well understand, however, that an unsuccessful claimant could find it difficult to believe that his case had received absolutely unprejudiced consideration when the chairman of two successive CPMBs [Central Pneumoconiosis Medical Boards] was the same, especially in

the absence of any statutory procedure for appeal from the decisions of such Boards. I was glad, therefore, to be assured by the Department that they are always willing to consider sympathetically specific requests that a differently constituted Board should deal with a case on a second or subsequent occasion."(118)

Finally, the PCA may be critical of the case in general. One such instance was a complaint that a DHSS official, who had dealt with the investigation of the complainant's allegedly fraudulent activity as per invalidity benefit ( it was alleged that he was working whilst receiving it) had subsequently handled his claim for supplementary benefit, and as a result had let his prior knowledge affect his judgment. Sir Cecil Clothier concluded:

"But both parties agree that the official who saw the complainant reminded him of the previous occasion when they had met (that is when the official was investigating allegations that the complainant was working while drawing invalidity benefit) and suggested he look to his work activities to provide him with money. I can well understand that in the light of this the complainant may have felt that it was not

open to him to submit a claim. The official maintained that if the complainant was dissatisfied and had persisted in his request for help, a full interview with an official from the supplementary benefit side of the office would have been arranged and a claim taken. But this is certainly not the impression gained by the complainant. No forms were made available to him and it seems to me that in the light of the strong suggestion that he was not entitled to benefit by an official who had already interviewed him in connection with the alleged fraud, the complainant cannot be blamed for believing that the issue was as good as decided. I consider that his conviction that he was denied the opportunity of making a formal claim for benefit and of having it properly determined was justified in the circumstances."(119)

In another case, where a fraud officer acted as a benefit officer, Sir Cecil Clothier was pleased to note that departmental instructions had been amended.(120)

(b) Pre-stated Opinion

The objection to this is similar in nature to the objection to previous involvement, ie the decision-maker is not coming to the process with an open-mind. However, this category does not require the person concerned to have had a previous connection with the case, or the parties, merely to have stated an opinion concerning it, or the matters dealt with in it.

The PCA has been somewhat thwarted in this area. Several cases have raised interesting points, but have been ruled as being outwith his jurisdiction.(121) For instance, a dentist complained about the panel constituted to consider up-grading his appointment to that of consultant. He alleged that two members of the panel had expressed opposition to the creation of such a post. Sir Idwal Pugh felt able to consider to review the appointment of the members, only to a limited extent:

> "I have not seen sufficient independent evidence to substantiate the complainant's allegation that two of the members of the Committee were previously known to be opposed to the creation of a consultant post in dental radiology. But since it is not within my jurisdiction to investigate the way in which the decision of the Review Committee was reached I cannot in any case

look into the allegation that the complainant's application was prejudiced by the attitude of individual members."(122)

It may well have been the case that the PCA would have been more critical of their appointment to the Committee if there had been more evidence.

Other possible cases have turned out to be merely misunderstandings. In one unfortunate case, it might be felt that the PCA did not probe deeply enough. A man complained of being classified as a seasonal worker, with consequent adverse effects to himself. He asserted that the Unemployment Benefit Office manager was prejudiced against seasonal workers in general, and himself in particular. He supported this claim by reference to a local newspaper which carried the manager's stated view that 'more and more seasonal workers had decided that life was easier if they just hung around for the winter and drew money from the State.' Thus the complainant alleged that the manager could not be expected to be impartial in matters relating to seasonal workers. The PCA appeared to accept the manager's explanation that he had been misquoted, and that it was not meant as an attack against genuine seasonal workers.(123) It is important to remember that the complainant's classification was the decision of the manager, but there was a suggestion that the his Unemployment Benefit Office could try to influence the Insurance Officer's decision. The PCA was satisfied that

this was not the case here. There was no criticism of the rather unfortunate appearance of the misquotation, nor an attempt to establish whether the manager had sought to remedy the situation.

In another case it was alleged that the Minister of State had stated previously his opposition to the creation of any further National Parks. Sir Alan Marre was satisfied that this also had been a misunderstanding, in that the Minister had already stated, in reply to query, that this remark had been reported out of context, and that any such proposal would receive 'dispassionate, judicial appraisal on the basis of all the facts.'(124)

(c) Pecuniary Interest

The PCA deals with this particular form of interest very rarely, particularly in the form of an individual personal pecuniary interest on the part of the decision-maker. In one case a complainant alleged that a DHSS official had formed an alliance with a local tradesman, and thus forced complainants to go to this tradesman if the DHSS were paying for the goods. The PCA believed the official's account (he was chosen as a reliable 'trouble-shooter') that he had merely suggested that the tradesman in question offered good value for money. There was no question of any alliance.(125))

(d) Conflict of Interest

This means that an interest in the outcome of the case, exists through another occupation or function of the decision-maker. In the department's case, it may be dealings with other government departments, or it may be at the personal level of the individual decision-maker.

In the second category, an illustrative example was where a complainant wrote a letter of complaint about the Official Receiver, to the Department of Trade and Industry. The Department's reply was signed by the person who was the subject of the complaint, acting in the capacity of his new position. The PCA was satisfied that there was 'nothing sinister' about this, but felt that it would have been better if another official had handled the matter.(126)

Sir Anthony Barrowclough dealt with a possible clash of capacity in a planning case. the complainant, an objector to the appeal, complained that the appellant's agent was an employee of the Property Services Agency [PSA], which was a government agency forming part of the Department of the Environment. Thus the complainant was concerned with the partiality of the inspector's decision. The PCA satisfied himself that the PSA had no operational link with the Department of the Environment (Central) and the Planning Inspectorate (the bodies concerned); secondly, the Planning Inspectorate was arranged so that

there was no direct contact between the personnel of the unit and the departmental staff, and thus there could be little chance of the Inspector knowing the agent.(127) There appears to be more concern with actual bias, than with the appearance of bias here.

In the first category, dealings between government departments are usually viewed with suspicion on the complainant's part. This is particularly so, where it is one government department that has an interest in one side, or is in fact the other party in a planning case. In one such case, the Home Office [HO] sought to build a prison on surplus MOD land. After the inquiry, objectors made several complaints, including the allegation that there had been liaison between the departments. Sir Alan Marre outlined this objection and its basis, and gave his conclusions:

> "The complainants believe that there must have been close collaboration between HO and DOE [Department of the Environment] on the planning issue - and by implication pre-judgment of it. They base their views on the fact that, when DOE were asked for an assurance that 'no officer of the Department of the Environment has by letter,telephone,orally or by other means been in communication with the Home Office or the Ministry of Defence or any other

> Government Department in relation to this matter [the proposed prison] without the knowledge of all the parties represented at the inquiry', they explained that they could not give a complete assurance of that kind in view of the range of the Department's activities.... I can understand the feelings of local people about any proposal to site a prison in their midst and their suspicions that one government department might have been reluctant to reject the proposals of another. The variety of functions within DOE involved in this case tended to complicate matters and encourage the fears of objectors that departments and branches might arrange things between themselves without due regard for the views that local residents might put forward. But I am satisfied from my detailed investigation of all aspects of the case that their suspicions of collusion, bias and failure to give proper consideration to all relevant evidence are without foundation."(128)

It would appear that at a departmental level, the PCA is satisfied that no bias enters the system by way of a conflict of interest. However, as illustrated above, on an

individual basis, there is more likely to be a substantiated occurrence, although as of yet, there has not been a biased interest strong enough to be seen to affect the outcome of a process, and thus, the PCA has not questioned any decision taken, although he has suggested improvements in the various processes.

(e) Policy Considerations

In general, what is termed 'administrative' or 'departmental' bias elsewhere, is taken for granted in the PCA's work. Thus it has been assumed in the previous sections that the workings of administration, may prevent total impartiality. Mention has been made in the passing to the PCA's attitude to departmental/government policy. This will now be considered in more detail. As has been seen, the PCA sees himself as having no remit to consider the merits of government policy. Moving on, statutory provisions are unlikely to be challenged; unless they are made under statutory instrument, in which case there is the possibility of review under the 'bad rule' power.(129)

Policy may dictate that some form of 'discrimination' is part of the process. In one case the complaint was against the Manpower Services Commission [MSC], part of a Church's submission was that their application for assistance with a building project, had been turned down because the Church let CND use their halls. The PCA

conducted his investigation and produced evidence that the Church's application had been unlikely to succeed from the outset. This had not been effectively conveyed to the Church by the MSC, nor had possible improvements in their scheme been explained to them. This proved there were viable reasons for refusal long before the mention of CND arose. However, the PCA also considered the allegations that the vicar had been closely questioned on one occasion about the CND's use of the hall, and the vicar felt that the impression that MSC would not fund a project involving that organisation had been conveyed to him. The PCA questioned the officer involved who stated that he had merely attempted to ascertain all groups who used the hall, and the extent of the CND's involvement therein. The PCA in his report evaluated whether this action was necessary for the official to perform his job properly - he concluded that it was. However, he did not stop there - he forwarded the following opinion:

> "It seems to me quite possible, however, that in the charged atmosphere of the meeting the complainant may have misinterpreted the Link Officer's motive in asking about meetings held on the premises by the CND. As the complainant will no doubt now be aware from his having seen the 'Sponsors and Agents Handbook' on the Community Programme, one of the criteria is

that the projects must not bring the Community Programme into public controversy or disrepute by providing for or encouraging the organisation or participation in marches or demonstrations of any kind. I do not consider that if asked about the CND to establish the extent of their use of the church premises the Link Officer was doing anything outside his remit. The meeting ended with the Link Officer asking the Church - quite reasonably in my view - to provide written information on the matters of community use and financial support."(130)

However, the PCA will not condone arbitrary uses of power - the policy must be considered. A complainant ran an immigrants' advice centre on a commercial basis. The Minister of State at the Home Office became increasingly worried about his activities, particularly his charges(on the basis of charging as much as he could) made for services that could be obtained free of charge for immigrants. After a meeting between the two, the Minister issued instructions that all immigration offices were to cease dealings with the complainant and his agency. The man complained to the PCA. Sir Idwal Pugh criticised some aspects of the decision:

"... I have seen no evidence to suggest

that they considered that he had exceeded his powers. Nevertheless I consider the action to have been hasty and ill-judged. The evidence which was held to justify such a serious step was not fully established and the intention was expressed without full consideration of the problems it might create for the Home Office to modify their attitude and eventually to decide that they should no longer distinguish the complainant from other paid agents or intermediaries in the immigration field."(131)

It would appear that if the policy is consistently applied, and can be justified; and if the PCA does not think that it is a 'bad rule', then he will not criticise it. However, if it is seen to be arbitrary, he may be more critical - although government policy is beyond his remit.

## CONCLUSION

This Chapter has attempted to illustrate the complaints concerning lack of impartiality investigated by the PCA. It would be fair to say that in many of the categories the PCA acts merely to reassure the individual complainant, that the procedure followed throughout the case was correct, or not as the case may be.

In contrast the area of inconsistency within one case

has developed a conscious identity as a clear type of fault within the PCA's reports. This is an interesting development. It is also interesting to note that the PCA accepts that there will always be a certain amount of inherent bias within the administrative process. It is a matter of deciding on the acceptable level for this, and censuring the cases where these levels have been breached.

The same approach will now be taken as regards the PCA'S consideration of complaints alleging a breach of the duty to consult.

## CHAPTER FOUR THE PCA AND THE DUTY TO CONSULT

This Chapter deals with the PCA's response to errors within the consultation processes. It is difficult to specify what type of consultation processes are involved generally, as they cover a wide ambit. Not surprisingly, planning procedures used by the Department of the Environment, such as planning inquiries involving members of the public are prominent. Quite often it can be seen as a tri-party situation, where the department's role may be of 'arbitrating' between a member of the public and a local authority, or between two members of the public.

As in Chapter Three the approach to presenting information is to elucidate the empirical caseload being conducted on a day-to-day basis by the PCA's office. Quotations are given from the PCA'S reports to illustrate the approach adopted by him. The classification of errors follows the pattern of the consultation process, starting with Notification (Section I); through decisions as to persons entitled to be consulted (Section II); and finishing with the quality of the actual hearing (Section III).

Section I - The Initial Stages

(a) Absence of Prior Notice

This occurs where persons concerned or affected by a decision are not in fact informed of the start, or the existence of the decision-making process. For instance, failure to inform a person of their right of appeal, would be considered a fault by the PCA.(1) These cases however, usually deal with an established right of appeal, usually set down in statutory provisions. Where there are no such statutory grounds, the PCA is less clear about when prior notification should be granted.

If statutory provisions do not allow for consultation, or even notification, then the PCA may not always criticise their absence. In one case, an investigation was conducted into an incident at an airport involving the pilot complainant.(2) He only learnt of this inquiry as a result of one of his passengers being contacted. The PCA accepted the explanation that the Department of Trade & Industry had not contacted the complainant at the time, as there was some doubt as to the identity of the pilot( he was in fact told 4 months later ).

In another case, Sir Alan Marre explained why he felt that the lack of consultation of the owner of a building, which is about to be listed as being of special architectural or historic interest, is not

maladministration,as there was no statutory provision for consultation; that the question had been aired in Parliament, where the Government explained that the anticipated problems of tracing owners etc. could mean delays; and that it was a 'matter for expert judgment based on national standards, and not one for negotiation with the owner.(3)

However, in another case, although there was no statutory provision for consultation, the Department of Education and Science had a practice of allowing 21 days for representations, however there were no provisions for informing affected parties of this opportunity.(4) Sir Idwal Pugh was critical of this:

> "By the Department's own standards the complainants have reason to feel that they were denied natural justice, and I criticise DES for failing to make adequate arrangements for representations to be made."(5)

Sir Idwal Pugh considered that where there was a choice as regards the statutory procedures to adopt, the route allowing objections should be preferred were possible.(6)

Even a deviation from normal procedure may not be totally criticised - particularly if the PCA felt that it did not affect the outcome.(7)

Sir Cecil Clothier, however, was highly critical of

the Department of the Environment for the administrative 'bungling', which allowed cottages to be demolished before the local people had a chance to air their views at a public inquiry:

> " The cottages have now been demolished. Whether in breach of their statutory obligations or not, the Council have had their way, since the Department could not or would not do anything to stop them. Any opportunity that the local residents might have had to make representations against the demolition by way of public inquiry has been lost for ever. This has been a deplorable failure by a Government Department to attend properly to the legitimate interests of the private citizen. There is now no way in which the Department can restore the **status quo ante.**"(8)

Administrative difficulties may excuse absence of consultation in some cases. Sir Idwal Pugh considered whether the local community should have been consulted before a local site was offered by the Home Office, as an alternative venue to the organisers of a pop festival:

> "The Home Office have explained to me that they took the view that there was no point in engaging in local consultations until there was a positive possibility that a

particular site might be offered and accepted. And they have told me it was not possible to convey to the festival organisers the offer of the Watchfield site, and the conditions on which the offer was made, before 16 July 1975, less than six weeks before the festival was due to begin. They say that, with time for the necessary preparations to be made already so short, consultation with the people of Watchfield at that stage would have effectively precluded the use of the site. I accept their reasoning in principle, but I have sought to establish whether the decision to offer the Watchfield site could have been reached before it was.....

I am satisfied that it was never part of the Home Office's policy that local interests should be deprived of the opportunity to express their views. By the time the possible use of the site had become a reality, any further delay would have effectively prevented the festival from taking place there."(9)

However, failure to consult possible buyers in a discretionary sale of land amounted to maladministration in the opinion of the PCA.(10) Here, an adjoining strip of

land which was offered for sale, was only offered to one neighbour, who had approached the Department - no inquiries were made as to the interest of other neighbours.

Also, Sir Cecil Clothier was uneasy about the practice of not informing objectors in written representation proceedings, of the date of the site visit, and was happy to note that the Department had changed this practice so that in the case of written representations, and where there is a request to the effect, they will inform an interested party of the arrangements for the site visit. It was, however, emphasised, that the inspector cannot listen to representations as to the merits of the appeal.(11)

Sir Anthony Barrowclough also thought there was a duty to consult a complainant before the IR agreed partnership accounts for tax purposes with his ex-partner.(12)

Sir Idwal Pugh felt that there was a duty to consult if the department have given assurances to that effect(13)

It would appear that the later PCAs were more cautious of letting the department have a free rein.

Thus, it would appear that total absence of information about a process or decision, unless there is statutory authority for this, will be, in the PCA's opinion, a fault in the process. He obviously feels that it is not for him to consider the merits of the statutory provisions, though

as has been seen, he may investigate whether there are reasons for its exclusion.

(b) Inadequacy of Prior Notice

(i) Process

Notification, in itself, may not be enough. Prior notification can only be effective if it is adequate in content. One form of inadequacy would be not allowing enough time between notification and the event, thus ensuring that affected persons have enough time to prepare to participate in the process. This may not be the fault of the department. In one case, the department were merely giving effect to EEC regulations where the lack of warning was deliberate to prevent a rush of imports.(14)

What is regarded as adequate notice will depend on the type of case, and the circumstances involved. For instance, a claimant was given less than one week's notice of the date of an appeal tribunal despite having requested that this period should be given, to allow his representative to arrange to be there.(15) In another case, eight months' notice of the introduction of new regulations regarding the size of fishing nets, was considered adequate under the administrative circumstances, by Sir Idwal Pugh:

"My officers discussed with the Department

whether the possibility of deferring the introduction of the measures had been considered. It was explained that it was in any case delayed for legislative reasons by three months, to 1 October 1976. This roughly coincided with the new sprat season and the Department said that further delay would not only have run contrary to the NEAFC recommendations but would have further aggravated the fish stock position. Bearing in mind that the United Kingdom had been to the forefront in proposing conservation measures to assist an urgent situation, I think charges of inconsistency could have been justifiably made if the implementation of the measures had been further delayed."(16)

Sir Cecil Clothier was also worried by a case where the complainant could have been given more warning as to the likely possibility that his driving licence would be revoked. He recognised the need to act quickly in the interests of safety, once the decision had been taken; but he criticised the Department for not giving a clear indication as to what the process might entail, given the important nature of driving licence to the average individual.(17)

The PCA will take a broad view of the attempt to

notify interested parties. For instance, in one case concerning the routeing of a motorway, part of the complaint was that not all the objectors had been notified.(18) The PCA's investigations revealed that the Department had sent out 4,500 letters, and that it was not a ground for a finding of maladministration on the part of the Department, if some of these letters were not subsequently received.

In another case, the publicity arrangements for the introduction of a mobility allowance were reviewed, and Sir Idwal Pugh found them to be adequate; they entailed circulating information to doctors and health authorities; making a leaflet available to the general public; and including references to the scheme in general information publications.(19)

He also appeared happy with the arrangement whereby the decision as to who receives notification was left to the local planning authority. The complainant in one case lived some 500 yards from the site. He was aggrieved that he did not receive personal notification of the inquiry - he did not see the notices and the advertisements placed in the Press. He learnt of it from other residents. The PCA did not feel that the Department was at fault, despite the fact that the complainant had felt that he had not adequately prepared his case as a result.(20)

Sir Alan Marre also supported the proposition that it was not the duty of the inspector to the inquiry to

ascertain whether adequate notice was given.(21)

Sir Cecil Clothier dealt with a complaint that a public notice under the Town & Country Planning Act 1971 had not been correctly displayed, and that the Department of the Environment, although informed, did not do anything about it. He was not critical of the posting methods, or the means of verifying such, but he criticised severely, the lack of response to the idea of independently checking this notice after the complaint was received.(22)

It would appear that if a reasonable attempt is made to disseminate information, then the PCA will be happy.(23)

The notification process does not need to include direct consultation about the inquiry date.(24) However, the maximum amount of notification possible must be given:

> " In my view, the procedure for agreeing time and place first with the promoters... is sensible, and I do not accept that it prejudiced the interests of the objectors. I do, however, think that as soon as agreement had been reached, the objectors should have been notified at once. I also consider that an objector would not necessarily know that, if his objection was maintained, an inquiry was bound to be held and that therefore he could begin preparing his case immediately, without risk of wasting time and money."(25)

Again, any statutory provisions will be accepted by the PCA.(26)

(ii) Content

Not only must there be adequate notice given, but the content of the notice must give the necessary information to the recipient. The PCA was critical in one case where the notification did not give full guidelines to a complainant, on how to proceed with his claim for compensation.(27)

SECTION II - Pre-Hearing Decisions

(a) Entitlement to be Heard

A further question to be answered in the initial stages is, who is entitled to present written or oral questions. This moves into the consultation process - who is entitled to be consulted not just notified. Although obviously this section has some bearing on the previous one.

The first consideration is who should be consulted?

(i) Parties to be consulted.

It has already been established that some parties, such as owners of potential listed buildings, do not have the right to be consulted.(28) Other areas may be more ambiguous, particularly those dealing with non-statutory objectors, ie where there is no definite right to be consulted, contained within the relevant statute. Sir Idwal Pugh expressed satisfaction with the policy of one department in relation to such objections to compulsory purchase orders:

> " It is the Department's policy to arrange an inquiry even when they are not statutorily bound to do so, if otherwise they might offend public opinion. This seems to me to be a reasonable policy provided proper consideration is given to the balance between the interests of those with statutory rights and those with none. I am satisfied from my investigation that the Department gave careful consideration to all factors, including the knowledge that both the complainant and the council had reasons for wanting an early decision, before concluding that that balance in this case required an inquiry. And I see that the inspector felt that there were a number of

objections which were relevant to the matter he had to decide. I see no grounds, therefore, for questioning the Department's decision to hold the inquiry."(29)

In one unusual case, Sir Anthony Barrowclough considered the position of a special group of objectors. The complainants were the owners of a property, their tenant appealed against an enforcement order served on him. To be considered as 'principal parties' (with associated rights) to the appeal, the complainants would have had to exercise their statutory right of appeal against the enforcement notice; however that would have appeared to be supporting the tenant, which was contrary to their purpose. The PCA recognised their dilemma, and their 'right' to a more important role in the proceedings, and was able to secure from the department an assurance that the procedure will be changed to allow people such as the complainants to be treated as 'principal parties' if they so request.(30)

It may be difficult to decide which 'interested parties' to consult. Another unusual situation arose, whereby , when an appeal had been remitted to the Secretary of State for re-hearing and determination by the High Court, the third party objectors had not been given the opportunity of making further representations, although their original objections were considered afresh. Sir Idwal Pugh was uneasy about this situation:

"But I have seen that it is the opinion of the Department's solicitor and Legal Adviser that the Secretary of State was under no legal obligation to extend to the complainants the opportunity of making further representations in the circumstances of this case. The Lord Chancellor's Office have not dissented from that view. It is clear that the question whether third parties should have been given the opportunity to make further objections was not considered when preparations were being made after the Court Order had been issued. I think it was unfortunate that the Committee were not given the opportunity to comment again and while I do not question the Department's decision in this case I am glad to see that the case has led the Department to think carefully about the position of third parties where an appeal is remitted for re-hearing and that they have come to the conclusion that, where the interests of third parties are affected by the issues on which further representations are made by the principal parties, the Secretary of State may not be justified in relying upon the absence of legal rights of

such persons."(31)

Sir Alan Marre considered that an Allotment Association should have been consulted before the appropriation of allotment land between two councils.(The assurance that they would be so consulted was overlooked)(32) Also, he felt that consolidated local opinion should have been considered when a decision was being taken on whether to amalgamate medical practices.(33)

This was a consistent view held by Marre ie that if specific groups exist representing a relevant interest, then those bodies should be included in the consultation process; for example in one case, although M.P.s, and the Airport Consultative Committee (which included local authority representatives) were consulted, the local authorities directly affected, and local amenity groups were not. The PCA held this worthy of criticism.(34)

However, such associations need only be consulted if their interests are not effectively represented by other groups. In one case, a yacht club complained that it had not been consulted before the construction of mooring facilities. Sir Alan Marre decided that their interests had been represented by another organisation, and as such it was not necessary for the Department to consult the club as well.(35)

In the same vein, Sir Alan Marre accepted that individuals could not expect to be consulted on some

matters, if it could be assumed that their interests would be represented by a trade association or similar.(36) Sir Idwal Pugh supported this in a later case.(37)

However, failure to consult by local authorities whilst making plans for the local educational system, does not give the Department of Education & Science the right to reject their proposals.(38)

Entitlement to be heard, in the PCA's opinion, would appear to depend on the subject-matter of the case. For instance in one case, the complainants noted that the Department of the Environment was willing to hold an inquiry to hear objections to the use of a rugby ground as a site for a new school; but they refused to hold an inquiry to hear representations about the use of an alternative site.(39) The PCA explained the distinction was due to the Secretary of State's statutory obligation to approve proposals to amend a Development Plan in the former case, as opposed to his discretion to call in for his own decision an application for planning permission, for which the local planning authority is usually responsible, which in the latter case, he had decided not to exercise.(40)

(ii) At what stage in the process?

The PCA can be concerned with when consultations are instigated. Obviously in some cases objectors will have

less chance of influencing or changing decisions, if the decision-making process is well advanced when they are consulted, rather than if it is in its infancy. Where there is room for discretion, Sir Alan Marre seemed to favour as early a consultation as possible.(41)

However, Sir Alan Marre also made it clear in another case that he was also aware of administrative difficulties involved in consultation procedures.(42) The case involved compulsory purchase of land for a motorway. The route was divided into five sections, each dealt with by a separate public inquiry. It was open to objectors to raise the question of the broad strategy for the motorway, at any of these inquiries. However, one inquiry was concluded and draft compulsory purchase orders (CPOs) published, before the inquiry into the next direct section commenced. The objectors felt that this prejudiced their chances of altering the route proposed. Sir Alan Marre acknowledged this, but felt that this was an inevitable consequence:

> " The Secretary of State has made the point that it is possible, at each stage, to challenge the broad strategy of the line as a whole. While I accept this, it is self-evident that as each section is determined, the chance of successfully challenging the line as a whole becomes progressively more difficult. Nevertheless I recognise that there are sound practical reasons for

determining the line of a major new highway section by section, and, even though the end points of a section may, to all intents and purposes, already have been determined, there remains scope for objectors to canvass variations of the line between those points."(43)

(b) Form of Hearing

Having decided who should be consulted and when, the next stage in the process is to decide in what form the hearing should take place - oral or written representations.

The PCA receives complaints that no opportunity was given for an oral hearing. In the absence of statutory requirements, the PCA appears happy to accept the department's discretionary decision, as to whether an oral hearing is necessary. The usual guidelines are whether the individual case was complicated enough to warrant an oral hearing. This tends to rely on the departmental view of the detail required, rather than the complainant's, who may feel that their objections have not been fully aired without an inquiry.(44) This was summarised by Sir Alan Marre in one case:

" I accept as a fact that Ministers receive numerous requests to see individuals

and representative bodies, and it is a matter within their discretion which of these requests they meet. In the present case the Financial Secretary to the Treasury had before him information and advice submitted by officials of H.M. Customs and Excise, without intervention of Treasury officials. This was in accordance with normal practice..... I am satisfied that he knew, from these official submissions, what were the main reasons for the Association's grievance, and how they thought the situation might be remedied. He also knew that the remedies suggested by the Association... had been referred to in the course of Parliamentary debates, and that the proposal to zero-rate the carriage of passengers in licensed taxis had been taken to a Division in the House of Commons and defeated. Against this background he concluded that a meeting of Treasury Ministers now with representatives of the Association would not serve any useful purpose."(45)

Considerable local interest in the subject, may well convince the relevant department that a local inquiry will be desirable to allow public feeling to be aired on the

matter.(46)

The PCA also appreciates why the written procedure is perceived to be disadvantageous from a non-statutory objector's viewpoint:

> "The complainant said that he was left in ignorance of the detailed arguments on which the Secretary of State's decision was based. Under the written representation procedure, third parties are not given the opportunity to comment on the arguments of the other parties. And given that the procedure was intended, in appropriate cases, to be a means of reducing the delay in getting decisions on appeals, I do not think the argument could be sustained that all parties ought to be permitted to comment on other representations."(47)

Sir Cecil Clothier appreciated that such a decision may give the wrong impression, but that a decision not to hold a public inquiry, could be justified on administrative efficiency grounds, in that it would not add to the sum total of the department's knowledge of the situation.(48)

This also applies to the choice of the type of oral hearing eg the choice between a planning inquiry commission [PIC] and a public local inquiry.(49) In one case dealing with a proposed petro-chemical terminal, the

Department's advice to the Secretary of State, was accepted by Sir Idwal Pugh. The advice was that:

> "It recommended that, instead, there should be a public local inquiry of the more normal kind. This was because, in the Department's view, all the planning, economic, safety and other arguments could be properly examined and evaluated at a normal inquiry, and important though the proposed development was to the objectors, it was not of so novel or unusual a nature as to require such an unprecedented, expensive and time-consuming procedure as a PIC. A note could be issued to all concerned indicating the matters on which the Secretary of State would hope the inquiry to concentrate, but this would not rule out the raising of other matters, eg the availability of other suitable sites."(50)

An oral hearing may not be granted if the department feels that there has been adequate opportunity to present written representations, particularly in busy areas such as immigration matters(51)

However, in a tax case, Sir Cecil Clothier felt that the Collector had not fulfilled his duty to satisfy himself of one side of the case, before reaching a decision as to whether the employer or the employee should

pay the back tax:

" I accept that there is a great deal of information in the papers which were before the Collector at the LA[London Account Office]. It is contained however in reports of meetings written by Revenue officials and not in documents originating from the company themselves. I doubt therefore whether the Collector can be said to have fully discharged his duty of being required to be 'satisfied **by** the employer'..if he has made no attempt to hear their side of the story or to let them try to discharge the burden of satisfying him that they had taken reasonable care.....

.... the Chairman explained that although he accepted that natural justice required that the employer should have every reasonable opportunity of presenting his case, the best legal advice available to the Revenue was that the phrase 'satisfied by the employer' did not require the Collector to conduct an oral hearing. The Chairman said that his advice was that the statutory powers enabled the Collector to exercise his discretion on the basis of written material. Therefore, as long as the Collector who made

the decision satisfied himself that the employer had been approached by, and had given his explanation to, another Collector (and provided that there were no unresolved doubts in his mind about the circumstances), he was in a position to discharge the duty laid on him."(52)

The other main point that can be established is that where there is discretion, the onus would appear to be on the complainant to seek an oral hearing, rather than it being the department' duty to offer one.(53) However, departments are expected to pick up on such requests. Sir Alan Marre dealt with a number of complaints concerning the authorisation of Vehicle Testing Stations.(54) In one such case, he expressed concern that the Department had not offered an interview to one affected owner, when it should have been clear that he was, in fact, requesting such a hearing.(55)

It should be noted that a chance to put your case in person, may not amount to a 'hearing' - merely a representation. The difference was explained in another case dealing with the withdrawal of an appointment as a MOT test examiner:

"The Department have told me that the regulations allow representations to be made against the withdrawal of an authorisation, but there is no formal hearing of the

'appeals' as such... Most 'appellants' submit only written representations, but if they ask to present their case in person their requests are accepted. It would appear that both the complainant and his accountant were under the impression that a formal hearing would take place, where the evidence would be presented as in court. This may well have led to a misunderstanding between them and the Department when discussing the complainant's 'appeal'. The Department have said that one of their staff recalls a telephone conversation with the complainant in which he asked if he could be present at a 'hearing'; he was advised to put his request in writing, but there is no record of a subsequent written request. It might have been more helpful had the complainant been told clearly that there would not be a hearing as such, but that representations in person could be made to the Department if he wished, subject to the necessary arrangements being made."(56)

Another consideration is whether the inquiry should be open to the public, or its findings made available to the public, or whether the matter should simply be dealt with by an internal inquiry. Again, this would appear to depend

on whether the Department considers it would add any further information.(57)

Conversely, it has been argued by complainants that an oral hearing was unnecessary, and that a decision could be reached without it. This was the point in an immigration case; Sir Cecil Clothier felt, however, that independent adjudication is preferable to internal adjudication by the Home Office.(58)

(c) Duty of Adequate Disclosure of Information

This section can be divided into two sub-sections - the first is the basic right to know the case against you - the need for initial basic information about the nature of the decision. The second is the right to know all the facts that will be considered in the decision-making process, in order that your submissions can contain comments on all considerations. The distinction is perhaps one of some sophistication.

(i) The right to know the case against you.

The PCA is keen that the reasons why an unfavourable decision is to be taken, should be made clear. This has been highlighted clearly in cases where personal loss to the complainant is concerned. For instance, in one case a local authority employee's work on road safety was

criticised, with the effect that the Department of the Environment withdrew the road safety grant to the Local Authority - thus rendering the employee unemployed. Sir Alan Marre made the following criticism:

> " But I have also pointed out that the complainant and the Borough Council had been of the opinion that the Council's road safety arrangements complied with the Department's requirements, and that at no time before the Department reached their decision had they been informed of the specific respects in which the Department judged their arrangements to be inadequate, or of their view that the complainant's other road safety preoccupations might be affecting his contribution to the Borough. This omission seems to me to have been unfortunate since it meant that the complainant could not consider or advise his Council, with full knowledge whether there were grounds for challenging the Department's views on what changes might be proposed in light of these views."(59)

Although this complaint is more often found in personal cases as above, it can also apply where numerous people are affected by a decision, such as in planning cases. Sir Alan Marre upheld a complaint that insufficient

information had been given as regards details, such as the height of proposed embankments, for the complainants to fully understand what was being undertaken.(60) Sir Idwal Pugh was particularly scathing of Departmental insensitivity, where such plans were such that lay-people would have difficulty in understanding what exactly was proposed:

> "I have myself examined the plans... and I conclude that it would have been beyond the wit of most to trace the pedestrian route across the interchange. The Department told me that they could not see the difficulty but I think that attitude shows a lack of understanding..... In these circumstances it seems to me that it is reasonable for the Department to adopt as helpful an attitude as possible when responding to requests for, and questions about, plans supporting statutory orders."(61)

However, the PCA also accepts that there may be other administrative concerns. This was illustrated in a case where the Department of Trade refused to authorise the complainant as being eligible for appointment as a company auditor:

> "It seemed to me that in a situation like this it would have been in accordance with the principles of natural justice to give

the applicant a fairly full explanation of the doubts, so that he could have the opportunity, by producing his own counter-arguments, of trying to remove them. The Department tell me that they would indeed have liked to follow such a course, but felt that they could not do so without breaking confidentiality with the referees.....

This case has highlighted a conflict between two principles, each in itself important. On the one hand the principle of fairness to the individual requires that he should not normally be judged on the strength of information which he has had no opportunity to comment on. Otherwise the risk of a decision which may be unjust to him is enhanced. On the other hand, the principle of the public interest may require that information should be obtained which can only be obtained on a promise of confidentiality. I am satisfied that, in deciding that priority must be accorded to the second of these two principles, even though they would have liked to tell the complainant of the reasons for their doubts, the Department gave proper weight to the arguments and I do not feel justified in

criticising their decision."(62)

Non-disclosure of exact allegations or suspicions against a complainant, has been upheld where the administrative process requires it. For instance, it is standard Inland Revenue practice not to disclose to the taxpayer which sources of his income they suspect that he has not disclosed. Sir Alan Marre supported this practice, as being justified in the circumstances, as to disclose the particular sources may lead to the taxpayer continuing to withhold other sources.(63)

A later PCA was not happy, however, that a couple were not told which offence the Customs & Excise suspected them of perpetrating at the start of their interview, despite the fact that they issued a caution under the Judges' Rules. He did not support the Department's view that they did not want to 'put all their cards on the table at once.'(64)

Another administrative problem in this area, is the use of anonymous information. This is common in Inland Revenue cases, where investigations are sometimes based on anonymous information supplied to them. Sir Alan Marre's view was that this was a necessary part of the IR's function ie to seek to check that all legally due tax has been assessed and collected.(65)

Sir Cecil Clothier was unhappy about an Inland Revenue case where the Department refused to tell the complainants the source of their information (when it was known to

them, and when they could have been expected it to have been possibly unreliable as the source was the complainant's ex-wife):

> "I therefore find it difficult to accept that their withholding of this evidence best served the interests of a negotiated settlement, or, given its provenance, those of natural justice."(66)

However, both these elements were severely criticised by Sir Idwal Pugh, in a D.H.S.S. case, where an anonymous allegation that the complainant was working and claiming benefit, actually concerned another person with the same name, but as the nature of the allegation was not explained to him the mistake persisted; the eventual result was that the complainant collapsed under the strain.(67)

(ii) Disclosure of Necessary Information

In general, the PCA supports the proposition that each party should have the full facts and documentation before them.(68) However, he does accept that there are limits as to the amount of information that can be made available. An illustrative case occurred during Sir Idwal Pugh's time; he outlined the situation, a prisoner carried out a prolonged correspondence in an attempt to elicit answers from forensic scientists, who gave evidence at his trial.

He believed that this information was vital to his appeal.(69) Sir Idwal Pugh concluded that there had to be limitations:

> "In my view, the complainant's request to be informed of details of all the cases in which one of the forensic scientists who had given evidence at his trial had appeared as a prosecution witness over a five year period... was not a reasonable one for him to make. I would naturally expect the Home Office to show a proper concern to ensure that the rights of appellants - indeed of all prisoners - were protected, but I recognise that they have a responsibility to allocate their resources in the manner best calculated to serve the interests of all prisoners. This implies that they must make judgments in individual cases as to whether the administrative time and cost involved in complying with a particular prisoner's request are justified. I do not criticise the judgment they made in this instance."(70)

Nor will he support claims for disclosure of information, if the information is considered confidential (as seen above). For instance, the PCA did not feel it was necessary to disclose the amounts of betterment levy paid

on other properties in the complainant's area, particularly as an offer of a general discussion on the subject had been offered to him.(71)

An alternative to non-disclosure, would be selective disclosure. Sir Idwal Pugh was of the opinion that only justifiable changes/adjustments to information should be made in the interests of confidentiality. In one particular case, he was unhappy about a report of an incident, which blamed the complainant, an air traffic controller, a copy of which was supplied to this man. As a result of which he had been sacked by his employers:

> "But a comparison of the two versions shows that there are differences, other than the simple omission of names, for which I have not received a satisfactory explanation. I consider that the carrying out of such a revision, and the despatch of the revised copy for the complainant without ensuring that it was made clear to him that the report differed from the original in more than the mere omission of names, was not an example of good administration, and I criticise it accordingly."(72)

Commercial confidentiality is another consideration. In one case,Sir Anthony Barrowclough considered whether objectors should have been give certain information; he accepted that the department had given due consideration

to the matter, and had reasonably come to the conclusion that disclosure of the requested information could benefit one of the party's competitors.(73)

However, Sir Idwal Pugh held that confidentiality could be taken too far on occasions:

> " The Department hold the view that when they receive approaches from industry these should be treated in confidence and not normally disclosed to other parties unless the firm or association making the approach wishes this to be done. This seems to me to be a reasonable general principle, particularly in respect of approaches from individual firms. In the case of associations, however, it seems reasonable to assume that they are likely to inform their members of the outcome of any discussions and, therefore, that the same degree of confidentiality need not apply...."(74)

A major problem area is in the position of medical reports. There are cases, mainly within the D.H.S.S. ambit, where full disclosure of the medical opinion may be harmful to the patient - this, of course, presents problems when the condition is discussed by a tribunal. The Pensions Appeal Tribunal [PAT] Rules dealt with this occurrence; and Sir Alan Marre expressed his approval of

their provisions, and in cases of complainant, sought to assure himself that they had been properly complied with in that case.(75) These allow the appellant's representative to have full access - it merely restricts the information given to the appellant himself.

Though Sir Cecil Clothier was happy to record that even fuller information and submissions were to be made available to PATs, after an investigation, even though he had made no criticism of the previous policy.(76)

In other cases he is happy if a department base the disclosure of medical information on the basis of 'the bounds of normal professional practice.'(77) However, each case must be dealt with on its own merits,eg the removal of the word 'cancer' from a report led the complainant to think that inaccurate information had been presented, whereas it was an attempt to 'protect' him. This was in fact, unnecessary in his case.(78)

In some cases, the PCA may feel that there is no justification in allowing access to the department's medical opinion, if the appellant is supplying his own medical opinion; if the same evidence has been available to both parties, from which to draw their conclusions.(79)

Access to the documentation of the other side can also be a contentious issue. On the one hand, the complainant feels that he has not been able to answer the other side's case effectively, if denied access to their comments on his case. On the other, the administrative

process must be kept within a time-limit, so that the process of countering the other side's arguments does not continue interminably.

In Sir Alan Marre's term of office, problems involving the intervention (or non-intervention) of the Secretary of State for Education, in disputes Local Education Authorities(LEAs) and parents, were quite common. Often the objectors complained that the Department had not given them the opportunity to to see the comments of the LEA as regards their objections, and thus, deprived them of making further comment if necessary. These complaints were often couched in strong terms, such as "if justice was to be seen to be done...."(80); & "contravention of that part of natural justice proclaimed in 'audi alter partem"(81)

However, Sir Alan Marre accepted the Department's legal opinion that this was not necessary under the relevant legislation(82):

> "On the basis of this advice, the Department confirmed that it was not their normal practice to supply objectors with copies of the authority's replies. The Department's practice, which I do not find unreasonable, is only to pass the authority's comments to an objector if it is found essential in order to enable the Secretary of State to reach a proper decision or if the authority

have no objection."(83)

In another case, he also accepted the associated administrative difficulties as a suitable reason for not allowing this course of action. This extract sets out the scale of the task involved.

" By passing on these comments they would, by implication, be affording objectors an opportunity of making further representations; and the department's legal advice is that this would involve affording a suitable opportunity to every individual objector, so that it would not be sufficient to pass on the comments only to the person organising the petition. In many cases, objections to proposals under Section 13 are numerous, and authorities do not always relate their comments to specific objections, but comment on the issues raised by them. The Department consider that the process of relating the comments made by a local education authority to particular objections and then passing them on to each individual objector would add very substantially to the already heavy burden of work in handling Section 13 proposals and would lead to quite unacceptable delays in disposing of them. The petition forwarded by

> the solicitors in July 1972 had itself 18 signatories..... But the Department tell me there were six other objections to proposals relating to the grammar school and altogether 3,706 individuals objected to the proposals, while the total number of individuals objecting to all the proposals for the reorganisation of education in the borough was 34,061."(84)

Sir Cecil Clothier accepted that administrative difficulties will mean that not every procedure is absolutely perfect - in one case he recognised these problems with the 'written representations' procedure - in that it would have to be accepted that one party cannot be sure that all their representations are seen by the other side and the inspector, but this was not reason enough to advocate changes in the system.(85)

In some cases, the PCA may not criticise a department for not providing supporting information in their published statement of case, before an inquiry, if they know that the information will be out-of-date, or not available until the inquiry, if the postponement of the inquiry would cause unnecessary delay, and all other available information has been issued.(86) The PCA will not criticise the department, if it is not their fault that the documents are not present.(87)

Section III Quality of the Hearing

(a) The Procedure of The Hearing

(i) The Right to be Heard by the Tribunal

This may have been decided prior to the actual hearing (see Entitlement to be Heard above.) However, this may not be an immutable right. In one case where a mutually suitable time for giving oral evidence could not be agreed between the inspector of the inquiry and an objector, the PCA felt that the complainant had not been disadvantaged by not giving his evidence in person to the tribunal, as he could have arranged for a representative to give his evidence for him, or else he could have submitted written representations.(88)

Further to this, Sir Idwal Pugh considered a complaint that the choice of venue for the public inquiry, had precluded some people, particularly the elderly, from being able to attend the inquiry. Sir Idwal Pugh advised caution on the part of the Department in this area:

> " While I recognise that the convenience of the local authority will be served by holding a public inquiry in their own offices, this is by no means paramount and there may well be cases where the convenience of objectors is sufficiently

important for the Department to give them special consideration. And I do not consider that they should accept too readily the contention of any local authority that it is for the convenience of all concerned that public inquiries should always be held in their offices."(89)

However, Sir Cecil Clothier felt that an inspector should take the public desire for evening sessions at an inquiry, into account, before deciding against holding them, though such a decision was not unreasonable.(90)

It is up to the complainant to use the available opportunities to be heard - in one case, Sir Idwal Pugh investigated a case where it was alleged that following his complaint, no-one from Customs & Excise had asked the complainant for his evidence. The PCA found that he had been visited and thus approached for information, but that he had chosen not to supply it on that occasion. The PCA felt that it was up to the complainant to use that opportunity to present his case.(91)

A right to be heard does not mean a right to speak for as long as you wish. At a hearing before the Charity Commissioners, the complainant had been speaking for more than three hours, when the Chairman intervened and suggested that the rest of his evidence could be submitted in writing - the PCA found no maladministration as a result.(92)

Third party objectors at inquiries may be heard at the discretion of the inspector. Sir Cecil Clothier was quite happy with one inspector's approach, which required third party objectors to make written application, and only hear them if they were personally affected by the proposals (ie local interest) - giving less priority (if they were heard at all) to those not directly involved, but who wished to make representations about government policy. He noted in that particular case that "[I]f they believe the inspector's actions are so unreasonable as to prevent natural justice they have their remedy in the courts"(93)

(ii) The Right to call witnesses

This point was raised in a case whilst Sir Idwal Pugh was in office. It was alleged that an objector at an inquiry, was not allowed to call a witness by the inspector. Unfortunately it would appear that there was a misunderstanding as to the nature of the witness - the objector felt that he had been denied his right, and the inspector felt that the objector merely wanted to call a corroborative witness, which in the particular circumstances was unnecessary. The objector had subsequently died, so the PCA felt unable to settle the matter conclusively.(94)

It is not unreasonable in the PCA's opinion, to have this right denied, if you do not conform to the procedure

of the inquiry, and seek to reopen your case by the introduction of a new witness.(95)

(iii) The Right to Cross-Examination

In written proceedings, cross-examination might be said to be in the form of the opportunity to comment on the other side's case. The limits of this, were studied in the section on disclosure of necessary information (above). Some public inquiries have their own rules, usually allowing the inspector a certain amount of discretion - there is no guaranteed right for all objectors to call evidence or cross-examine. The PCA seems to favour an opportunity being afforded, but the onus would appear to be on the complainant to seek this opportunity. Most of the problems seem to arise when new evidence is introduced during the inquiry. This is mainly due to the need to re-timetable the inquiry, in such circumstances, if the inspector has good reasons for not allowing it, the PCA will not criticise.(96)

A problem can arise if written representations have been submitted to the hearing and thus, the witnesses are not there in person to be challenged. It would appear that the onus is on the complainant to make it clear that he wishes to question the witnesses in person; so as to allow the witness to be called within the time limits of the inquiry.(97)

The PCA made no adverse comment on the fact that a complainant was prevented from cross-examing a witness by an inspector, where the inspector explained to the PCA that the complainant had had ample opportunity to cross-examine that witness the previous day.(98)

There is no duty to facilitate cross-examination by objectors, by preparing a transcript of the inquiry proceedings.(99) [Tape-recording was permitted, so long as the speaker did not object.]

(iv) The Right to Legal Representation

The PCA rarely deals with complaints of denial of legal representation - Sir Edmund Compton and Sir Alan Marre did not do so. Sir Idwal Pugh received a complaint that the Home Office, through its delay in answering a petition, had effectively denied a prisoner the opportunity of legal representation before a Board Of Visitors. Sir Idwal found that this was not the case; and relied on the legal decision in Fraser v. Mudge, in answer to the point re legal representation at the Board - ie that there was no such entitlement.(100) [The Board of Visitors' actions are outwith the PCA's jurisdiction.]

Though not actually related to the procedure of an oral hearing, it should be noted that if the PCA feels that departmental faults have necessitated a complainant seeking legal advice or assistance, then he will support a

claim for reimbursement of the fees paid.(101) For instance, in IR cases there is now a set of guidelines laid down as to when professional fees should be paid.(102) The rules were explained in one case:

> "...The Board's general rule was not to reimburse a taxpayer for such costs, and that it would consider compensation, on the facts of each case, only where they arose directly out of serious error where an official of the Department had done something which no responsible person, acting with good faith and proper care, could reasonably have done. In the complainant's case there were elements of delay, and careless oversights in the form of repeated failures to copy assessments to her accountants. These failures merit criticism, but the IR do not regard them as within the category of serious official error for which they are prepared to consider compensation."(103)

This of course has implications for written procedures, as well as administrative processes in general. It is also interesting to note that the PCA has made it clear that he will not support claims for professional expenses in making a complainant to his office.(104)

(b) Evaluation Of The Evidence

(i) Consideration of All Available Evidence

This covers whether the tribunal or decision-maker availed themselves of all the evidence, in reaching their decision. [This is close to the category in the last chapter, relating to the consideration of all relevant facts, however, that chapter was more concerned with matters other than oral hearings.] Sir Alan Marre felt that in one case the Department of the Environment should have asked for further evidence from the complainant, on one aspect of his case.(105) However, a complainant's contention that a district valuer should not have reached a final decision on the value of the complainant's property without viewing it first, was rejected by Sir Idwal Pugh.(106)

Also in the same vein, was the complaint that an inquiry was not held in the summer when the alleged damage to the local foliage was most apparent. As this evidence was not central to the purpose of the inquiry, the PCA felt that the above grounds were not sufficient to warrant the postponement of the inquiry.(107)

It may also be necessary to consider whether certain matters should have been included in the public inquiry. For example, alternative sites, or the actual need for a motorway. Sir Alan Marre accepted that the introduction of

such topics depends on the purpose of the inquiry:

> " The complainant maintains that the Inspector failed in his duty in not considering other possible sites for the telescope....
>
> The Welsh Office have explained that the purpose and scope of inquiries into motorway proposals which emanate from a government department, are different from those of a planning inquiry to consider an application from a private developer for planning permission to develop a particular piece of land for some specified purpose. In the latter case, the choice of site is a matter for the prospective developer, who can be expected to put forward the site he considers best suited to his purposes and who in that process may well have considered and eliminated a number of other locations for one reason or another, including their availability to him. The Secretary of State's function, and, therefore, that of the inquiry, in such cases is not to determine the best site for the proposed development, or whether it should be carried out at all, but simply whether it is acceptable on planning grounds at the

location which has been proposed by the developer. This is not to say that the question of alternative sites cannot be raised at such an inquiry. It is open to the parties to submit such evidence as they think fit on that question having regard to objections raised against the proposed site, and that evidence would be taken into account. But the Secretary of State is under a statutory obligation to give a decision on the merits of the submitted proposal and it would not, therefore, be appropriate for him to prompt objectors to suggest alternatives sites (as he does in the case of a motorway proposal) particularly as, in the absence of compulsory acquisition powers, the developer's freedom of choice is limited to land he can acquire by agreement.

In the case of a motorway proposal which is promoted by the Secretary of State himself, a public inquiry is part of the process to assist him to find the 'best' route from all points of view and not only to assess the impact on the neighbourhood through which the road will pass. As he has compulsory acquisition powers to obtain the land needed for it, he is not fettered in

the choice of route, as a private developer usually is as regards a site for his proposed development, and he can, therefore, consider any alternative suggested on its overall merits. An important part of an inquiry into a motorway proposal is to hear objections from those whose land would be required for its construction, and in that connection it is especially relevant that contentions that another route would be a better one should be examined."(108)

As to what extent Government policy can be challenged at an inquiry, Sir Idwal Pugh received this clarification:

" They [The Department] went on to say that it was Government policy to provide the country with a strategic network of modern roads and a freedom of choice between different modes of transport, and they were not prepared to debate these general policies at an inquiry. But they recognised that, within general policies, questions could arise as to whether a particular road was needed, and such questions could constitute the basis of relevant objections."(109)

A common complaint to the PCA is that not all of the complainant's objections and representations have been

considered by the department. The PCA investigates these claims, but usually finds that the representations have been noted, the department has merely omitted to acknowledge the fact.(110) However, on one occasion, it was found that the possibility of representations had been overlooked:

> "I have found that the immigration authorities did not do all they could to ensure that the requirements of natural justice were met in this case, with the result that the complainant and his Member of Parliament were effectively denied the opportunity to make representations on Mr.X's behalf."(111)

Often the real reason is that the complainants feel that their objection is so strong that the only way an unfavourable decision could have been reached, would be in ignorance of their representation.

However Sir Cecil Clothier did criticise the actions of a department, in not evaluating the submissions which they had requested:

> " On the above evidence, I cannot escape the conclusion that the only the most persistent or respected objectors succeeded in getting the Department to discuss their proposals and that the Department ought to have made a much more concerted effort to discuss the

suggestions and ideas put to them. After all, they had invited the public to submit objections and representations and they therefore had a responsibility to give detailed consideration to all the alternative proposals put to them .....

I have concluded that the Department did not take adequate action to consult individual objectors at an early enough stage to reassure them that their views were being fully considered. To that extent I consider that Mr. X has a valid point in that justice was clearly not seen to be done."(112)

(ii) Rejection of Evidence

Evidence can be totally rejected in certain circumstances. For instance, if the objections led are in fact related to a different matter, such as the development proposals in general, when the subject of the inquiry is a proposed 'stopping up' order for a highway.(113) An unusual case occurred where the inspector rejected evidence led by the complainant, in the mistaken belief that it was not within his power to recommend the proposition to which the evidence was directed. The PCA reckoned that in the circumstances of the case, the

complainant suffered little injustice, as the outcome differed very little from the possible outcomes had her evidence been led.(114)

(iii) Consideration of Outside Information

This is also closely related to 'consideration of all the evidence', but raises the question of whether this outside information should be placed before the parties for their comment, or whether it is retained exclusively by the decision-maker.

A major complaint to the PCA is over the status of the inspector's/ reporter's report after an inquiry. Many complainants misunderstand its function and purpose, and feel there has been maladministration if the Secretary of State does not follow the report's findings.(115) Sir Alan Marre summarised his view of the role of the PCA in such cases:

> " My investigation has been concerned with whether, at any stage during the decision-making process, there were administrative failures or shortcomings which cast doubt upon that decision. Having carefully studied the evidence, I am satisfied that it was open to the Secretary of State to come to the decision he did about the zoning of the land in question and that it was taken on a

proper consideration of the relevant issues."(116)

To what extent should the other information that the Secretary of State draws upon, be available to the parties for their comment or challenge? Sir Alan Marre seemed happy with the existing rules, in that if it was a planning appeal, a new finding of fact, or new evidence (including expert opinion on a matter of fact), or a different finding from the inspector on a finding of fact, then an opportunity would be given to parties to make further representations.(117) However, these did not apply to development plan proposals, where the Secretary of State was free to seek the views of his own professional advisers without referring to parties involved in the inquiry.(118) The PCA did not make the comment that this must have been confusing for the public - although he does mention that complaints about the procedure adopted by tribunals should be addressed to the Council on Tribunals.

(c) Competency of the Tribunal

A hearing is diminished in value if the person who presides over it, does not have the necessary expertise with which to conduct it.

One form of complaint is that the inspector/reporter did not have enough technical knowledge to conduct the inquiry in that particular case. This is unlikely to be

the complainant's representative could play, which was corrected before the end of the hearing, and where it was not disputed that the hearing had been fair, could not be used as grounds for demanding a fresh inquiry.(123) Site visits during planning inquiries spawn a number of complaints, one of which is that the visit by the inspector was too short, ie he could not have conducted a thorough inspection in that time. The PCA is unlikely to support such contentions.(124)

In most of these cases, the PCA has expressed the opinion that the main problem is fundamental disagreement with the merits of the decision taken, - a matter which is not in his remit, and the above complaints are simple attempts to circumvent this barrier.(125)

## CONCLUSION

In conclusion it can be seen that the PCA receives a varied selection of complaints in this area which seem to span the General Catalogue's spectrum. As was noted at the beginning of the Chapter he only looks at procedure with a non-statutory basis, or else where statute gives discretionary powers as to the procedure to be adopted. This does limit his scope for a wide jurisprudence in this area, but as has been seen in the preceding sections, various encumbents have made criticisms where they felt that it was within the department's ambit to have provided

better procedures. The quotations used illustrate the reluctance the PCA displays to make general statements, and that each case is decided on its facts alone.

It will also have been noted that the PCA's other constraint (apart from the statutory ones) is that of balancing administrative convenience. If a more desirable procedure was adopted, but which would extend the whole process beyond a reasonable length, the PCA will have to decide by which route better administration is to be achieved.

## CHAPTER FIVE - THE PCA AND OTHER PROCEDURAL ERRORS

The two other categories of administrative procedural error dealt with by the PCA are that of delay (Section I) and the duty to give reasons (Section II). The latter is the quite a familiar category of error. However, delay is not so well-known or defined at least not within the U.K. system. The General Catalogue does register it as a possible administrative fault.

The PCA receives many complaints about delay in the administrative procedure. The types of delay and their causes vary considerably. Therefore classification was required for further elucidation. Thus the structure of Section I is based on a graduated spectrum of the forms of delay encountered by the PCA. This is formed on the basis of the likelihood of censure by him. The characteristics of the delay which cause the PCA to be more critical are simultaneously identified. This classification is contained within Parts (b)-(e). Part (a) of Section I introduces the concept of delay as a procedural error as understood by the PCA.

SECTION I - Delay

(a) Delay in Context

The PCA's definition of delay is not rooted in a time-scale, although the complaint sent to him may be formulated with reference to the length of time that the administrative process is taking, or has taken to complete. Rather, his definition is based on consideration of the circumstances of the case itself. Thus there is no reference scale by which it can be stated that a certain length of delay will mean that maladministration has occurred. In one extreme example a delay of twelve years was considered to be justified.(1)

The length of time involved is only a major factor when the impact of the delay on the complainant is being assessed. What degree of inconvenience or worse, has the complainant suffered. The subject matter or area of the complaint seems also to be a consideration on Marre's part. On the subject of delays in the DHSS and its benefit functions, Marre stated:

> " The nature of supplementary benefit is such that it may be needed immediately to prevent difficulty and even hardship, and any delay in payment must be a matter for criticism."(2)

Very soon after he started the job of PCA, Sir Idwal

Pugh echoed these sentiments:

> " A person who claims to be in need of supplementary benefit may need it very urgently, and the claim therefore ought to be dealt with expeditiously."(3)

Also in delays dealing with petitions from prisoners the PCA emphasised that there can be special considerations, such as when errors possibly affecting the validity of a committal warrant was the subject of such a petition

> "The Department have assured me that the importance of dealing expeditiously, especially with matters concerning liberty, is well appreciated."(4)

In other areas the PCA attaches less criticism to longer delays - possibly as suggested because the impact on the client is not so great. This is well illustrated by the work of the planning appeals section of the Department of the Environment - here, long delays were often seen as unavoidable(5)

This is only one factor in the overall assessment - as a very general guide though, it is true to say that the PCA will be concerned by a delay of weeks, or even days, in cases concerning the welfare provision of the DHSS. Whereas, delays of months or even years, will sometimes be acceptable in planning cases.

Having said that, there is little further consideration of time-scales within the PCA's treatment of

delay. The PCA appears to have developed a scale by which he judges the acceptability of the delay by its cause. The PCA talks in a variety of terms of 'acceptable' and 'unacceptable' - 'justifiable' and 'unjustifiable' delays. It is difficult to make a clear-cut division between these two forms of positive and negative 'categories' - instead, what emerges is a sliding scale.

At one end of this spectrum,(if it is in fact on the spectrum), there is the situation where the complainant asserts that there was delay, but the PCA is of the opinion that it was not in fact delay, but a perfectly reasonable time-scale for the procedure in question. For instance, in one case(6), one part of the complaint was that it had taken eighteen weeks for a decision to be taken by the Secretary of State for the Environment, after he had received the inspector's report from an inquiry. The PCA considered this time, which was around the average time that it took to make such decisions at that time, not to be unreasonable, with particular regard to the fact that it was not an uncomplicated case. Here, although the time taken was considered, the PCA was also concerned with the circumstances of the case, which in his opinion, did not allow for a faster time.

This spectrum can be broken down into the following components:

(b) Delay as a Product of Complexity

This category can be sub-divided into (i) procedural complexity and (ii) substantive complexity.

(i) Procedural complexity.

This deals with administrative processes which by their nature are long drawn out. That is, the need for good administrative practice, requires various steps to be taken, which may mean that more time is required to complete the process.(7)

The prime example in this area is the need for consultation.(8) Some processes necessitate detailed inquiries, which can take extend the time period - one particular process which was the subject of a number of complaints to Sir Alan Marre was the Inland Revenue's procedure for checking the validity of documents supplied in connection with claims for a married person's allowance for a wife and children overseas. Marre explained the problem in one case;(9) it was largely due to the fact, that the IR was dependent on information, which they were waiting to receive from the Indian Authorities.(10)

In 1974 the PCA noted that delays of one year were common in this type of case. The sympathetic approach to such situations, was well illustrated in one case by Sir Idwal Pugh (it is interesting to note that the case deals with matters affecting the liberty of prisoners, it would

appear that the need to prepare the case properly outweighed the considerations of speed in this case):

> " Because of his [the Member's] efforts and the readiness of Ministers and officials to make a dispassionate assessment of the evidence he produced, the Home Office had in their possession, by mid-October 1974, all the medical evidence that was largely responsible for the convictions ultimately being quashed by the Court of Appeal. It was not, however, until June 1975 that the case was referred back to the Court of Appeal. I make no comment on whether the advice the Home Office sought or the consultations they engaged in, after they had obtained the medical evidence, were essential to their consideration of the issues involved. I am, however, generally satisfied that the Department dealt with the case conscientiously and as expeditiously as the difficult circumstances allowed. And I do not think it can be said that there was any administrative action or inaction falling within the limits of my jurisdiction (see paragraph 8) which caused the reference to the Court of Appeal to be unnecessarily delayed."(11)

Other types of necessary procedure may add to the delay. It may take time to record all the details of a complex case.(12) Or it may be necessary in the interests of other aspects of good administrative practice such as 'fair hearing', to allow extra time; in one case, this allowed prolonged representations by the parties involved in a planning appeal.(13) Here the PCA felt that there had been no undue delay, when the average time for completion of appeals was considered. The difficulties involved in this were explained by Marre in another planning case, where the decision by the Secretary of State for the Environment was not to be announced until ten months after the relevant public inquiry:

> " The undoubted need for a decision to be reached as quickly as possible in order to resolve local uncertainty and worry over a proposed redevelopment scheme has to be balanced against the need for detailed consultation and careful consideration of all the scheme before a decision is taken"(14)

The necessity of complying with legal requirements of a process may also cause delay.(15)

Public interest requirements can also cause delay, again the PCA will acknowledge the right of the department to implement them:

> " But the Department have a duty to ensure

that proper controls exist for the payment of grants which they are empowered to make "(16)

This could also be seen as a balance between the administrative functions of the department.

Introduction of a new government policy will be an acceptable reason for delay. In one case, important changes in central and local government policy, meant a delay of five and a half years. Sir Idwal Pugh felt that it was right that these were considered.(17)

In cases where there is a requirement upon the department to issue a judicial decision taken on behalf of the Secretary of State, then the PCA accepts that some delay will arise because of the procedure which has been adopted. This was first recognised by Sir Idwal Pugh, who stated in one case:

" When an application for a formal decision by the Secretary of State is received each case is examined afresh without regard to any opinions previously expressed within the Department; and where as in this case, the point at issue is the accuracy of the Department's records over a long period of time, the necessary enquiries inevitably take time. The Department make the point that, while they are concerned to deal with the matter quickly, they consider that speed

in the judicial field is not acceptable if it is at the expense of thoroughness. I agree, in principle, with the soundness of this argument."(18)

Another manifestation of this form of delay is where the department concerned is not directly responsible for the delay.(19) This might be as a result of waiting for information or submissions from local authorities or other public bodies. Or it might be as a result of inaction on the part of a private party involved in the case.(20) The necessity of balancing the interests is acknowledged by the PCA. In one case, a delay of twenty-one months from the submission of proposals was continuing, awaiting a public inquiry which was not forthcoming. The complainant's house was bordered by land that was the subject of an application for planning permission by a company to build houses. The PCA emphasised that a balance had to be struck, and that it was for the Department to force action on the part of the company.(21)

These cases of course, also illustrate the potential overlap in categories of procedural error, such delay could be seen as allowing more time to one party to the disadvantage of the other - a form of spontaneous partiality.

(ii) Substantive complexity

The second sub-category is that of substantive complexity. This is where the particular nature of the individual case necessitates a more complicated process.

For example, it may be necessary in some cases to obtain legal opinion before a Department can reach its decisions. This appears to be accepted by the PCA as a reason for delays in such cases, presumably because such opinion may take time to formulate, and also because time may be needed for the request to be processed and passed between departments or sections.

One case dealt with the Department of Trade and Industry's delay in publishing a report on the investigation into a company's affairs, was not unreasonable in light of the fact that there were civil legal proceedings raised on account of an alleged breach of natural justice in a very similar case;(22) and as a result similar allegations were then raised in this case. It was felt necessary to contact the Director of Public Prosecutions as to the possible prejudice to the on-going proceedings presented by the publication.(23)

Another occasion involved the submission of a late objection by the new owner of property affected, whilst the Department of Environment was still considering its decision - it was felt necessary to take legal advice as to whether such an objection could be admitted. The PCA

considered this to be proper procedure.(24)

Although there may not be any need for legal consultation, the complicated nature of some individual cases may require extra time for proper consideration. In one case a delay of two and a half years in preparing the Department's case was accepted by the PCA as a result of the differences in medical opinions, which had to be considered.(25)

In what was acknowledged as a very rare subject-matter in one case, the delay resulting was criticised by Sir Anthony Barrowclough:

> "This delay merits my strongest criticism. In his comments to me the Principal Officer explained in mitigation that claims to IDN [Industrial Disablement Benefit] in respect of farmer's lung are very rare and virtually unknown by the great majority of local offices. He said that the staff concerned with the complainant's case had no experience of handling such an unusual claim and that the inordinate length of time taken to resolve it was due to this and not to any lack of effort. My own investigation has not led me to take a contrary view but this does not excuse the delay...."(26)

Or the complicated nature of the individual case may slow down the process. In one case the delay was caused by

the applicant's frequent change of address due to the local housing authority moving him around accommodation(27); and in another case the delay was as a result of the Department of the Environment suspending action on a case on being told that there were negotiations were underway between the two parties involved, however these had subsequently broken down, of which fact the Department was unaware.(28)

The individual case can also arise where detailed enquiries need to be made, for example, the PCA held that delays in answering a prisoner's petition were justified on the ground that the Home Office needed to gather as much information as possible in order to answer the petition fully.(29)

(iii) Necessary Procedure To Be Followed By The Department In Such Cases.

In the above areas, the PCA will on the whole be sympathetic to the delay, as it can be seen that there is a case to be argued that it is necessary for good administration. Thus, the verdict of the PCA in such cases will usually be that the delay was justifiable or unavoidable.

However, the PCA does demand that the effects of the delay are mitigated wherever possible. The PCA will only exonerate the department concerned if he feels that they

have taken adequate steps to minimalise the delay. The following can be identified as requirements by the PCA.

(1) Provision of Information.

The client or other parties involved, must be kept informed of the delay, and the reasons for it.(30) Presumably, this is to prevent the suspicion building up in the client's mind that his case has been forgotten. For instance, the length of the period of delay in the above-mentioned tax allowance cases should have been conveyed to a party concerned in such a case.(31). This is, of course, simply an extension of the principle of administration that requires reasons for decisions.

(2) Guards against inefficiency

This relates to the manner in which the procedure is carried out - the delay must be part of the proper procedure and not just an excuse for a failure in the system(32). Thus, the established need for consultation does not escape criticism if the means of consultation are inefficient - for example, the DHSS took nineteen weeks to reply to a letter of inquiry, although the reply necessitated the opinion of various other departments, the PCA felt that copies of the letter could have been sent simultaneously, and not the actual letter which was

circulated in turn.(33)

Sir Idwal Pugh, however, seemed more sympathetic towards unnecessarily protracted administration (albeit subsequently corrected). He concluded in one case:

> "I myself have considerable sympathy with him [the complainant] in complaining of the difficulty of having to deal with so many different departments..... And I question whether the tortuous procedures necessary to complete the formalities of making a formal offer.....could be defined as good administration. But I have been glad to learn that much of this has since been simplified, and I am satisfied that, given that those were the normal administrative procedures at that time, there was no avoidable delay of significance on the part of [the various departments involved]"(34)

A common form of consultation is where the department seeks responses from outwith other government departments, eg local authorities. The department would be expected to meet any delays on the part of the local authorities by fairly frequent reminders to them(35) or by setting time limits, which if not met by local authorities means that the procedure will simply continue without them.(36) This will also apply to dealings with private parties, or other such sources.(37) It will also apply to the need for

international consultations, if the PCA feels that these are not efficient:

> "Finally, on the evidence of this case, and the Department's comments about the difficulties which they often experience in dealing with claims when other countries are involved, it seems to me that there is some need for improvement in the existing international arrangements for settling such claims so that they can be dealt with more speedily. The Department have explained to me that this country is already participating in international discussions on this problem in the EEC and the Council of Europe. That is not a matter for me but it is one which I recommend should be pursued with a view to the avoidance of such fully justified complaints as have been made in this instance." (38)

In general, departments are expected to monitor cases and to make sure the administration of it has not come to a halt.(39)

(3) Provision of Interim Relief

In cases concerning financial payments, the possibility of interim payment or an interim grant of

relief should be considered,(40) though it can discounted for good reasons.(41) If interim relief has not been considered, this will be grounds for criticism of the department concerned. Interim relief should help mitigate the effects of delay where the client is waiting for a financial payment.

(c) Delay as a Result of Resource Constraints

Delay may occur as a result of a heavy workload in the department concerned, with pressures of shortages of staff and/or finance. This moves further along the spectrum, - this reason for delay is more frequently not acceptable to the PCA. Again this is qualified by the department's efforts within their resources to minimalise the delay.

Occasionally, the PCA decides that the delay in such cases is totally unavoidable, although still not desirable. This is illustrated in a case concerning the Public Trustees and his office, where there was a delay of twenty months in the final distribution of a trust fund. The situation was explained to the PCA as follows:

> "The Public Trustee has explained to me that there were at the time long delays in the preparation of accounts in his office because of the loss of a number of experienced staff, and consequent accumulation of arrears of work, after the

publication in March 1972 of the White Paper (Cmnd.4913) announcing the Government's decision (reversed later) to close down the Public Trustee Office in its existing form."

Sir Alan Marre concluded:

"The staff shortage and arrears of work with which the Public Trustee was faced in 1972/73 were the consequences of a Government decision (subsequently reversed) for which the Public Trustee cannot be held to blame."

However, this did not mean that he was happy with the situation:

" I understand the complainant's disquiet over the time that it took to wind up the trust."(42)

In another case, a delay of eighteen months in dealing with a claim for attendance allowance, was called 'inordinate', but the PCA went on to state that he appreciated that the introduction of a new scheme, and the unexpectedly large number of appeals, made much of the delay unavoidable.(43)

However, it should be noted that the PCA has not always been so favourably disposed towards similar delay in the accounts section of the Public Trustee's office - although he had recognised the pressure on this section, he stated: "this does not diminish the dissatisfaction the

dissatisfaction or anxiety caused to private persons affected by the delay, and in this respect, I find the complaint justified."(44)

The possible difference here as far as the PCA is concerned could be that the delay took place before the Government White Paper.

Sir Idwal Pugh was happy to accept that an increase in the workload of a department which was sudden, not capable of being anticipated, and outwith their direct control, would fall into the former category.(45) This approach was continued by Sir Cecil Clothier, though if other causes of delay, such as administrative errors, were identified, then there would be criticism.(46)

Sir Anthony Barrowclough conceded that externally controlled workloads could mean unavoidable delays:

> "I do not normally regard delays of eight and nine weeks in answering correspondence as reasonable. But the Principal Officer of the Department has explained to me that the responsibility for the delays in this case was shared by Ministers who have an overwhelming load of correspondence - some 25,000 letters a year. It inevitably takes time to answer all this correspondence. And if the issue in question is one which requires a good deal of Ministerial attention then delays are often

inescapable"(47)

Very often the PCA will identify 'problem' areas (such as the one above) which occur due to a number of complaints received, all relating to the same area and process.

Sir Alan Marre dealt with two notable areas where the delays were frequent, during his time in office. The first of these areas was the planning appeals section of the Department of the Environment. In this period a large increase in the number of planning appeals to the Department occurred. As a result there were problems with shortages of staff, or experienced staff, and a large backlog of cases. In 1974, Marre noted:

> "The delay in deciding appeals generally is a matter for concern. It is undesirable that appellants should have to wait as long as they do for decisions. But I recognise that the increase in appeals has created a serious problem of staffing and administration, and I hope that the steps the Department have taken will reduce and in time eliminate these delays."(48)

And in the next year, he again commented on the delays being experienced:

> "....I have referred in earlier reports to the efforts that the Department have made to overcome these problems, particularly by

recruiting more staff. The Department tell me that they have for some time now been putting in a sustained effort to reduce the backlog of outstanding cases; to improve the handling of the individual case; and to devise new procedures which will cut down delays and ease the load. Although quick and dramatic improvement cannot be expected, I am glad to record that their current experience is that, due to co-operation at all levels in the Department, their efforts are beginning to show results."(49)

Happily, Sir Idwal Pugh was able to report of improvements, when he investigated a case of delay from this period; he noted that in 1974, there was an average delay of 60 weeks, which he called unacceptable, but noted that in 1976, this had been reduced to between 23 & 34 weeks, depending on the procedure involved.(50) It should be noted that 'unacceptable' must be taken to mean 'undesirable', in that it could not be expected that changes could be achieved quickly when the problem was as intrinsic as this one.(This was acknowledged by Marre in the above case).So, for the purposes of this thesis the delays were not 'unavoidable' at that time. Whilst not perhaps 'justifiable', they were not totally 'unjustifiable' under the circumstances.

This is also illustrative of the PCA's approach, as

observed in foregoing categories, in that he checks that all delay has been minimalised in each case.(51) The same requirements can be identified such as the need to keep the client fully informed.(52) In this category, the fulfilment of these requirements may not totally mitigate the delay.(53)

The second area concerned matters related to the Home Office's Immigration Section, and the introduction of the Immigration Act 1971; combined with Pakistan's withdrawal from the Commonwealth and its associated immigration problems; as well as a loss of experienced staff. Marre summoned up the situation:

> "But as I know from a number of other complaints I have investigated, there is, regrettably, a considerable delay in the preparation of statements in non-priority cases, caused by an acute shortage of trained staff in the Department and the very large number of appeals that are lodged. I have recently visited the Immigration and Nationality Department and seen for myself the pressures under which they are working at the present time and I have been told what steps the Home Office have taken to try and reduce the delays.....
>
> As the Home Office recognise, it is of little comfort to the complainants to be

assured that the delay experienced was not abnormal in the circumstances, and that there is an explanation of the heavy arrears of work in the Appeals Section."(54)

As is obvious, pressure of work or related circumstances are not always totally accepted by the PCA as a reason for the delays, - eg in one case the PCA did not totally accept that the delay of ten months (+ five months when it was not realised that a formal decision was required) was totally the result of pressures on the Department:

" The Department tell me the time taken to complete this case was essentially attributable to its intrinsic complications as well as staffing problems and heavy pressure of other cases. I accept that those reasons do help account for the delay.....Certainly, it seems to me that at least four months in total could have been saved without difficulty."(55)

Although in other cases the PCA has been more sympathetic (delay of five months):

" I find that there have on occasions been lapses in the way in which the IR have dealt with the complainant's tax affairs. But tax offices, have, in recent years had to work under very heavy pressure, and in the

circumstances I do not consider that this complaint of general inefficiency is justified."(56)

And in another case, he considered it "highly regrettable that applicants generally should have to wait as long as this"(eighteen months).(57)

Overall, it appeared that Sir Idwal Pugh(in his earlier years at least) was less sympathetic to this problem than his predecessor. He was critical of the delay in most of cases(58), even where there was an exceptionally high turnover in staff (of the 50 working in the office at the end of 1976 - 8 had been there before April 1975).(59)He was less critical in some cases, particularly one in which there had been an unexpected increase in work after the introduction of new legislation - this would appear to have been assumed to be beyond the control of the department(60). Also in this case steps had been taken to remedy the situation by the redisposition of staff. Both these steps would seem to have lessened the criticism.

As can be seen the PCA will accept this type of delay, only if he can satisfy himself that the system is working at peak efficiency within the constraints set. Sir Idwal Pugh dealt critically with a case where the staff resources had not been deployed effectively.(61)

Sir Cecil Clothier echoed this view in another case:

"I accept that, with finite staff resources,

the Department have to decide priorities for dealing with their workload, and that some work will inevitably have to wait its turn. But in these circumstances, it is more important than ever that the Department should have proper monitoring arrangements to ensure that cases are not delayed unduly due to oversight or error. and the lack of such arrangements was plainly a factor which contributed to the lengthy delay in this case."(62)

However, Sir Idwal Pugh was less critical in a later case where the department had done all that was possible within their powers:

"The Department have told me explicitly that the office concerned are unable to speed up the handling of cases already submitted to the Department without an increase in staff. Priority has been given to other work. I do not question the priorities of the Department have given to the various tasks but the situation is a most unsatisfactory one."(63)

Sir Anthony Barrowclough was less sympathetic in another case in 1987, though this may have been because the same section had been the subject of a similar complaint two years previous. He outlined what had been

done to remedy the situation:

> "The Principal Officer told me that the senior manager responsible, with the approval of his superiors in 1982 and 1984 sought to construct procedural packages for handling life sentence work as a whole which would have reduced the burden on the staff concerned with this work. This was in accordance with the general ministerial policy, and good management practice, that officials should seek radical remedies for work delays rather than simply throw resources at them. After consideration and discussion Ministers did not agree to the suggested changes of handling procedure. The senior manager sought and obtained extra staff in 1984, and then the additional staff to which I have referred to above in 1985. Nevertheless, it was clear that there was a long-standing problem. An effective solution should have been in place earlier."(64)

This shows the high concern of the PCA with the system in general, and not just with the individual case.

He does not go further than this. His perceived role appears to be to ensure that maximum efficiency is achieved within the budgetary constraints. He will criticise the internal deployment of finance or staff, but

he does not see it as his function to chide governments to provide better resources for the particular area.

Sir Cecil Clothier was more blunt in his comments than his predecessors:

> "But I think it appropriate to observe..
> that even the best-intentioned legislation
> can seldom be better in its actual outcome
> than the administrative capability and skill
> that the Ministers are prepared to divert
> from other purposes to implement it, and to
> express the hope that such lessons are being
> more readily learned."(65)

Thus he welcomed governmental review of a problem in the Nationality Division of the Home Office, in another case.(66)

Thus, if he is satisfied that the problems could not have been foreseen, or even if they could have been, they are now being remedied, the PCA will not be too sweeping in his criticism as a result. The delay will probably be classified as inevitable.

(d) Delay as a Result of Disruption in the System

Running into the last category, is delay caused by disruption in the system. This is caused by changes in the working practices, or the transfer of functions between sections or departments.

Again the efficiency of the system will be considered - this is a greyish area similar to the above, in that the PCA is more likely to conclude that the delay was not justifiable.

The most obvious cause of disruption in the system is industrial action. Sir Cecil Clothier first dealt with this problem, and set the guidelines for the PCA's view in relation to the question of resulting delay:

> "Industrial action cannot necessarily be regarded as sufficient for shortcomings in a department's performance, but I accept that in this particular case the Department cannot be blamed for the slight inconvenience which the complainant suffered. In my view the blame lies, rather on those civil servants as individuals, and their union officials, who disrupted public business in the furtherance of private ends."(67)

Therefore, in such cases, if the department take all possible action to prevent to keep disruption to a minimum, then the PCA will not hold them responsible for the delay.(68)

One particular case at the time of local government reorganisation was aggravated by the fact that the new local authority had inherited a large number of appeals from the previous authorities. Sir Alan Marre commended

the Department of the Environment's efforts in this case, though he expressed the view that such delays were still undesirable in such simple matters. The department had sought to promote the choice of the shorter procedure of written representations, and encouraged the local authority to process appeals more quickly.(69)

Sir Idwal Pugh was tolerant of delay in the system whilst a new administrative system was experimented with. All applications were directed to a central office rather than being dealt with by local offices which were unfamilar with the new procedures. This did cause some delay, the system had subsequently reverted to local administration. Pugh believed this to be justifiable.(70)

He was also uncritical of a delay when a new procedure was introduced at the DVLC:

> "And I do not regard such a period as inordinately long or inconvenient to the public, given the large scale, complex, and once-for-all nature of the total nationwide operation involved."(71)

However, he was less inclined to be sympathetic when the cause of the disruption was less intentional, directional or organised. In a dispute-resolving capacity, the Department had no standard procedure for formal resolution, the case was then caught up in a reorganisation within the Department - the PCA found the resultant delays 'inexcusable'(72)

In another case, the extension of Invalid Care Allowance to married woman caused an increase in claims, however, the system adopted by the department meant that older and more complex cases were left at the back of the queue, until they were eventually given priority. The PCA was critical of this arrangement as being inefficient.(73)

(e) Unjustifiable Delay

First in line here is delay caused by delay from departmental guidance.Failure to follow departmental instructions has also caused delay, which was deemed avoidable.(74) One of Sir Idwal Pugh's cases where there was a series of such errors, is illustrative. The case attracted severe criticism:

> " ..But they[the Department] acknowledge that a mistake was made when her papers were destroyed in 1973. ..... Had the proper procedure been followed it would have been simple to confirm the complainant's payment when his daughter asked for return of her contributions in 1975.
>
> But there were other mistakes in procedure. The records of telephone calls and action taken are incomplete and difficult to follow. And I am not now able to establish precisely how many times the

family made enquiries or the Department tried to contact them. But I am not satisfied that adequate efforts were made to get in touch with the mother again when it was discovered, ..... that her daughter's papers had been destroyed. And it is clear that considerable delay was caused by careless filing.....The Department also tell me that there should have been no need to seek further information once the photocopy of the cheque was available: that alone should have been sufficient evidence of the right to a refund.

In my view the complainant had every reason to complain about the way the whole matter was handled, and the Department deserve severe criticism for their administrative shortcomings."(75)

The instructions need not come from the department; in one case delay was caused by the department failing to follow the instructions given by the complainant.(76) Alternatively, the fault may be in adhering too closely to instructions without sensitive adaptation to the particulars of the case.(77)

Also under this heading is failure in communication. For example, failure to explain procedure properly to the complainant caused a misunderstanding which was the basis

of the delays in one case.(78) Or it might be slowness in communication, or lack of communication;(79) or failure to identify which section was responsible for the case;(80) or failure to pass on information.(81)

At the far end of this spectrum is what might be termed 'human error'.(82) This is where the delay is traceable to an action taken by an individual.

Delay was caused by asking a series of questions of a Local Authority, where the PCA reckoned that with the Departmental experience in such matters, they could have submitted one batch of questions.(83)

Other such mistakes included waiting unnecessarily for the outcome of an unrelated matter before implementing a decision,(84) and indecision after identifying an option,on whether to take that course of action.(85) Or it could be allowing negotiations to drag on.(86) Such mistakes could be classified as bad administrative skills on the part of the individual.

Another manifestation of the human error factor could be in losing a file or papers relating to the case,(87) or in the misfiling of such,(88) including the failure to link papers to the case file.(89)

In one such case the PCA described the fourteen week delay caused by the loss of a file in the review of the proceedings of a Mental Health Review Tribunal as 'indefensible'.(90) Other examples include failure to enter information onto a computer(91) and other computer

related difficulties,(92) as well as failure to cross reference papers.(93) Such an error is compounded if it is persistent and not just a 'one-off'(94)

A common fault is what PCA's have described as a lack of urgency in administering the case, and is usually due to a lack of efficiency.(95) It can for instance be a failure to identify the case as being particularly urgent.(96) Sir Cecil Clothier severely criticised the Home Office for lack of concern, and failure to identify an urgent case in a separate report to Parliament on the review of a conviction for murder:

> "A miscarriage of justice by which a man or a woman loses his or her liberty is one of the gravest matters which can occupy the attention of a civilised society. And it seems to me that when an unprecedented pollution of justice at its source is discovered, quite an exceptional effort to identify and remedy its consequences is called for. My overall impression of the way the Home Office administrators responded to the discovery of Dr. Clift's serious shortcomings is that they failed fully to grasp or face the implications. As my investigation has shown their response was in some respects prompt and efficient; but in others they seem to have been content to

adopt a passive and reactive role rather than a positive one."(97)

And also in the following case:

"Most serious delays occurred in this case which, coupled with the local office's initial mistake of overlooking the complainant's claims to SHA, resulted in his having to wait over 11 years for a decision. My investigation has shown that there were long periods of total inactivity, interspersed with short bouts of only partly effective action and that for the most of the time the complainant was left completely in the dark."(98)

The PCA is critical of an approach to a case which lacks coherence, ie 'a piecemeal approach'.(99)

The above extract is also a good example of the grey line between this category and the next.

A large number of cases involving delay seem to involve inexplicable delay ie failure to take action with no identifiable cause - what could be described 'sitting on a case'.(100) Sometimes this does occur in a situation where there is a partial explanation for this, for example, where work has been transfered to another section, where PCA described 'inadequacies in handling'.(101) Others have little or no explanation.(102) A large number of these delays of this type occurred in

the Inland Revenue and the DHSS. In the DHSS the period ranged from four months to issue a pension book;(103) to six months for a claim to supplementary benefit.(104) Inland Revenue cases include delays of three months;(105) delays in one case of one year in one aspect where the PCA found on the whole 'no satisfactory explanation', and one and a half years in another aspect,(106) to four years.(107)

Such delay can be found on its own, or alongside other forms of delay.(108) For example in one case, involving the IR issuing a clearance certificate relating to estate duty, four and a half months of the total time of eleven months was found on investigation by the PCA to be without reason or cause, although some of the remaining delay was necessary to the process.(109)

## SECTION II - The Duty to Give Reasons

This is really a lack of communication between the decision-maker and the party/parties involved. The PCA is keen to promote communication at all stages in the process; he is not just confined to the need to give reasons for the end-product of the process ie the decision.

For instance, in one case the department did not keep the complainant informed about their handling of an

outbreak of disease amongst his herd and their proposed action, as a result the complainant took inappropriate decisions which cost him £7,500 in losses. The PCA felt that he should have been consulted before they took the decisions.(110)

It has already been noted that the PCA is insistent that the 'clients' are kept informed of any delays in the procedure, and that the reasons for them. If this is done, he argues, it is less likely that misunderstandings, and misinterpretation of actions, will arise.(111)

This also applies to, the need for proper explanation of procedures,(112) and the need to reply adequately to questions.(113) The same logic applies to the need to give reasons for a decision - if reasons are not given, or inadequate reasons are given, then it may appear to the client that an arbitrary or inadequate decision has been taken.(114) For instance, complainants alleged that inadequate reasons had been given for the decision to grant planning permission for an oil refinery, following a public inquiry - the complainants alleged that this meant that the Scottish Office had inadequate reasons for that decision. After a full investigation, the PCA concluded that this was not in fact the case; although he could well understand the complainants' view.(115) In another case the Department of the Education & Science did not explain a point properly in a letter to an aggrieved parent:

"...they [the Department] accept that the matter ought to have been properly explained to the mother in a full reply and that the Department were at fault in this respect. ...this gave the mother the impression that they had not properly investigated her complaint."(116)

Also in one case, an inspector's report did not give adequate reasons:

"...the inspector's findings in his report on the critical issue of noise amounted to little more than saying that, given the conflict of expert evidence on that issue, he simply preferred that of the company without much explanation of why he did so and where the Association's evidence had been found wanting..And,....it is understandable that their [the Association's] suspicions were aroused that behind-the-scenes influences might have played a part in determining the outcome of the company's application."(117)

Sir Cecil Clothier explained that the department had a duty to remember that the public were not always au fait with the procedures used by the department:

"The complex provisions of the Noise Insulation Regulations 1973 make it very

difficult for house-holders to understand why some homes are offered insulation and others, in apparently worse positions, are excluded from that benefit. Because of this, it is essential, in my view, that the public officials who are familiar with the technicalities should realise that others are not and cannot be expected to see the logic in their conclusions unless trouble is taken to explain them in terms the layman can understand. I think it regrettable that the Welsh Office did not take more care in explaining to the complainants in this case how they had reached their decision."(118)

Obviously, the same applies to being given the wrong reasons for a decision. In one such case a grant awarded was withdrawn from the complainant.

"But the MSC acknowledged that the reason for the withdrawal of the grant given to the complainant by that EO [Employment Office] in their letter ... was incorrect, and that the different reason given by the area manager in his letter... was equally wrong. Through me, MSC offer their apologies to the complainant for these errors and for the fact that he was never given a full explanation of their reasons for the

withdrawal of the £400."(119)

As a result, the matter was not resolved as quickly as it might have been.

However, it is fairly safe to state that the PCA views the policy of giving full explanations as good administration. That does not mean that he views their absence as maladministration, in itself - it might contribute to it, but it does not constitute it.

The PCA will accept the lack of an explanation, if confidentiality demands it. For instance, one company had approached H.M. Customs & Excise with a sample of its product, and gained an exemption from purchase tax. Another company objected to this, H.M. Customs & Excise explained that whilst they would be happy to talk to the objecting company about the differences between the two products in general terms, commercial confidentiality prevented them from disclosing specific details of the exempted product. The PCA accepted that confidentiality between a company and H.M.Customs & Excise was necessary for the department to function efficiently.(120)

Another area where confidentiality overrides the duty to give reasons was illustrated in the following extract:

"As for the reasons for that decision, I accept the general principle that Departments with prosecution powers cannot necessarily be expected to disclose, even to interested third parties, detailed reasons

why particular people have not been prosecuted in particular cases. There are sound practical and legal grounds for this, quite apart from such special considerations as the need not to breach confidence, reveal the identity of informers, or make public delicate personal information."(121)

Sir Idwal Pugh supported the DHSS in not giving detailed reasons for the refusal to allow a child to be adopted from abroad; it was enough, he felt, in such a case, for the Department to state that on the prima facie case a court would not grant an adoption order.(122)

However, confidentiality must only be extended as far as is necessary. In one case, the PCA accepted that a report on which a decision as regards the siting of a trunk road, was based, could not be published in its entirety, but the Department should release factual information from it, if requested.(123)

## CONCLUSIONS

It is certainly true that this Chapter was mainly devoted to the error of delay. This is justified by the fact that the PCA can be said to have developed and refined this concept. This has been one of his major contributions to administrative redress. It also reflects

his ability to temper errors with the needs of administration, for example in his acceptance that complicated procedures require longer periods to administer. This is of course, subject to verification that the procedures are not unduly complicated for the task in hand.

It is this sensitivity and adaptability which is one of the PCA's strengths. Here he has developed a response to a frequent complaint, which has been neglected by other redress mechanisms.

The second section of this Chapter also highlighted another of the PCA's successes. This is emphasising that if administration takes time to explain their procedures, 'clients' are less likely to feel aggrieved. It is not the usual approach to the duty to give reasons, but rather it is a reminder of the philosophy behind these and other procedural rules and safeguards. This philosophy is best expressed in the judicial phrase that 'justice must be seen to be done'.

It is perhaps in this Chapter that the PCA has been seen to be more definite and more confident in his approach. The next Chapter considers the remedies the PCA suggests for the errors catalogued in this and the previous two chapters.

## CHAPTER SIX REMEDIES AVAILABLE TO THE PCA

In this final chapter dealing exclusively with the work of the PCA, probably the most important aspect (at least for the complainant) is discussd. Whilst it is desirable to ascertain what procedural errors the PCA identifies and censures, it is arguably more important to analyse how he remedies the wrong. The remedies available to and used by the PCA are perhaps the best guide to his efficacy as a dispute-mechanism. How does he enforce his findings?

The Chapter is divided into two sections. Section I lists the remedies used by the PCA. Section II deals with the limitations, both self-imposed and superimposed, placed on the decision to grant any of these remedies.

### SECTION I The Forms of Remedies

The remedies obtained by the PCA can be divided into four headings: financial compensation; the review or reconsideration of the individual case; apologies from the department for the maladministration; and revision of departmental practice to prevent the error recurring. The last category is often combined with one of the preceding, most often the third, ie an apology. Each form of procedural error has its own peculiar remedy in the sense that one form of remedy is more often used, or is more

suited, to one sort of maladministration. These will be identified below.

(a) Financial Compensation.

To many complainants this is probably the most desirable remedy, short of a return to the status quo. It is not the most common form of remedy, and a number of qualifications must be satisfied before the PCA will recommend this action to the department involved. Financial compensation is most often given in cases of delay. It is by no means exclusive.(1)

Sir Cecil Clothier summed up the PCA approach to compensation (and to some extent to the granting of remedies in general) in the following extract:

> "I see the blame as falling on both the company (or their agents) and Customs. In reaching that conclusion, I am conscious of the possibility, that in law, no claim for damages made by an importer would lie against Customs - it being arguable that no duty of care is owed by them to the individual importer (or for that matter, exporter) in respect of the exercise of their surveillance responsibilities. But I am not a court of law. Nor, as I have explained to the Chairman of the Board of

Customs and Excise, do my findings have the force of precedent in the way that judgments of a court of law do. Rather is it my duty to afford equitable relief against that injustice which may not be remediable at law but which in this particular case is shown to have flowed directly from the maladministrative act or omission of a government department. Furthermore, the combination of circumstances which arose in this case seems to me to be quite exceptional."(2)

Financial compensation, in the form of an ex-gratia award of the amount equivalent to an expected financial benefit, is used in some cases, particularly in cases where the department has mistakenly awarded it to the complainant and then withdrawn it.(3)

In other cases, payment in kind is also seen. In one case, where a man complained that all his neighbours had been compensated with new brick walls in light of development, but that he had not(inconsistency between cases), the Department built a wall for him as well, despite the PCA stating that there were adequate reasons for the distinction.(4)

The PCA may also award compensation to help pay for professional help to sort out the department's maladministration(5) - if he deems it justified and

proportional to the problem(6)

The compensation may take the form of a waiver of a charge or charges made by the department.(7)

Compensation for a variety of forms of losses may be seen. It may be for the complainant's expenses incurred in trying to sort out his affairs eg. telephone calls etc.(8). Or it may be for a more exact loss, for example, in one case concerning a dispute over the provision of education for a child, where there was deemed to be an 'inexcusable delay' on the part of the Department of Education and Science, the child's parents were refunded the fees for a private school which they had paid during the delay.(9)

An interesting problem occurred in one case, where interest was sought on an ex-gratia payment of expenses incurred at a public inquiry. The delay had occurred in the payment of the expenses (around £4,500) at a time of high interest rates. The Department held out against making such a payment:

> "They explained that there was no legal right to reimbursement of costs, and even less to reimbursement by any particular date, and that it had not been their practice in the past to pay interest on costs even when a considerable delay had occurred in repaying applicants. They added that it would seem rather odd to them to

make an ex-gratia payment of interest on a payment which was made on an ex-gratia basis and they also made the point that there was no suggestion that the complainant had suffered any handicap on account of the delay.....

....But I could see nothing in this policy which would make it inappropriate to compensate a successful objector when a long and wholly indefensible delay in paying him costs had caused him loss. On the contrary, it seemed to me equitable that this loss should be recognised in the total amount that the Department paid. I did not consider the apologies given in November 1974, when the balance of costs was paid, was a sufficient recognition of the loss the complainant had sustained by reason of the delay, and therefore I invited the Department to reconsider their position."(10)

Another illustration of compensation for financial losses caused by delay, along with elements of the other forms of remedy as well, were found in one case dealing with delays at the DVLC. Sir Alan Marre summarised:

"The Department have been guilty of a whole series of inexcusable mistakes, as a result

of which the driver has lost all the advantages which should have accrued to him from his successful appeal and has been put to considerable expense.... I therefore invited the Department to consider whether, in addition to the apology and the offer of a free driving test, they should not also offer some recompense to the driver in respect of the cost of employing solicitors and his own expenses in his attempts to have the Crown Court Order implemented and his licence re-issued. They have agreed to this and they are getting in touch with his solicitors with a view to making an ex-gratia payment to cover his reasonable costs."(11)

(b) Limitations To Financial Compensation.

Financial compensation may be limited, or even not awarded, if any of the following factors is detected by the PCA.

(i) The loss does not stem from the department's omission or failure.(12)

(ii) The loss must be quantifiable, and it must be real and not based on hypothetical calculations as to the situation if the maladministration had not occured.(13)

In the first category, only losses directly associated with the maladministration will normally be accepted. This was illustrated in one case:

> "The Company in setting out their claim against the Ministry and Customs, had included such items as the expected net income they would lose through being unable to undertake the work for the French company; the whole of their transportation costs and handling costs; the extra costs of materials bought for the contract but not used; and costs associated with having to dismiss staff and then subsequently employ and re-train new staff. The only part of this claim (totalling some £67,000) which it is appropriate to take into the reckoning in relation to my finding against Customs is the actual expenditure incurred by the company in having the pheasants delivered from the port to the company's premises; the company's actual costs of unpacking and re-packing the pheasants; and the cost of transporting them back to the port for shipment."(14)

In another case the PCA ruled that the complainant's financial difficulties were not the fault of the department.(15)

This insistence on direct financial loss can lead to anomalies. For example, in one volume of case reports, Sir Idwal Pugh dealt with two cases, both relating to the then-existing Employment Transfer Scheme. In one case a man was led to believe that he would be eligible, when in fact he was not, the PCA commented:

> "After reviewing all the circumstances of this case, I came to the conclusion that there were a number of aspects where MSC's administration was seriously deficient. I felt that there was sufficient doubt about the way his application was handled, and the clarity of the information he was given about his eligibility, to justify my inviting MSC to consider whether they could alter their decision and accept the complainant as eligible for assistance."(16)
>
> [This was in fact done.]

In contrast, the complainant in the other case was actually told in a letter that he would be eligible. This error, which resulted from carelessness, was discovered, and his case reconsidered, and assistance refused. The PCA felt that there were no grounds for compensation, as he had not moved in anticipation of the assurance of assistance, and as a result there could not be said to be a financial loss as a result; whereas in the above case, the complainant stated that he could not have afforded to

move in order to take the job, if it had not been for the assistance he was allegedly offered.(17) This does appear to be harsh, but it is an illustration of the second limiting factor that of direct consequence.

If the loss has not followed as a direct result of action taken on the advice or information tendered, then the PCA may not feel that compensation is justified. In one case, a man was possibly misled as to his entitlement to sickness benefit whilst on holiday abroad. As he stated to Sir Alan Marre, that he did not think that he would have cancelled his holiday, if he had known the true position, ie that he was not entitled to benefit, the PCA did not feel that there were grounds for ex-gratia payment.(18)

In the second category an actual financial loss must be established.(19) For example, in one case, the PCA held that there had been no financial loss, only the inconvenience to a woman of not having the money to repay a debt to her mother.(20) Also the loss must stem from more than a moral obligation. For instance, a man was told that he would qualify for a car maintenance allowance, he made arrangements to buy a car, but was then told that he was ineligible. He felt morally obliged to buy the car, being 'a deeply religious man', but the PCA felt that he could only expect apologies, and not financial compensation.(21)

Secondly hypothetical loss has rarely been allowed.

This was illustrated in a case dealt with by Sir Cecil Clothier:

> "In putting her complaint to me the complainant expressed the view that the Department should pay her compensation for the injured feelings and loss caused by the Department's failings. Apart from the loss of opportunity to bid for the property I have found no evidence to entitle me to conclude that the complainant and her husband have sustained any other loss. There is nothing before me to suggest that the bank would have been prepared to advance them a mortgage on the whole property or, if so, in what amount. And even if I knew what funds might have been available to them, there is no way of determing whether they would have outbid the tenant of the shop, who, I note was prepared to pay the full valuation price without a quibble."(22)

However, in a recent case Sir Anthony Barrowclough appeared to be willing to accept a claim for hypothetical loss:

> "In addition, it seemed to me that, as the person principally affected by the development, the complainant was entitled to something more than a simple apology, and

that some tangible recompense was called for to reflect the distress the episode had caused him and his wife and the possibility, albeit slight, that the outcome would have been different had it not been for the Department's maladministration. When I put this suggestion to the Principal Officer he said that, though he regretted the fact that the complainant had lost his right to challenge the decision, he saw the outcome of any redetermination of the appeal that there might have been as far too speculative to justify any payment from public funds. That said, he expressed himself ready to offer the complaint an ex-gratia payment of £250 in recognition solely of the distress and frustration which he and his wife had been caused by the Department's poor handling of his representations and subsequent correspondence. I told the Principal Officer that I did not think that it was possible, in cases such as this, to determine the degree of distress and frustration justifiably experienced by the complainant - and consequently the appropriate level of compensation - without giving some weight to the likelihood or

otherwise of the outcome having been different if the maladministration had not occurred. That factor would, as I saw it, undoubtedly weigh with the complainant, coupled of course with the other main factor which would be less the degree to which the development which had been permitted would impact on his amenities and the amenities of his property, compared with the impact of the other possible outcomes. It seemed to me, in all the circumstances of the complainant's case that equity would be served if an ex-gratia payment of £500 were to be made to him by the Department."(23)

It is not yet clear whether this was merely an unique case, or whether hypothetical loss is now a consideration in assessing compensation.

(c) Review/Reconsideration of the Individual Case

This is more common where the complaint has been that there was impartiality or that there was not an adequate hearing. The PCA has no power to declare a decision to be void/invalid, but he can suggest to the department that they review their decision in light of his findings.

One of the main areas here, is where the PCA discovers that not all relevant factors have been taken

into consideration. If this is the case, and it was a material fact, the PCA will recommend that the decision be reconsidered.(24) Of course there is no guarantee that the reconsideration will mean that the complainant is successful. If review is not possible under the procedure, an opportunity to submit a fresh application will be offered.(25)

In cases where an oral hearing was denied, such an opportunity may be granted, though on some occasions this results from the Department's own initiative, rather than from the PCA's prompting.(26) In another case in this area, a Footpaths Preservation Society were deprived of an opportunity of an oral hearing of their objections to a proposal. Sir Alan Marre was pleased to report, that the Department had decided to withdraw the unmade order, and reopen the whole procedure, and thus afford the Society an opportunity to object orally.(27)

In cases of delay, review is sometimes used as a means of remedying a loss which is not financial, which stems from the delay.(28) For instance, one complainant lost his statutory right of appeal, as a result of the expiry of the time limit. whilst he was awaiting an answer to a submission he made to the Department concerning an alleged error in the decision letter.(29) The Department denied and then admitted the error. As a result of this delay, the complainant lost the opportunity to exercise his statutory right of appeal. The PCA established that it

was open to him to make a fresh application for planning permission to his local planning authority; from which he could again appeal to the Department, if necessary, however, Sir Alan Marre stressed that this did not necessarily mean planning permission would be granted, and in fact indicated that it seemed unlikely from the facts that it would.(30)

In another case, there was a six-week delay in dealing with a claim for attendance allowance, as a result the complainant's mother died before she could be medically examined in connection with the claim.(31) The PCA accepted that in all probability, if it had not been for the delay, the examination would have taken place, but all he could offer was the suggestion that this fact, plus the other evidence should be placed before the appeal board, in the hope of still being able to satisfy all necessary conditions.(32)

(d) Apologies

The most common outcome to all cases where the PCA has been critical of departmental action or procedure, is for the department to tender apologies to the complainant via the PCA. In various sources, successive PCAs have expressed a certain amount of satisfaction with this outcome, in that they perceive that this is what most complainants desire from the process, an apology and an acknowledgement that they were right. Certainly, there are cases where apologies are undoubtedly the most suitable remedy, where other remedial action would be inappropriate; such cases include delay where there has been no real hardship, financial or otherwise as a result; and cases where no reasons have been given for the action taken and this has led to a misunderstanding between the parties.

It must also be said that the PCA expects such apologies to be fulsome. Sir Cecil Clothier reprimanded a department for a grudging apology:

> "I think it a pity nevertheless that in the terms of their reply to the complainant they were not somewhat less defensive, selective, and unapologetic. Even if it is technically correct that the Department's employees in the county court were not directly engaged in exercising the Department's

> administrative functions, it is scarcely surprising that the citizen should look for explanations and apologies, when a public service fails, to the Department which provides it. I do not think it would have derogated from the Department's strict view of its legal liability for administrative error to have given the complainant an apology for what had been done under their apparent aegis. Merely to say that they were sorry that he should have been refused credit and put to some embarrassment and inconvenience, but that the real blame lay elsewhere, seems to me not enough to meet the case."(33)

However, the question must be raised as to whether this is not letting the department off somewhat lightly. The PCA sets great store by the fact that an investigation by his office is considered to be a serious matter within Whitehall circles, but does the proposal of just being able to say 'sorry' at the end of it, really an incentive to the department to improve its practices? It could be argued that even though a delay did not cause the complainant hardship (in any form), does not mean that the department should not be penalised in some way. However, the terms of the PCA's remit, which require him to find injustice as well as maladministration preclude this.

(e) Review of Departmental Procedure

This occurs both on its own, or in combination with one of the above, more individual remedies. This can be seen as a non-individual remedy in that on its own it does not benefit the complainant. Rather, it remedies the departmental procedure, and thus promotes better administration in general.

Again it occurs right across the catalogue of procedural errors.(34) It can mean a general review of the procedure concerned to improve its efficiency, it may mean the revision of a leaflet(35), or the issue of new instructions to the staff of the department.(36)

The PCA can also go further than remedying departmental procedures. The Select Committee on the Parliamentary Commissioner for Administration has suggested that the PCA should inform Parliament, when he discovers that the working of legislation is producing an effect, that he believes to unintentional by Parliament. This gives Parliament the opportunity to amend such provisions, if this is in fact the case.(37)

On occasions the PCA will acknowledge that future remedy of the situation will be of little comfort to the complainant concerned. It is at this point that one is forced to consider what the PCA considered to be his most important role - identifying maladministration and

promoting good administration in general, or seeking remedies for individual cases of maladministration.

## SECTION II PCA's Restrictions on the Grant of Remedies

Mention was made in the previous section as to limitations surrounding the grant of financial compensation. This Section deals with the limitations which apply universally to the grant of remedies by the PCA.

### (a) Departmental and Administrative Considerations

One of the first arguments used by the department against the granting of a substantive remedy such as compensation, is the 'floodgate' principle. This is used with varying degrees of success. In one case, it was used along with the suggestion of uneconomic expenditure disproportional to the injustice. Sir Idwal Pugh commented:

> "The Department have declined to do so. They fear that it would encourage similar refund requests, difficult to check for their **bona fides** but awkward in equity to refuse if the complainant has had a refund, from up to 600,000 other vehicle-owners whose licences were renewed during the same fortnight. Such

consequential requests could, on their estimate, cost up to £4 millions in refunds plus the expense of the additional administrative burden. I think the Department attach undue weight to the problems, the number, and therefore the cost, of the refund requests likely to have to be met in practice. And in any event it must be questioned whether any individual clearly shown to have suffered through maladministration, even though it involved his overpaying only £10, should necessarily be refused a tangible remedy in the shape of a refund merely because of official unwillingness to face coping with similar claims from others. I therefore consider the Department's response to be a less than satisfactory outcome to my investigation."(38)

However, the 'floodgates' principle has been accepted as worthy of departmental consideration, when it was agreed that the department must be careful not to make special exceptions, which would leave them open to claims of inconsistency between cases.(39)

The PCA is more likely to accept economic arguments if it has been suggested that the remedy should be positively extended to others in a similar situation, if the

department is willing to make an attempt:

> "They have explained - and I accept - that tracing these from departmental and PAT records would require expense out of all proportion to the accounts which would be due. They propose instead to publicise the position through the agency of the ex-service organisations and the War Pensions Committees and see this as offering the best practical prospect of tracking down the few cases concerned."(40)

The PCA will also accept that administrative principles may prevent a remedy being granted in the form suggested. For instance, one department had to reject the suggestion that they pay the costs of a new application to the department, as this gesture might be seen as prejudicial to a possible neutral adjudication by the Secretary of State at a later date. Instead they offered the equivalent amount in the form of an ex-gratia payment for the inconvenience already suffered.(41)

(b) Complainant's Conduct

In general this means any action taken, or not taken by the complainant which impedes the department. For example, if a complainant writes unnecessary letters about his case to the department, which require to be answered,

he diverts their attention from actually dealing with his case; for example a local office was swamped by over 70 letters from the complainant and from the people that he requested to intervene on his behalf.(42) Such behaviour can be categorised as follows.

(i) Failure to inform the department of relevant facts.

If the complainant could have helped to prevent the department's maladministration, then the PCA will be less willing to grant a remedy, other than perhaps an apology for the fault that can be attributed to the department.

For example, in one case dealing with delay, the matter concerned a son leaving school, the PCA felt that it was not incorrect of the Department to assume that this was after the Summer Term, whereas it in fact was after the Spring Term, but as this had not been made clear by the complainant in his letter, the PCA did not feel that the Department merited criticism.(43)

This category would also include the cases where the complainant alleged that they had not been given an opportunity to be heard, but on investigation, the PCA finds that they have been approached for information, but have chosen not to take that opportunity to present their information.(44)

(ii) Failure to comply with regulations/ instructions

This is most common in delay cases, where the complainant has not complied with given instructions;(45) or has followed the wrong procedure(46) which includes writing illegibly on the form(47) or erroneous completion of the relevant documentation;(48) or has been dilatory himself;(49) or if he has not been specific enough in his request;(50) or has shown negligence in the conduct of his own affairs, eg not informing himself of the terms and conditions of the scheme,(51) then the PCA may feel that the remedy offered (if any) should reflect the complainant's own contribution to the delay. This also applies to other errors, for instance in the case of misleading advice, if it can be established that the complainant was aware of the risks involved in his action or it could be said that he should have been aware of them, then compensation will not be granted.(52) In one such case, the complainant attended a talk at his workplace before his retirement at which he was given incorrect advice by an official, who was later reprimanded for his part in encouraging misrepresentations from the public. The PCA took the view that the man should have been well warned by the circumstances in which the advice was given (the official had prefaced his remarks with the words 'They won't tell you this at the DHSS), and the fact

that the course coordinator had warned them to check all advice in case it became out-of-date.(53)

However, the department may not escape criticism, if the PCA feels that the department should have realised that a mistake had been made;(54) or that the complainant's culpability is negligible compared to the department's errors.(55)

(iii) Complainant's non-co-operation in the procedure.

This is closely related to the above category. Whereas the complainant's actions in the above category may have been inadvertent, the complainant's action here is wilful. An example is found in the delay category where Sir Alan Marre concluded:

> "There has been some delay in making a repayment to him, but he has contributed to that delay by his failure to answer letters written to him by the tax offices, or to complete income tax returns issued to him, and if this continues it can only prolong the delay in bringing his income tax affairs up to date."(56)

In another case, the PCA noted that the complainant's attitude had caused the Australian Department of Veterans' Affairs (who had been assisting as the complainant resided

there) to take the very unusual action of refusing to have any more dealings with him.(57)

(iv) Failure to take action to mitigate loss.

In assessing the suitability of a remedy, particularly a financial one, the PCA expects that the complainant will take all action available to him to mitigate the loss and its effects on him. For example, the PCA described a delay in one case as 'inexcusably long', but he felt that no remedy other than an apology was due, as the Company concerned had access to information on which to base the decision without waiting for the Department.(58)

In another case, the PCA felt that the complainant had failed to take mitigating steps to reduce the financial loss caused. The complainant had been strongly urged, even by her own advisers to make a payment on account to avoid interest, but she did not do so. The PCA felt that financial compensation for the interest accrued during delays, was not a suitable remedy.(59)

(c) Error That Has No Effect On The Outcome Of The Case

Another consideration for the PCA is whether the error concerned had an effect on the outcome of the case. If in his judgment it did not, it is unlikely that an individual remedy will be recommended, although he may still

recommend that the department reviews its procedure.

This would appear to be a dangerous route as it seems to necessitate considering matters of substance rather than procedure. However to a large extent the approach would appear to be dictated by the need to find 'injustice' to the complainant, as well as maladministration.

It has already been seen how this is a major consideration for the PCA in dealing with the cases that allege that not all relevant factors have been taken into consideration. If the omitted factor is not deemed to have been material to the case by the PCA, then he will not recommend that the case be reviewed, as he is of the opinion that no factor other than a material factor would affect the outcome of the case. [It is at this point that it appears that the PCA is unsure of why he is reviewing procedural errors in the first place. It could be argued that all procedural errors affect the decision, in that whether or not it is the correct decision it is tainted by the errors in the procedure. However, the PCA also feels that he has to find hardship on the complainant's part, amounting to 'injustice' - it is not enough, that the decision has been marred by procedural errors.

The PCA demands that persons making complaints to him do so with 'clean hands' - "I take the view that anyone who refers a complaint to me alleging maladministration on the part of a Government Department which has caused him

to suffer injustice must come with clean hands"(60)

The PCA also holds the view that there may be maladministration, but there is no injustice if the complainant benefits as a result.(61) 'Injustice' appears to amount to delay which causes financial loss or other hardship to the complainant, and impartiality, or a defect in the hearing which is so severe that it means that if the error had not occurred, the decision or outcome in the case would have been different. Thus, if the error is very small, it will not be deemed to have caused injustice, this was illustrated in one case where the delay amounted to a very small part of the whole process, and Sir Cecil Clothier maintained that 'its significance should not be exaggerated.'(62)

In one unusual case, Sir Cecil Clothier could not see the injustice complained of by an immigration service:

> "But it is less easy to understand that they should be so anxious to ensure that one recommended for deportation should be deported that they are prepared to criticise the authorities for not arranging this with administrative haste rather than ensuring that the person concerned could exercise all his legal rights. I do not suppose they would be slow to seek my intervention if they thought that such administrative action was being improperly used."(63)

It is also to be found in cases of error where the PCA has stated that although there has been an error, it had not affected the outcome of the case.(64) In another case, there was delay in reviewing a trainee driving instructor's licence, due to the loss of a file, (ie avoidable human error). He sought compensation for being unable to continue his work. However, the PCA ascertained that it was extremely unlikely that the decision would have been favourable, and therefore the PCA did not feel that compensation was appropriate.(65)

Errors in the consultation process will also be analysed in this way. In one case Sir Alan Marre criticised the department for not granting an oral hearing, when it was clearly requested, however, he did not believe that it would have affected the outcome:

> "With regard to the later developments, while I fully recognise the complainant's justifiable sense of grievance at not being seen. It seems to me that all relevant considerations from the company's point of view were very clearly set out in the correspondence before and after the authorisation was withdrawn. The Department have taken account of what was said in that correspondence both by the complainant himself and by the Member of Parliament and they have maintained their decision not to

restore the authorisation; and I see no reason to think that they would have come to different decision if representations had been made orally as well as in writing."(66)

(d) No Remedy Available

This situation ie where the PCA finds maladministration and the requsite injustice, but cannot provide a remedy, can arise in two ways. First of all, the department concerned may refuse to grant the remedy suggested, and the PCA is left to record that there has been injustice caused by maladministration, which has not been remedied.(67)

Secondly, it may well be that in the particular situation, circumstances prevent a remedy from being granted. This is usually related more to the first two remedies listed. For example, a decision was taken without proper representations from an affected party, the Secretary of State was unable to reverse his decision, and thus no remedy was available to that individual. However, it was stated that the Department of the Environment (the department concerned) was to improve its procedures in the future.(68)

The PCA may also feel that he is not the appropriate person to grant a remedy, and that the complainant should seek his remedy elsewhere, eg in court.(69)

CONCLUSIONS

This Chapter has displayed the various remedies used by the PCA. There are several points that can be made which support the proposition that this is another area of strength. First of all the PCA can match the appropriate remedy to the error. Here, he uses an element of proportionality, illustrated by his self-imposed limitations. For example when he insists on awarding compensation based only on direct loss, or where the complainant is not exactly unblameworthy in the situation. This is also aided by the fact that there does not have to be a 'winner and loser' as in the more adversarial techniques of dispute resolving.

Secondly his position benefits from the fact that none of his previous cases bind him. He is sometimes more successful in obtaining a remedy such as compensation when the department knows it will not necessarily held to it in future cases.

It should be noted that the PCA does not have the power to overturn decisions, though this is often what the complainants wish him to do. However, this is line with other dispute-resolving mechanisms confined to procedural errors. Given this superimposed limitation the PCA makes reasonably good use of his ability to obtain suitable remedies to administrative procedural error.

The thesis will now turn to the U.K. courts for a

comparative study to enable the PCA's work to be seen in perspective.

## CHAPTER SEVEN THE COURTS AND ADMINISTRATIVE PROCEDURAL ERROR

### SECTION I - The Courts

#### (a) An Introduction & History

The Courts are the second area of study in this consideration of the review of procedural error. The Courts exercise control over such administrative error by the process of judicial review, or by the process of statutory appeal.(Though the second is more often associated with substantive matters, procedural errors may also arise.) For many years the Courts were at the forefront of Administrative Law (though such a term might not have been recognised then) and its remedial procedure, for the simple reason that no other avenue existed to the aggrieved citizen, other than political redress through his M.P.

It would be wrong to view judicial review as a purely 20th. Century phenomenon - it existed much earlier - but its importance increased last century with the growth of the functions of local government and its associated boards. What has changed is the main focus of judicial review - the main administrative tasks are contained within central government, and more use is made of such bodies as quangos and tribunals. The growth of central

government, as we know it today, has been traced elsewhere.(1) A number of factors played their part, the Northcote-Trevelyan Report(2) making the civil service a more professional body; the advent of easy national communications; the growth of the Welfare state, in that central government assumed more control for the relief of poverty - it now had the effective means to do so - in the form of a highly-organised and able civil service, and national communications.

It did seem, however, that control of this new administrative body could become a problem, the Courts did not seem to intervene too readily. Early warnings were sounded by Lord Hewart in his book 'The New Despotism' in 1929.(3)

The explosion of what is known as the welfare state on the national scene, after the Second World war, was inevitably going to bring the matter to a head. The sheer proliferation of bodies and associated regulations, meant that even more people were being brought into regular contact with the administration, and thus more complaints were going to arise as a result of this contact. They looked to the Courts for remedies. It has to be said that the Courts let them down.

It would seem that the judges did not want to expand their use of judicial review to keep track of the new developments in the administrative process - to some extent they even contracted the basis established in

earlier times.(4) The late forties, the fifties and the early sixties were undoubtedly the twilight period of judicial review. The failure of the Courts to protect the citizen, led to various reports, which are documented elsewhere.(5)

The most interesting reason put forward by the Courts for their reluctance to intervene, was that the remedies lay in the political processes of Parliament - it was the function of M.P.s to check the excesses of the Executive. It would now be appropriate to consider the approach of the Courts to judicial review in more detail.

(b) The Approach of the Courts to Judicial Review.

Before studying individual examples of the treatment of administrative procedural errors before the Courts, it is necessary to examine some of the principles that have been used by judges in judicial review cases, thus giving a background on which to base more detailed investigation.

As we have seen, during the middle part of this century (in some cases, there is evidence of earlier instances(6)) the courts were very reluctant to become involved in judicial review of administrative action. They set out strict guidelines as to when they 'could' intervene; cases which fell outwith these guidelines were the prerogative of Parliament, and political remedies. The distinction was drawn between 'judicial' and

'administrative' functions of a body - if the function complained of was deemed to be a 'judicial' function ie it had the characteristics of a 'judicial' nature, then the Courts felt that judicial review was applicable.(7) However, if it did not have these characteristics, then it was a purely 'administrative' function, and was deemed not to be within the Court's remit.

Needless to say, the distinction was never clear-cut - the original definition of 'judicial' was loosely based around the idea of a 'lis inter partes', ie a dispute between two sides, with a third party as arbiter/judge. Thus a tribunal would qualify, if there were two parties arguing their side of the case, and the third party (administrative body) was judging the merits of each case. Obviously, less clear-cut was the case of a form of inquiry, where viewpoints were being stated, but the panel hearing the arguments may be involved in the decision, in that they are calling for information from all interested parties, in order to be able to reach a decision.

Such cases caused many problems. A body could be performing a 'judicial' function in one task, and an 'administrative' function in the next - the distinction is not always obvious to the lay-person(nor it has to be said to the lawyer!).

It is pointless to suggest that the Courts operate in a vacuum - the judges are at least unofficially aware of public feeling. It was not unnoticed, by at least a number

of judges, of the growing unease surrounding what could be seen as unchecked administrative power. The Franks Report, the clamour for a British ombudsman, the burgeoning of the tribunal system, must have made it clear, that the 'public' needed more redress in such matters. it is arguable whether the Courts had failed, either because they did not identify the problem, or because they felt that they did not have the power, or else they were reluctant to use any power. It may be that the second proposition is the correct one, and that their constitutional role, prevented them looking any further than 'judicial' functions - that it was not their role to curb the Executive, but that of Parliament; and if Parliament was failing in its role, that was for Parliament to remedy and not the Court.

Whatever the reason, a change was coming in judicial attitude, as the Franks report was digested; as the debate continued on the ombudsman concept; in other words in the early 1960's, the judges made their move - several decisions indicated the change. For example the classic cases of **Anisminic**(8) and **Ridge v. Baldwin**(9) indicated that the judges (or at least some of them) had decided that their role did allow them to check administrative action in a more positive manner than before - zealous even! There was no doubt that the judges had thrown down the gauntlet, the Courts would have a role to play in this new area of 'administrative law'. It could be seen as a

conservative backlash - a return to Dicey - the ordinary courts are the place to remedy excesses, new areas of dispute resolution are not required - Britain has no 'droit administratif.'

The Courts had of course, boxed themselves in, the judicial/administrative distinction excluded a large number of cases. The distinction had been stretched in a number of cases, to accommodate the need to intervene which was felt. The problem was in the 'all or nothing' stance; if the function was 'administrative' no remedy was available, as the standards of procedure required of 'judicial' functions, were not applicable.

Without immediately abandoning the distinction, a new form of relief was given for cases, which fell into the administrative function category. Bodies or persons exercising these functions had a duty to act 'fairly'. Arguably, 'fairness' was a new concept.(10) Whether it was entirely new is doubtful, such a notion can be clearly found in early cases.(11) It certainly opened up new vistas for judicial review. Slowly, the judicial/administrative distinction became less important. Classification was not so necessary, if the duty to act fairly could be applied. Recently, the courts appear to be returning to the distinction again.(12)

These were by no means the only restrictions placed on judicial review of administrative procedural error. Many others existed, such as whether there was a 'right'

involved, or merely a 'privilege'.(13) Whether the relationship that existed was that of 'master & servant' and thus to be seen as a private law matter etc.(14)

The case that introduced the new generation of fairness was decided in 1967 - the same year as the PCA's office got under way.(15) Gradually, judicial review grew - many controversial cases came before the Courts. In 1977 & 1981 new procedures were introduced to facilitate speed and ease for such applications.(16)

At the same time, another judicial review test was gaining ground - that of 'legitimate expectation'. Only this time, it was not an expansionary move, but a constricting one; it narrowed the grounds for judicial review to cases where the applicant had a 'legitimate expectation' of certain standards of procedure. This doctrine had not started out as such, it had in fact been used as a lacuna in a judgment by Lord Denning, who whilst deciding against the applicant in that particular case, had obviously not wanted to close the door to judicial review in this area.(17) It now promises to be an uncontrollable monster, impossible to define, and judging by the cases, nay on impossible to apply consistently.(18) Certainly, this test, along with the distinctions now being drawn between public and private law rights, and its implications for standing, makes it appear that as we enter the 1990's, judicial review is on the retreat from the frontlines of Administrative law.

SECTION II THE Courts and Impartiality

This is not designed as a comprehensive appraisal of the judicial review of procedural error - for the subject is well-documented elsewhere.(19) It is merely to provide background for comparison with the procedural error catalogue, and the PCA's approach.

The courts' attitude to impartiality on the part of the decision-maker is contained in the maxim - **nemo iudex in causa sua.** This applies to all areas of the law, not merely the administrative law branch. It is within the inherent power of the court to review inferior courts' procedure, thus some of the cases, illustrative of the applied principles, come from outwith the ambit of Administrative law.

There are various sources of possible bias on the part of the decision-maker; pecuniary interest in the outcome of the case; a personal relationship with one of the parties; personal beliefs and attitudes, or prior involvement with the case; and clash of capacity. Each will be studied in turn.

(a) Pecuniary interest.

Pecuniary interest in the outcome of the case is the classic example of disqualifying interest. The standard case here is **Dimes v. The proprietors of the Grand Junction Canal.** (20) It was held that the Lord Chancellor,

Lord Cottenham, should not have heard the case on account of a small shareholding in the company (of which he was unaware at that time). Lord Campbell delivered the famous judgment on the matter:

> " ... No-one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest that he had in this concern; but, my Lords, it is of importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest... And it will have a most salutary influence on these tribunals when it is known that this High Court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was on that account a decree not according to the law, and was set aside. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence."(21)

In a later case, a decision by a local authority to grant planning permission for a roadhouse, was quashed on

the basis that one of the councillors was acting as the agent for the landowner, in the negotiations for the sale to the developer.(22)

(b) Personal Relationship

A close family relationship between the decision-maker and one of the parties is a disqualifying interest. This is particularly well-documented by Scottish authorities.(23) Friendship is a less certain ground; in **Cottle v. Cottle**, a rehearing was ordered in a matrimonial case, as a result of the wife's mother informing the husband that the magistrate was a family friend, and thus was biased in their favour.(24)

(c) Personal Attitudes and Beliefs

It is unlikely that personal beliefs and/or attitudes will amount to a disqualifying interest. For instance, belonging to a temperance organisation is not enough to bar a justice from sitting on a licensing court.(25) In England, however, a clear statement by a justice, that he would be betraying his beliefs if he granted a licence, was held to be enough to disqualify.(26) This has not been the case in Scotland, despite very strong indications of personal inflexibility of a justice in this area.(27)

This, of course, takes the matter into the realms of prejudgment of the issue, and the closing of the decision-maker's mind to the arguments of the case. This point was

illustrated in a recent case, where it was held that so long as a fair trial was given, it was not a matter for objection that a member of the licensing committee had previously published his own opinion, that sex shops (it was requirement for them to be licensed) should not be permitted.(28)

As to personal animosity between one of the parties and the decision-maker, old Scottish authorities suggest that this might be a disqualification, in very extreme cases.(29) However, whether this would apply in the modern world is perhaps questionable. Certainly, it has been held recently that a judge should not ridicule a party in court.(30)

Prior involvement in the case is objectionable, if it means that a fresh approach is lacking, and a participant has prejudged the issue. For instance, in one case it was held that in deciding whether a police officer should be compulsorily retired, a police authority should not have commissioned a medical examination from a doctor, who had recently pronounced unfavourably on the officer's mental condition.(31)

(d) Clash of Capacity

A decision-maker may have some connection with the case as a result of his role in another capacity or function. The question is, to what extent should this preclude him from presiding in that instance?

The decision-maker may be a member of the body which has brought the prosecution, or case. If he played no part in the decision to bring the action, there is usually no objection.(32) However, if as a member or officeholder of that body, he/she has proposed the decision to prosecute, or has taken an active part in it, then they will be disqualified.(33)

Connection with a party to the case may also be objectionable.(34) There are a number of cases governing the conduct of clerks to the court in this area. In one of the most famous examples, a clerk was a member of a firm of solicitors, acting for a party in civil proceedings, arising from the same incident, which was the subject of the criminal proceedings, in which he officiated.(35) This was held to be unacceptable, for although there was no suggestion of actual bias, the appearance of any possibility of bias had to be avoided.(36)

A definite objection will arise, where a body has delegated a decision-making/reporting function to a committee or sub-committee, and when it comes to deliberate on the matter themselves, members of that committee/sub-committee are present.(37) This is even more objectionable if the members are vociferous in their support for one side or viewpoint.(38) In the same vein, it is undesirable to have the person who was responsible for an initial decision, sitting with a body, which is

acting as a review/appeal mechanism from that decision.(39)

(e) Test for Possible Bias

The courts have required a standard test to determine the effect of possible bias. There has been much confusion over whether the test is 'a reasonable suspicion' of bias(40) or 'a real likelihood' of bias,(41) not least in the opinions given by the judges themselves.

The latest judicial theory is that the 'reasonable suspicion' test is applicable to cases involving 'judicial' functions; and the 'real likelihood' test is applicable to cases involving 'administrative' functions, thus reviving the flagging distinction between 'judicial' and 'administrative' functions.(42)

The conclusion of most commentators has been that there is little distinction between the tests. It may appear that the 'real likelihood' test is more difficult to satisfy in theory, but in practice, it is suggested, it makes little difference. In fact, Cane went so far as to say:

> "The outcome depends on a judgment by the court on the facts of the particular case. If the court feels the decision ought to be quashed for bias, it will choose terminology which enables it to reach that result, similarly if it thinks the opposite."(43)

(f) Exceptions to and Variations on the Rules.

(i)Necessity.

It is a fairly sound judicial principle, that if all the possible decision-makers are afflicted with the same disqualifying interest, then necessity demands that one of them shall sit regardless.(44) One of the most famous cases in this area was, **The Judges v. Attorney-General for Saskatchwan**(45) where the judges had to decide the constitutionality of the legislation which made their salaries liable to income tax.

(ii) Waiver

The affected party in a case may waive his objection to the disqualifying interest, under certain restrictions. For instance, he must know of the interest in full(46). Alternatively, he will be held to have forfeited his right to objection, if he does not take the earliest opportunity to exercise this right.(47)

(iii) Departmental/Administrative bias.

The courts have recognised the problems of dealing with allegations in decisions concerning policy. As de Smith states - "How far is it appropriate for courts to judicialise administrative procedure in order to provide proper safeguards for individual interests?"(48)

The seminal case here, is **Franklin v. Minister of**

**Town & Country Planning.**(49) The case revolved around the plans for a New Town at Stevenage. The Minister responsible for the plans and the associated policy of developing new plans, attended a public meeting, where he was faced with a hostile crowd, - he made defiant remarks to the effect that like it or not, the plans would go ahead. The decision was challenged on the basis that the Minister had made up his mind, before considering the report from the public inquiry. The House of Lords ruled that this was not a ground for objection. Lord Thankerton voiced the following opinion:

> "My Lords, I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or the other in the dispute. ...[I]n the present case, the respondent having no judicial duty, the only question is what the

respondent actually did, that is, whether in fact he did genuinely consider the reports and the objections."(50)

The reasoning based on the classification of functions, has been criticised.(51) However, there is a general acceptance that departmental policy is a fact of administrative life, and so long as objections etc. are evaluated properly, then it cannot be the basis for objection to a decision. The potential problems with any other attitude were identified as early as 1932 in the Donoughmore Report, which stated:

"An easy-going and cynical Minister, rather bored with his office and sceptical of the value of his Department, would find it far easier to apply a judicial mind to purely judicial problems connected with the Department's administration than a Minister whose head and heart were in his work.... Parliament should be chary of imposing on Ministers the ungrateful task of giving judicial decisions in matters in which their very zeal for the public service can scarcely fail to bias them unconsciously."(52)

Even although, the problem as per 'judicial' functions, has been remedied by the increased use of independent tribunals, the basis of the problem is still

there. All administrative bodies have policies, which they believe in, and from which therefore, they are naturally reluctant to depart. The courts have recognised that administrative law will always be beset by these considerations; obviously, having a policy cannot be a disqualifying factor from taking a decision - if it was, administration would shut down. But to return to de Smith's problem, where do you draw the line?

The courts have accepted that a Minister who was a member of a body, which expressed provisional support for an airport development plan, was still capable of reaching an impartial decision.(53) Or where the Secretary of State for Scotland, had before assuming office, offered support as a backbench M.P. to a constituent's objections to a grant of planning permission, there was no objection to his deciding the appeal.(54)

It has been accepted that a predetermined party policy will have been adopted in local government planning matters.(55) Ministers' backing for policy has come before the courts again since the Franklin decision. In the case of **R. v. Secretary of State for Transport, ex p Gwent CC** it was stated that whilst it was acceptable that the Minister should have a policy, if there were special reasons in any case, he must consider them and be prepared to depart from the policy.(56) However, if a Minister were to commit himself in some way to one course of action, then this could be seen as objectionable. For instance in

a New Zealand case, a Council was held unable to consider fairly objections to a proposed scheme, on account of the fact that the council had entered into a contract relating to the work to be carried out on the scheme.(57)

(g) Less Traditional Examples of Partiality

(i) Bias in the Process - Failure to Consider All Relevant Factors

The Courts usually deal with cases where material considerations have been overlooked, or irrelevant ones regarded, under the judicial review principle of reasonableness.

If a decision-maker overlooks an important fact, then his decision may be overturned. For example, it would be an error if the Secretary of State did not consider the costs of alternative proposals;(58) or in immigration cases, if he did not take into account special circumstances surrounding the case, such as the applicant's special position within his community.(59) It will also be a fault, if the decision-maker applies the wrong test/procedure in reaching his decision.(60)

There is a certain amount of flexibility allowed as to what relevant facts should be considered; just because a decision-maker could look at any factor that related to the public interest, does not mean that it will be an

error, if he does not do so.(61) However, if the decision-maker esteems one relevant consideration too highly, to the detriment of other relevant factors, then this may also be considered to be an error.(62)

Allowing considerations, which are not necessary to the process, to influence the decision will also be an error. It is in this particular area, that bias is most likely to be suspected. For instance, the biased political considerations, which influenced a local authority to withdraw certain newspapers from its libraries, caused the decision to be quashed.(63) It may not be an irrelevant consideration for one government department to consider other functions, than its own, if there is an overlap of matters, in one decision.(64)

However, the mere presence or consideration of an irrelevant factor may not be fatal, if it did not have an influence on the decision,(65) or if it did, it operated in the party's favour.(66)

(ii)Inconsistency

Inconsistency can occur in two major forms. Misleading advice can be given as to what procedure will be adopted,(this usually happens on a one-off basis) or the normal procedure may be departed from in the one particular case.

As to the first group, the Courts have mainly shown

reluctance to intervene; there is no great wish to introduce the concept of 'estoppel' into the administrative law field. Lord Denning (or Denning J as he then was) raised the possibility in the case of **Robertson v.Ministry of Pensions.**(67) A man had been informed by the War Office that he would be eligible for a war pension. As a result, the man did not proceed to gather further evidence to support his claim. It was, however, the responsibility of the Ministry of Pensions to make awards, and this department purported to revoke his pension. It was held that they were bound by the actions of another Crown servant, and that the public should be able to rely on such assurances. This approach did not find great judicial favour.(68)

In general, wrong advice given by an official will not bind the authority concerned.(69) The Courts have laid down two exceptions to this rule.(70) First of all, if there is a statutory power to delegate functions to offices of the authority, and there are **special** circumstances which make it reasonable for the party concerned to think that the officer had the power to make an irrevocable decision.(71) Secondly, if an authority waived a procedural requirement, then it could not claim a defect in the procedure, because of this lack of formality.(72)

No subsequent cases of this type have definitively departed from the above.(73) However, misleading advice

may have a 'knock on' effect, in the eyes of the court. Where a local authority erroneously informed students that they were ineligible for a grant, and then time-barred their applications, the Court held this to be unfair and an abuse of their discretion.(74)

The main fear surrounding the extension of the doctrine of estoppel, is that authorities, by stating that they will do something, and thus being bound by that statement, will be able to increase their powers by themselves, leastways, they will be fettering their discretion, and perhaps be taking a bad decision.(75)

The undesirability of such leniency towards the careless granting of advice should not be forgotten. It can mean that citizens can not safely arrange their affairs with any great ease, if they cannot reasonably rely on the advice proferred by the decision-making body. The solution that is proposed, is that although such decisions should not be disturbed (ie the authority does not have to stand by its statements), the misled member of the public should be granted compensation, for any loss suffered as a result.(76) The doctrine of negligent misstatement could be used as a remedy here.(77)

In matters pertaining to the second category, the Courts have been less 'lenient' on erring authorities. In general,the Courts will expect bodies to abide by their published criteria, in reaching a decision.(78) If it is to be departed from. then it is expected that the party

concerned, will be informed.(79) Most recently, these cases have been founded on one interpretation of the doctrine of 'legitimate expectation'.(80) In **R.v.Home Secretary, ex p Ruddock**, it was held that criteria for the tapping of telephones involved a legitimate expectation that they would be followed, unless there was a change of policy.(81)

Therefore the Courts are willing to see advice given in the form of published guidelines adhered to, but are less willing to interfere in individual cases where misleading advice has been given. The distinction that can be made, is that to some extent in publishing guidelines, the authority has fettered its discretion to some visible extent, whereas in the individual cases, this is not necessarily the case, and it may simply be 'bad' advice.

SECTION III - The Courts and the Duty to Consult

(a) Adequacy of Notice.

It is generally accepted that if a hearing is to be given to a party, but that party has had no notice of it, then the party is effectively deprived of their opportunity to be heard.(82) If notice is sent but not received, however, this may not invalidate the proceedings.(83) There is also some authority for the

proposition, that if there is no dispute as to the facts of the case, and no prejudice to the party affected, then the notice is not required.(84)

If notice is required, and it is served, then it must also be adequate, or else it will be little better than no notice.(85)

As to content, it must state specifically the time and place of any hearing(86), and the charges/subject-matter to be dealt with, must be clearly stated as well.(87) For example, notice given on action concerning matter A, cannot be adequate notice for action on matter B.(88)

Normally, lack of notice or inadequate notice will invalidate the proceedings, however, in certain circumstances, it may be excused. Statutory intervention has meant that the common law has become less important here.(89) One of the main statutory innovations is the need to prove that the party has been 'substantially prejudiced' before the procedural defect will nullify the hearing.(90)

(b) Who Should be Consulted?

The first point that requires consideration is whether persons other than the main parties to the matter, have a right to be heard in the case. In many administrative situations, for example,

planning and associated matters, there are statutory rules governing the right to be heard, though there is some discretion on the part of the inspector/reporter, to hear other interested parties.(91) There is no rule at common law, which states that there is a right to be heard at public inquiries merely by virtue of being a member of the public.

However, there may be a requirement to notify the hearing, and allow parties, likely to be affected by a decision, to speak. For example, it has been held that existing taxi-licence holders in Liverpool should have been given the opportunity to comment on the effect on their business, of increasing the number of available licences.(92) If such a right would be available to an individual, it will be open to an organisation, representing the individual's (and others') interests.(93)

(c) At What Stage in the Process should Hearing be Given?

The point at which consultation takes place, can be seen as important, for the further down the path to one decision the process goes, it is possibly more difficult to have any influence - there is more resistance to be overcome. The courts, however, have been reluctant to intervene to order a hearing at an initial stage, especially where there is an opportunity to be heard at a later stage in the process. This has ranged from the view

that a local planning authority taking the initial decision to make a slum-clearance order, does not have to consult an objecting landlord, as there would be an opportunity for him to voice his opinion at a later stage(94); to cases of suspension from office, without a hearing, because the suspension was pending a full inquiry.(95) Whilst in the former case, the order was ineffective until the Minister approved it, and thus it could be argued, that there was very little effect on the objector's position, the suspension from office does mean harm to a person's reputation at the very least, and thus can be seen as a much more serious matter.

Following on from this, is the question of whether a defective hearing can be corrected by a later appeal hearing, which is free from defect? The above argument applies, along with the simple point that although a fair hearing was eventually granted at the appeal stage, there should in fact have been two 'fair' hearings, the initial one, and the appeal stage - so thus in fact, there was only one granted. This was the reasoning taken in the case of Leary v. National Union of Vehicle Builders.(96) This was rejected as being too wide by the Court in **Calvin v. Carr**, at least as far as associations whose rules have been accepted contractually by members, are concerned.(97) A modified approach was taken in **Lloyd v. McMahon**, where it was stated that a procedurally correct second hearing will suffice, so long as this body can look at all aspects

of the cases, and is not confined to hearing points of law, being bound by findings of fact.(98)

Thus under the above conditions, a hearing very much later in the proceedings than intended, will suffice.

(d) Form of Hearing

The word 'hearing' usually means an oral hearing.(99) Naturally, if an oral hearing is granted to one side, it must also be offered to the other/others.(100) It has been long accepted, however, that in administrative cases (& others) a hearing can be constituted by written submissions.(101) A 'paper hearing' may be a convenient term to adopt, to distinguish it from an oral hearing. Paper hearings, to be acceptable must satisfy certain criteria. For instance, a decision cannot be made on preliminary written submissions made by parties, when the impression given by the tribunal was that an oral hearing would be granted.(102) The Party must be told of the matter involved,(103) and given a fair opportunity to reply to other evidence or objections before the tribunal.(104)

The most recent approach of the Courts (at least of the House of Lords) is that a paper hearing is adequate for even quite serious charges/matters. In the case of **Lloyd v. McMahon**, 49 Liverpool City Councillors were

surcharged by the district auditor for wilful misconduct.(105) The councillors were fully advised of the charges made against them, and were given the opportunity to submit their representations in writing. They did so, and they also gave no indication that they wanted an oral hearing.

The Court of Appeal felt that the serious nature of such charges warranted an oral hearing (which they said was supported by previous practice in such cases). The House Of Lords rejected this, stating that the procedure adopted was suitable to the charges, and fair to the group in the circumstances. A point of difficulty here, appears to have been the original lack of request for an oral hearing.

It would therefore appear that a paper hearing with most of the attributes of a typical oral hearing will be acceptable to the courts.

(e) Adequate Disclosure of Information About Case/Matter.

It is a judicially accepted principle that parties have the right to know the case against them, so that they are able to answer allegations/objections etc..(106) Thus, if the evidence is to be considered and used by the decision-maker in his deliberations, then generally a party should be able to see this information.(107) In general, a decision-maker must not use information that

has not been placed before it and on which there has been no argument.(108) Thus, an inspector may not use information formed on a site visit, without informing the parties of the nature of that impression.(109)

Nor should a tribunal base their conclusions on a previous decision which has not been disclosed to the parties.(110) However, as the reasons for using procedures such as tribunals, is because of the decision-maker's expertise in the field, it can be difficult to draw the line, as to when he can use this expertise in reaching a decision. It would appear that decision-makers can use this knowledge in a general way, providing that their reasoning, is disclosed, but if there is a more tangible or identifiable source ie a document, this should be revealed.(111)

There are some limitations on how full a disclosure should be made, it may not always be necessary for the actual documents to be handed over, so long as their substance is made clear to the parties. For instance, it may be held that it is not in the public interest for the source of information to be revealed, so long as an indication of the content of such information is given even if details are not given, so as to protect the source.(112) The functions of some forums may not require full disclosure, so the rule appears to be that so long as a comprehensive outline of the case is given to the parties, including points against them, then the body has

acted fairly. This is particularly true of investigative bodies.(113) For instance, in a recent case, it was held that the Monopolies and Mergers Commission investigating a company take-over, need not supply all the evidence supplied by one party to the other party, so long as both parties were aware of the decisive issues and arguments, and that there was no manifest unfairness.(114)

There may also be reasons which allow the tribunal to prevent the disclosure of a medical report to the party themselves, though it will be revealed to the representative or their own medical advisor.(115)

A decision-maker must always act even-handedly as between the parties. Thus, he should not hear evidence from one party without disclosing it (or at least its nature) to the other side.(116) Therefore, a compulsory purchase order was quashed, after an inspector had asked residents about their wishes during a site inspection, and had failed to inform the objectors of the answers, which were prejudicial to their case.(117)

There is also an identifiable approach to a Minister's functions in the area of inquiries. This stems from a realisation that a department may not be in a position to be clearly even-handed, on account of work done with the local planning authority before objections were raised to the plans. There are many statutory regulations to govern this area now, and de Smith notes that these are well-adhered to by the departments.(118)

There is also the problem of inter-departmental communications; should these be disclosed? The point was never clearly settled at Common law(119), however, the courts have ruled that the Minister is entitled to rely upon the opinion of another government department without opening up to debate.(120)

The courts have also upheld the principle that a Minister is not obliged to adopt the report of the inspector/reporter.(121) Members of the public are very often disgruntled when the report's recommendations are rejected, as the inaccurate view is taken, that if you 'win' the inquiry, you have 'won' the decision. However, in one case where a report was rejected, a decision was held to be invalid as there was no basis for rejecting the inspector's finding of fact.(122) Also, although the report is only one of a number of sources available to the Minister, the courts will intervene if he relies on another source, that has been emphatically rejected by the inspector as worthless.(123) On the whole, the standard required of the reports are that they must state the case fairly, giving an outline of the party's case in fact, in law, and the inspector's own opinion, thus facilitating the Minister in reaching his decision, by providing him with all the facts of the case.(124)

Thus although the courts recognise the need to know the case against a party, and the need to be able to counter evidence brought against the party - there is no

absolute right of disclosure of evidence, particularly in investigative procedures, of which inquiries are a major category.

(f) The Right to be Heard Fully

The time and place of a hearing should be suitable to allow a party with the right to be heard to attend. This means, that if necessary, an inspector/reporter should adjourn a hearing, though this is tempered by a reluctance on the part of courts to interfere lightly in this area, as it is recognised that it is an unenviable task for the inspector/reporter to arrange a venue and a time mutually suitable to all parties.(125) As a result of this consideration, a party must immediately raise any known objection to an unsuitable date, as soon as possible. In one case, a woman was unable to attend or to be represented at a public local inquiry, as it was being held on a religious holiday. It was held that there was no breach of natural justice as a result, as she had had ample time to object to the date of the inquiry.(126)

As to the actual hearing, it may amount to a de facto denial of a hearing, if time is not allowed for a party to produce evidence or a witness, if it is important to the case.(127) On the other hand, a party must state his case, eg he cannot just 'object' to a planning decision, he must

state the basis of his appeal, or face the prospect of it being dismssed.(128)

(g) The Right to Cross-Examination

In an oral hearing the opportunity to cross-examine is a prerequisite. The courts are usually willing to accept that a denial of this right amounts to a breach of natural justice.(129) In fact if there is statutory procedure does not cover this aspect of conduct of the tribunal, then the courts may be prepared to the rule that this right is to be implied.(130) However, another case suggests that the right is only activated by a party's request for it, there is no denial of justice if the tribunal does not **offer** him the facility.(131)

However, if the court feels that the 'hearing' in question, is not a formal process designed to arrive at a final decision, then there may be no denial of natural justice by refusing an opportunity to cross-examine.(132) For example, in a hearing, the main purpose of which was to collect information, the use of cross-examination would be inappropriate.(133)

Thus the courts require a right to cross-examination in formal oral hearings, but may relax this requirement, if the hearing is an informal one, with no definitive outcome.

(h) The Right to Legal Representation.

The courts have never really accepted that the right to representation (legal at any rate) is a principle of natural justice. Most of the judiciary are not receptive to the idea, for example Lord Justice Fenton Atkinson's words in a leading case:

> "[T]his is the first case where it has been suggested that the rules of natural justice demand a right to legal representation, before such a tribunal. If such a rule is indeed contrary to natural justice, a very large number of persons, including our legislators, must have been very insensitive over a long period of years to what natural justice requires."(134)

There is some authority for the proposition that the right to representation can be based on agency, in that if a person has a right to be heard, then he can appoint an agent to so do.(135) This has not gained much support.(136)

Can the right to legal representation be excluded totally? The problem arises more often in relation to domestic tribunals. There is one school of judicial thought which states that the rules can bar legal representation without exception.(137) Lord Denning, however, suggested that the door to legal representation should never be totally shut by a tribunal, they should be

prepared to exercise discretion to allow it in certain cases.(138) His suggestion is that the legal representation should be available where the matter concerns a person's livelihood, or reputation. Other functions, such as as investigating and report-making may not justify a right to legal representation, in Lord Denning's views. Such matters might include for instance, the work of the inspectors under the Companies Act.(139)

The right to legal representation has been a major concern in the area of prisoners' rights. In **Fraser v. Mudge,** the Court of Appeal decided that the principles of natural justice did not give a prisoner the **right** to legal representation on a disciplinary charge hearing, before the prison's Board of Visitors.(140) This principle has continued with the House of Lords recently ruling, that even on a charge amounting to a crime (or the equivalent), a prisoner has no **right** to legal representation.(141)

Other recent cases have stated that it is still within the Board of Visitors's discretion to allow legal representation; and that in certain cases, it would be wrong to disallow it.(142) In one of these cases, the relevant facts that the Board should consider, were listed. The Board should note the seriousness of the charge and its potential penalty; whether points of law are likely to arise; the individual's own ability to present his case; and the need for speed in reaching a decision.(143)

Thus it would appear that now the courts may still be reluctant to pronounce that legal representation is a **right** in general, but they are less happy about the removal of all possibility of legal representation in some cases.

To some extent the courts' reluctance to accept a right to representation, is based on the assumption that it will be in the form of a lawyer. Legal representation was seen as incompatible with the ideas of administrative law, lawyers would judicialise the processes, encumber them and slow them down. This is typified by Lord Denning's speech in the Enderby Town Football Club case:

> "In many cases it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done in them better by a good layman than by a bad lawyer. This is especially so in activities like football and other sports where no points of law are likely to arise, and it is all part of the proper regulation of the game."(144)

There is a slight desire to leave 'experts' to get on with the procedure. This may well be a good reason - but there has also been statements by Lord Denning to the effect that the best kind of representation is that offered by a lawyer.(145) It also appears that the courts

do not wish to be seen to be slowing down procedure.(146) The dividing line may have to be drawn by having regard to the substance of the case, as has been suggested by the courts, ie looking at the accusations and their likely effect, to decide whether legal representation is required.(147)

(i) The Competency of the Tribunal

This encompasses a number of points; first of all, to what extent is the delegation of the duty to consult permissible by the decision-maker. For example. does a statutorily named decision-maker have to take the decision himself or can he delegate it to another? It is firmly established that if a statute names a government minister as the decision-maker, then it is assumed that Parliament intended the normal procedures of government to operate - ie that this function may be executed by an official in the Minister's department.(148)

In other administrative areas it is permissible for the decision-maker to delegate the task of receiving evidence and reporting on the case; however, the substance of all submissions and objections must be reported to the decision-maker, an omission could invalidate the decision.(149)

The second area of difficulty is an overlap into the

field of the duty to be impartial. To what extent is a tribunal competent to hold a new hearing after a previous hearing has been condemned as unfair? The general approach is that if it is possible to reconstitute the tribunal with different members, this should be done.(150) However, this may not be possible, in which case 'necessity' demands that the same decision-maker hear the case again, and so long as there are no new procedural defects, this will be acceptable.(151)

## SECTION IV - The Courts and Other Procedural Errors

### (a) Delay

The Courts have never really classified delay as a procedural error, in its most serious manifestations, it would qualify as an abuse of discretion/power.(152) For instance, the courts have held that a delay would be an abuse of power if it were deemed to be unfair.(153) A recent attempt by a pressure group to remedy delays within the social welfare system failed, but again it was stressed that delay might be a form of abuse of power, if it qualified under the 'Wednesbury' rule.(154)

Therefore, as the 'Wednesbury' test is a strict one and difficult to meet, it is unlikely that the courts will be called upon to remedy many intrinsic delays.

(b) Duty to Give Reasons

There is no common law rule in this country which states that a decision-making body must give reasons for its decisions.(155) This is despite the fact that the Donoughmore Committee in 1932, called the giving of reasons "the third principle of natural justice"(156); as well as judicial comments, eg Lord Denning stating that "the giving of reasons is one of the fundamentals of good administration."(157)

This does not mean, however, that the issue has been totally ignored by the judiciary.(158) The emphasis is on the fact that it is not a fault in itself at common law. There are two clear areas where the courts take note of the failure to give reasons: (a) where it can be taken as an indication of another form of procedural defect; and (b) where there is a statutory duty to give reasons.

Looking to the first category, failure to give reasons for a decision can make an underlying error difficult to detect, eg an error of law by the decision-maker, and thus makes a right of appeal difficult if not impossible, to establish. (The same argument can be made for establishing a case for judicial review.) The courts appear quite keen to prevent failure to give reasons becoming an effective bar to further action by one party. for example, in the case of Padfield v. Minister of Agriculture, Fisheries & Food, the Minister did not

explain his decision - Lord Pearce took the following line:

> "I do not regard a Minister's failure or refusal to give away any reasons as a sufficient exclusion of the court's surveillance. If all the prima facie reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, the court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions."(159)

This approach follows an earlier Privy Council decision, in that case a Canadian Minister had effectively blocked a taxpayer's right of appeal, by not giving reasons for his decision, Lord Greene MR made the following observations:

> "Their Lordships find nothing in the language of the Act or in the general law which would compel the Minister to state his reasons for taking action... But this does not necessarily mean that the Minister by keeping silent can defeat the taxpayer's appeal. to hold otherwise would mean that

> the Minister could in every case, or at least, the great majority of the cases, render the right of appeal given by the statute completely nugatory. The Court is, in their Lordships' opinion, always entitled to examine the facts which are shown by evidence to have been before the Minister when he made his determination. If those facts are in the opinion of the Court insufficient in law to support it, the determination cannot stand. In such a case the determination can only have been an arbitrary one."(160)

However, even if required to give reasons to facilitate further redress, it may not mean that the explanation has to be comprehensive. In **R.v.Lancashire CC ex p Huddleton**, no reasons were given by County Council for refusal to exercise discretion, the Court stated that when the other party had been granted leave for judicial review, an explanation should be given. In response a minimal statement was given, which the Court accepted.(161)

The second area where there has been judicial activity is where there is a statutory duty to give reasons for the decision. Most of the statutory intervention in this area, follows the Franks Committee recommendation.(162) The major piece of legislation in

this area is now the Tribunals and Inquiries Act 1971, which imposes a duty to give reasons (written or oral) on request.(163) This duty applies to the tribunals listed in the Act,(164) and to ministers taking decisions, after public inquiries. However, the courts have always responded to enforce earlier statutory duties in this area.(165)

So what standards have the Courts set where they recognise the duty to give reasons? First of all, as there is no determinable common law rule in this field, the courts will not compel a decision-maker to state his reasons, if there is no statutory obligation for him to so do. This was particularly well illustrated where there was in fact a statutory exemption from the duty to give reasons placed on tribunals. Woolf J (as he then was) felt that there was a possibility of injustice where leave to appeal from a decision of a social security commissioner, was refused without reasons. Although there was an exemption to the **duty** to give reasons, Woolf J argued that there was nothing to **prevent** the commissioner from giving his reasons.(166) This approach was criticised by the Court of Appeal in a later case.(167) The Court of Appeal felt that this approach was 'unconstitutional' in its attempts to overrule a statutory dispensation.

However, if there is a clear duty to give reasons, what standards, if any, do the Courts require? The general idea seems to be in line, with the previous area

discussed, in that the lack of reasons must not hinder any further possible redress, and as such the reasons given must explain the basis for the decision, unless this is clearly obvious, and must satisfy the parties that no error has occurred.(168) Lord Denning's consideration of the statutory requirement made of tribunals, led to the following statement in **Iveagh v. Minister of Housing & Local Government:**

> "The whole of the purpose of the enactment is to enable the parties and the courts to see what matters he [the Minister] has taken into consideration and what view he has reached on the points of fact and law which arise. If he does not deal with the points that arise, he fails in his duties: and the court can order him to make good the omission."(169)

In some cases, this does not seem to mean that they have to give lengthy explanations; for example in one case a two-line reason for the decision to demolish a house, rather than rehabilitate it, was accepted by the Court of Appeal.(170) Standard or formula reasons may be acceptable(171) - so long as they do not become a 'ritual incantation' in the words of Lord Donaldson MR.(172) Although, exactly where the difference lies is not clear.

Thus the Courts appear to be reasonably willing to

uphold a statutory duty to give reasons, but are reluctant to extend the principle to the common law.

## SECTION V Remedies Available to the Courts

In general, the basic rule as regards the outcome of the cases now appears to be that if there is a breach of the rules of procedural error, the administrative decision in question will be void.(173) In practical terms, this means that the matter will be referred back to the decision-making body for new consideration, with hopefully error-free procedure.(174) This certainly applies to 'natural justice' cases; however, if a decision-making body has failed to give reasons for its decision, and the court feels that this is reprehensible, it may well simply order the body to give its reasons without affecting the validity of the decision.(175) The remedies normally available in such cases, the prerogative remedies, are discretionary, which means that the court can refuse to grant them to an applicant.(176) As has been seen, judicial reluctance to interfere with decisions involving inconsistency, as per misleading advice, has led to the possibility of compensation being used as a remedy, possibly via the award of damages for negligent mistatement.(177)

There has been some question over whether there can be a breach of natural justice, where the procedural

defect could not have had any effect on the decision, or at least whether the court should interfere in such a case.

On the whole, this line has been decisively rejected by the judges; the reasoning being succinctly summarised by Megarry J (as he then was):

> "As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which somehow, were not; of unanswerable charges which in the event were fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."(178)

Despite this noble statement, there have been cases where the courts have refused to remedy a defect in the procedure on the grounds that it could not have affected the outcome; where a body had a statutory duty to act in a certain way on the given facts(179); and where street-vendors had not seen the objections lodged against them, the judge, on inspection of the evidence, assured them that they could not have affected the decision.(180)

A more worrying trend is for the courts to withhold remedies from what they see as undeserving applicants. This is possible as has been mentioned, as the prerogative remedies for judicial review, are discretionary.(181) The reasons for considering the applicant undeserving are

diverse; one court held that it would not grant relief to 'those who sleep on their rights', after a student had waited seven months before applying for judicial review;(182) the nature of their offence is serious and deserves a severe penalty;(183) or because the applicants were persistent offenders;(184) or their moral conduct is found to be wanting.(185)

The obvious problem is that the Courts do not wish to hinder administrative procedures by offering a last refuge for complainants with 'hopeless' cases, by sanctioning the quashing of decisions resulting from a defective procedure, however, the words of Megarry J hold true. Wade suggests that the Courts should appreciate the need to correct procedural defects in administrative matters, where the decision-making body's discretion prevails, and thus the applicant might have a better chance of success; the need in statutory tribunals may not be so great, as the outcome may be governed by statute.(186)

# CHAPTER EIGHT - CONCLUSIONS

The first three sections of this chapter set out the empirical conclusions of the research. The review of procedural error by first the PCA and then the Courts, is tested by using the Procedural Error Catalogue as a basis for neutral assessment. Finally the two institutions and their interaction are considered by reference to the same neutral base. The fourth section draws out the wider implications of the findings for both institutions, but with the emphasis on the office of the PCA.

## SECTION I The PCA and the Procedural Error Catalogue

### (a) Bias

In the first category of procedural error, the PCA's work covers nearly the same sort of errors as the Catalogue records under 'Failure to be impartial'. The most notable area of difference is that of victimisation, which the PCA investigates. This is not a clear category in the Catalogue, and really has been developed by the nature of the complaints submitted to the PCA; as was seen, it is rarely upheld - lack of understanding of the process usually being the underlying cause. It is worth noting that this illustrates one of the strengths of the office, the ability to defuse such situations. The belief

may be genuine on the part of the complainant. However, he may be convinced otherwise by the PCA demonstrating by his investigation that there has been no such persecution. It also seems to be part of the PCA's role to explain the necessary procedures of the government department.

The PCA also receives a number of complaints on the basis that 'like cases have not been treated as like' as the Catalogue defines this kind of error, ('Inconsistency between cases' as per the PCA.) Many of these prove not to have an identical basis for comparison, but the PCA, like the Catalogue, accepts that administrative discretion may provide reasons for a difference in treatment. As a safeguard the PCA investigates the soundness of the reasons given.

Perhaps the most notable work of the PCA in this area has been in cases involving misleading advice given by a department, which leads to inconsistent treatment (Inconsistency within a case, per the PCA). Whilst the PCA can be criticised for setting quite a high standard of proof for such cases, he has developed the treatment of such mistakes as errors, and has highlighted a serious administrative problem. He has tried to strike the balance between the necessity not to fetter administrative discretion and the undesirability of department's escaping from the consequences of their incompetence. On the whole such misleading advice, which causes financial loss, as a result of the complainant's reliance upon it, will be

deemed an error by the PCA.

In the more traditional areas, (classified as bias in the decision-making process, and inherent bias) the PCA is in line with the Catalogue. One small point was noted on occasions, that the PCA was prevented from looking at the effect of pre-stated opinion, on tribunals, as most of the proceedings of tribunals are outwith his jurisdiction. This is a superimposed limitation which does prevent the expansion of the PCA's jurisprudence in this area. The other limitation applicable to the above is that the PCA will not comment on matters relating to Government policy.

Overall, the main impressions to be drawn are that, first of all, the PCA accepts that administrative procedures are, by their nature, susceptible to a 'background' level of 'bias'['inherent bias'] and that a completely impartial approach would be almost impossible to achieve. This is a recognition of the fact that, if complete impartiality was insisted upon, it would be at the expense of efficient administration. This does not conflict with the views reflected in the Catalogue, which also recognised this fact. The impression formed is that the PCA is quite comfortable with this concept, but will usually check that any such levels are no more than are necessary for efficient administration.

The second major conclusion is that the PCA is on the whole more concerned with actual bias, rather than with the appearance of bias. The mere possibility of bias, or

as he has himself referred to it -'Justice not seeing to be done', will not amount to maladministration.

(b) Errors in the Consultation Process

In the second heading of procedural error, the PCA is particularly concerned with the procedure leading up to a hearing (be it paper or oral). This is partly because the procedure of many hearings (eg tribunals) is outside his jurisdiction. The bulk of any work that he does do in this area, concerns the variety of planning inquiries. Statutory procedures are also laid down for many of the processes for consultation that he receives complaints about, so unless the department/inspector is given discretion in relation to what procedure to adopt, the PCA does not criticise matters in this regard. [There is, as has been noted, the possibility of comment, if the authority for the process is a Statutory Instrument.]

So within these limitations, what areas does the PCA cover? He has done a lot of work in relation to the provision of adequate notification of the existence of the decision-making process. This may just be notification, with no further participation opportunity for the person, or it may be notification as to their rights of participation. In either case, the PCA expects that the notification will be as comprehensive as possible. However, the PCA is aware of administrative constraints

here, and the duty is not absolute. Providing the department have taken reasonable steps to ensure notification, the PCA will not be unhappy about small errors. He is also aware of such constraints as a duty of confidentiality on the part of the department, in certain areas. But the positive side is the desire shown for the provision of as much information as possible, and also a trend in the later encumbents to adopt a more sceptical attitude to pleas of administrative constraints from departments.

The PCA's consideration of who is entitled to be heard on a matter, requires that as many people as possible should be heard, but that administrative efficiency should not be compromised as a result. Thus the duplication of information received, is to be avoided. The PCA appears to trust the department's own judgment on this matter. This is also the guiding principle as to the choice of whether the matter should be given a paper or oral hearing.

An oral hearing should be granted, if the subject-matter would be further illuminated by such a procedure, and if the department feel that they have enough information without it, then the PCA will not be critical. He will expect however, the department to inform the party of their reasoning. Even if an oral hearing is afforded, the PCA accepts that it may not be a formal process. The emphasis appears to be on the opportunity to be heard to

provide relevant information; and that there is no particular benefit **to the process**, by the provision of an oral hearing. [The PCA does acknowledge the **perceived** benefits to the complainant.] This is not necessarily out of line with the Procedural Error Catalogue, although whether the emphasis is so much on the convenience/advantage to the administrative process is doubtful. The perceived advantage to the process should be the enhanced public confidence in the system.

One of the PCA's strengths in this area, is his insistence that the party should be told the case against him, and also that he should have as much access as possible to relevant information, including, in some cases the other side's submissions. However, in the second category, the PCA accepts limitations, such as the need to preserve confidentiality; or that the scale of the operation would seriously dent administrative efficiency. Although the PCA will probe such claims made by the department, there is still the impression that he is willing to accept these, perhaps too readily. Complete confidentiality is discouraged, though pruning of information to protect sources is acceptable to him. The Procedural Error Catalogue does admit that there will probably have to be limitations on the availability of information, it does not the claim the duty to be absolute; and certainly the PCA attempts to ensure that these are not unreasonable.

As to the actual procedure of the hearing, as was noted, the PCA's jurisdictional limitations, means a paucity of case material in this field. Certainly, the PCA has taken account of most of the accepted prerequisites of an oral hearing, such as cross-examination, though it will be remembered, that he was happy to accept that a hearing granted by a department to further the administrative process, will not be expected to have such formalities. The main shortfall from the Procedural Error Catalogue is in relation to representation. The PCA has not really dealt directly with a major complaint in this area, but supports the idea that if professional help is required by the citizen to disentangle himself from the mess created by a department, then such expense should be reimbursed - but this relies on the fact that there is maladministration to be contended, it is not thought necessary in the normal course of administrative business.

Overall, it would be fair to say that the Procedural Error Catalogue envisages the opportunity of puting one's case fairly - it is not specific in the procedural requirements necessary for this to be achieved, but does generally emphasise the need for parties to be well-informed. To this extent, the PCA mirrors the Procedural Error Catalogue, adopting the stance, that there will always be limitations on the duty, which are acceptable so long as they are not unreasonable; and to some extent with

the later PCAs, there is also the suggestion that such limitations should be able to be justified in each case.

(c) Other Procedural Errors

As to the other procedural errors, the majority of the PCA's work has been concerned with delay. The common problem to both the PCA and the Catalogue is determining what constitutes delay. Obviously, it is somewhat impractical to set a time-limit, beyond which constitutes delay, although it was observed that that was what JUSTICE proposed. The general consensus is that 'delay' cannot be accurately assessed in units of time, for example, two months would be an excessive period for a decision to be taken in the field of social security, if it related to an emergency payment. Whereas, it would be less unacceptable in relation to a planning appeal.

Therefore the PCA's work has been analysed on a different basis and the spectrum of types of delay has been outlined. This is based on the cause of the error, and it is this criteria that the PCA appears to use in determining whether the delay is justifiable or unjustifiable.

It must be stated clearly that these divisions are merely a guide for understanding. They are not completely insular in that not every case will fall clearly into a particular category. Elements of all, or of some of the

divisions may be found in some cases. Nor does the classification of a delay into a specific category automatically determine the PCA's verdict on whether or not the delay is justifiable. For instance the delay in a case of complexity may not be justifiable if the PCA's safeguards have not been implemented.

The division relating to delay as a result of human error contained examples where no reason could be identified in the process by the PCA - a situation in fact of total inaction. Almost invariably, this was seen to incur strong condemnation from the PCA. This puts this division at the end of the spectrum most likely to be considered to be unjustifiable.

What is also clear from many cases is that the PCA is not content merely to identify the individual error. He is also concerned with why the system failed to identify the problem. Could a better system of supervision be introduced to ensure that such a halt in the progress of a case can be identified sooner in the future?

This can also be seen at the other end of the spectrum, in the categories most likely to be identified as justifiable delay (ie delay as a result of procedural/substantive complexity), where the PCA's mitigation requirements were identified. Again this to ensure that the system provides safeguards against unnecessary, additional delay entering the process.

Here it is very clear that the PCA is looking to the

system as a whole, and not just to the individual case. However, the one area that he is reluctant to enter is where the delay is caused by resource constraints which are the result of government policy. He will make reference to the fact, and it is then open to individual M.P.s or the Select Committee on the PCA to take up the cudgels.

As to the duty to give reasons, the PCA is not confined merely to a desire to see reasons given for a decision; although he does emphasise this need, particularly, in relation to the prevention of misunderstandings. In contrast to the Catalogue, he apparently feels that this should be a spontaneous reaction on the part of the department, and should not have to be activated by a request from the client. In addition, there is an obvious thread running through his reports, that he considers the general provision of information and explanations to the client to be of paramount importance. He does accept that there may be constraints in this area, such as the need to preserve confidentiality by the department, but the necessity of such restrictions in each case is probed. Again the reasoning behind this is that such communication between the department and their client prevents misunderstandings and subsequent complaints. However, it has to be noted that failure in this category will bring criticism from the PCA. Nevertheless, it rarely amounts to

maladministration on its own.

Thus on the whole, the PCA operates roughly in line with the procedural error catalogue. The errors listed may bring criticism from the PCA; they may not be good administration, but that does not necessarily mean that they will fall into the category of 'maladministration' which the PCA reserves for the more serious examples of the above errors, or more often a combination of the above errors.

## Section II The Courts and the Procedural Error Catalogue

The purpose of this section is to consider how the Courts' definition of procedural error corresponds with the Catalogue.

### (a) Duty to be impartial

The Courts' consideration of the duty to be impartial tends to concentrate on the traditional areas, and ultimately on the principle of 'nemo iudex in causa sua'. Thus such areas as clash of capacity, personal and pecuniary interest etc. are the main subjects for judicial review. The adopted test, whether it be 'reasonable suspicion' or 'real likelihood' does not demand that there be actual bias present, before the decision will be affected. But it can be discerned that tangible interests, such as shareholding, personal relationship, or a visible

clash of capacity, involving active participation in each capacity, will be greater indicators of potential bias, than nebulous (in the Courts' eyes) concepts such as personal attitudes or beliefs.

It is also to be noted that the Courts do make concessions to the needs of the administrative process, with the doctrine of departmental bias, which accepts that the need to formulate administrative policies will generate a 'background' level of support/bias towards such policies on the part of the department. The problem in the past, (and the constant, potential danger) is that the Courts, not being well versed in administrative matters, may well overcompensate for administrative needs. This could be seen clearly at the time when the Courts supported the idea that the principles of 'natural justice' did not apply to bodies exercising purely administrative functions; it was corrected to a certain extent by the development of the doctrine of 'fairness'.

As to the newer areas, such as treating like cases as like, and misleading advice emanating from departments, the Courts, whilst not completely rejecting such values, are obviously not keen to encourage their development as grounds for judicial review. The administrative consideration of not fettering discretion, appears to be too high an obstacle for them to overcome. Also consideration of the doctrine of ultra vires considerations hinders them - for obviously, the Court

cannot direct an authority to maintain an illegal decision. So far, there has been little attempt to negotiate these fences.

Of course in the traditional approach, these categories, along with the consideration of all relevant facts/non-consideration of irrelevant facts, are not classified as procedural errors in the same way as the principles of 'natural justice'. The consideration of all the relevant facts is a well-established principle of review, but the others are definitely subject to judicial whim, and as such cannot really be said to be established categories, and thus it can be said that the Courts do not cover these areas of the Procedural Error Catalogue.

(b) Error in the Consultation Process

Obviously, the second grouping, is akin to home territory for the Courts, with the principle of 'audi alteram partem'. The Courts do not cover all aspects of the duty to consult, as listed in the Catalogue, though some aspects are more strongly defended than others.

Starting with the issue of adequate notice, the Courts desire that this should be provided, as it is crucial to the consultation process - though as was noted, statutory provisions may require evidence of 'substantial prejudice' to the party denied notice before action can be taken.

An area peculiar to the Courts' attention, has been the issue of whether a procedurally correct 'appeal' hearing can effectively cancel the negative effects of a previous, incorrect first hearing. The latest reasoning appears to be that, so long as the 'second' hearing is identical in its remit as the first, the second will count as a fair hearing. The obvious defect, as pointed out, is that this effectively denies an 'appeal' hearing in that particular process and, as such, may be at variance with, at the least, the spirit of the Catalogue.

In the same area, so long as a 'hearing' is eventually afforded, the Courts are not swayed by arguments that it should take place early in the proceedings. Also, the latest judicial approach, appears to accept 'paper' hearings, which meet certain criteria (usually in relation to countering evidence, perhaps roughly equivalent to opportunities afforded in oral hearings) as adequate.

Therefore, although the Courts will require a party to be given a hearing, that is all that it amounts to - an opportunity to be heard. There are no specific requirements to grant a hearing as early as possible in the process. Nor does it have to be an oral hearing as opposed to a paper hearing. But again the Procedural Error Catalogue is non-specific, in this field as well. Even if an oral hearing is granted, it need not be formal; however, if a formal hearing is to be held, then it will

be an error, if for example, cross-examination, is not allowed on request of the party.

The Courts also support the right to adequate disclosure of information, in that relevant considerations to be used in the decision-making process, should be disclosed. How full this disclosure should be, appears to depend on the nature of the body concerned. If its function is in the main, investigative, with no formal outcome as such, to the proceedings, it is less likely to have to make full disclosure, so long as the party is made aware of the substance of the evidence. So again, limitations are acknowledged.

Another area that the Courts have considered is the right to legal representation - this is certainly an issue on which the Courts diverge from the Catalogue. The Courts do not champion the right; in fact instead of it being a positive issue, it is more a negative one, in that the Courts are fighting a rearguard action, in deciding whether it is acceptable to exclude such representation. The consensus appears to be that it would be wrong for a body to rule that it would never allow such representation, and that certain factors could probably impose a duty to allow it. On occasions, the debate has touched on representation by lay persons, but on the whole, it has centred around the desirability/non-desirability of legal representation.

(c) Other Procedural Errors

In the area of other procedural errors, the Courts fall short of the Catalogue in a major way. Delay will only be considered as an error by the Courts if it amounts virtually to perversity on the part of the decision-maker. Thus it can be said that the Courts would only consider the most serious and unique cases of delay, certainly not routine delays. Therefore, only a small part of the Catalogue in this area would be covered by the Courts.

Perhaps the most serious departure form the Catalogue, is that of the enforcement of the duty to give reasons. Despite being called the 'third principle of natural justice' in 1932, by the Donoughmore Committee,(1) the U.K. Courts have failed to elevate it to that exalted position - in fact it is doubtful whether it has even got off the ground. The position has been well stated by JUSTICE in its 1971 Report:

> "No single factor has inhibited the development of English Administrative Law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions."(2)

It is this failure to rigidly enforce a non-contentious, accepted administrative principle, even during the expansionist period, that warns that the Courts

are unlikely to embrace the more controversial parts of the Catalogue.

## Section III The PCA and the Courts

This Section will consider how the PCA and the Courts interact in the review of administrative procedural error.

### (a) Failure to be impartial

Under the first group of procedural error, the first notable difference between the PCA and the Courts, is that the PCA deals with a much broader spectrum of errors. For instance, the Courts do not deal with complaints of victimisation as such. Certainly, the Courts have considered complaints of inconsistency, but it is obvious that the judiciary are not keen to develop this area of review. The PCA, on the other hand, now has an identifiable routine for dealing with such complaints. On the whole he has done so very successfully, by by-passing the difficulties of supporting ultra vires decisions, by the device of ex-gratia compensation. The PCA has certainly pioneered the 'newer' areas of procedural error in relation to partiality.

In the more traditional areas of bias (as identified above) the work of the two institutions certainly overlaps. For example, there is joint recognition of such

limitations, as the doctrine of necessity. That is , both institutions recognise that sometimes a decision must be taken by someone with an interest in the matter if he is the only qualified person available. However, there are differences in approach, which makes it difficult to say with conviction, that the review procedure is being duplicated.

First of all, the PCA is restricted in his work of review to government departments in the main, thus the 'background' level of administrative bias is second nature to him. It affects all his review work - what is an acceptable level of departmental bias, and what is not. On the other hand, in developing the jurisprudence of 'nemo iudex in causa sua', the Courts have had to develop the category of 'administrative/departmental' bias in relation to the review of such bodies, and thus it is not such a familiar, and possibly, comfortable concept for them. For all the PCA's use of the concept is more pervasive, it does not appear to have made much in the way of apparent differences in the outcome of the such cases.

Both the Courts and the PCA have dealt with complaints that a Minister was determined to force through his policy despite opposition. The evidence in each case was the fact that the Minister had made a speech strongly favouring his policy. Both institutions were willing to accept such statements, as facts of political life, so long as the Minister made his decision, having properly

considered all the representations presented.

Secondly, the PCA is less concerned with the possibility of bias, than the existence of actual bias. This may be a by-product of the investigative nature of his functions, in that he is looking for substance in the complaint. It also relates to the need to find 'injustice' as well as maladministration. It is the case, that successive PCAs have mentioned the judicial maxim of 'Justice must be seen to be done' or similar, but, although the outward potential for bias may draw criticism from the PCA, it will not be counted as maladministration (so therefore, injustice is not even a consideration). That, presumably would be reserved for actual bias, which as was noted, evidence for which has not been uncovered by the PCA.

The Courts, on satisfaction of the adopted test, will condemn the appearance of bias. The Courts' reasoning for this is partly concerned, with maintaining public confidence in the system. It might be argued for the PCA, that his declaration that he has found no evidence of bias, would amount to the same thing.

(b) Imperfections in the Consultation Process

The Courts and the PCA work pretty much in parallel in the second area of error. It may be that the PCA is often more concerned with the build-up to the hearing,

rather than with procedural aspects of the hearing itself. This is partly due to some of the actual hearing procedures being outwith his remit; but then it would have to be added that the Common law principles have to a certain extent, diminished in importance, as more 'hearings' are regulated by statutory procedures.

Both require adequate notice, both in timing and content, but both also accept that a process cannot be invalidated by lack of such, if reasonable steps were taken to ensure that such notice was effective, eg non-delivery situations.

As to the form of hearing, it would appear that both institutions are more concerned with a 'hearing' being afforded, than anything else. To a certain extent, the Courts would appear to want to match the following criteria: that the party can fully develop his case, and have an opportunity to counter adverse evidence also put forward. The PCA is merely concerned with the party being able to put his case; but it has to be said that the PCA feels that this should be developed with the benefit of adequate disclosure of information - so there may be a hidden element of countering adverse evidence. Anyway, such distinctions are minor. As to the vexed question of the necessity of oral hearings, the PCA believes that these should only be granted to facilitate information gathering by the decision-making body; the Courts appear to be questioning any such right, so long as the paper

hearing is deemed adequate.

Other similarities in attitude include that the error lies in denying a request for cross-examination etc., rather than in the failure to **offer** the opportunity. Also an awareness of the difficulties in time-tableling such events as planning inquiries, and a reluctance to throw further difficulties into the system.

The Courts and the PCA also both set limitations on the necessity of making full disclosure of all relevant material to the parties, for example in the case of medical reports. Or where the need for confidentiality has been established in an individual case.

On the question of legal representation, it was seen that the PCA relies on the legal precedent set in particular circumstances, and does not criticise departments for following this.

(c) Other Procedural Errors

The PCA has obviously developed his work in the remaining categories of procedural error, in a much more determined manner than the Courts. The PCA's work in the field of delay, when analysed, provides a valuable insight into the variety of the forms of that error. The PCA's approach is realistic, in that he accepts that some delays are inevitable, and it is the role of good administration to minimalise such delays and their effects; but they

cannot always be prevented; yet he condemns slovenly procedures and mistakes which lead to delay.

The Courts, however, appear to recognise the enormity of the task of attempting to quantify delay; and have decided not to tackle it, unless the delay is so unreasonable, as to amount to an abuse of power. This again would appear to look to the cause of the delay, in that it is envisaged that such delay would occur through wilfulness on the part of the administrator. However, although the Courts have not closed the door, they are not throwing it wide open either. It is fair to mention that both institutions are reluctant to condemn, as administrative error, delay that is caused by resource constraints, as a result of governmental fiscal policy. In general, it would seem that this is an area destined to remain the prerogative of the PCA, as between the two.

As to the duty to give reasons, it has been noted that the Courts have missed an opportunity to enforce an important administrative principle to the full. The PCA, on the other hand, emphasises the need to communicate at all stages in the process, but is less likely to call any failure 'maladministration', though it will attract his criticism. It would appear that his mission here is to promote the idea, not penalise the failure to use it. Thus although he is sending clearer signals as to the desirability of the doctrine, it must be asked, if his review role is really any better than that of the Courts.

(d) Conclusions from the comparison

Thus, drawing on the Catalogue, it has been demonstrated that the PCA encompasses the same spectrum in dealing with complaints, and the Courts only a small section of this spectrum. As has been seen above, to a certain extent, their work in the review of procedural error overlaps. Does this mean that there is a duplication of functions?

To a certain extent serious inroads into the Courts' jurisdiction are prevented by the requirements of the 1967 Act, that the PCA should not investigate a complaint which has a possible legal remedy - this includes judicial review. There is a discretion open to the PCA to investigate such cases, if it appears to him to be reasonable to so do. However, the PCA has mentioned in the course of some complaints that further redress on such matters should be through the Courts, but in other cases the PCA exercises his discretion.

However, the overlap is less obvious, when consideration is given to the fact that the PCA does not always find maladministration, in the examples of procedural error, whereas, if found the courts will condemn such errors. The fact remains that the two review mechanisms both work in the same areas, and deal with the same types of errors in some cases. Is this duplication? In the end the answer is no, because of the outcome of

such cases from each mechanism, in terms of remedy and approach. The approach is different in that the Courts are adversarial and deal with only the facts presented to them by the parties. Whereas the PCA investigates the matter for himself, and thus is responsible for the fact-finding. In both cases, the remedies available are discretionary, but after that the differences are more manifest.

The Courts' usual remedy is that the decision is in effect quashed, occasionally in the areas away from the traditional principles, the Court may direct the decision-making body to state its reasons, or in other cases, compensation in the form of damages for negligent misstatement will be awarded. In other words, the Courts remedy is all or nothing - most applicants would be quite happy to see the decision quashed (or at least until they realise that it does not mean that the Courts have stated that the body took the **wrong** decision, and that if the proper procedure is followed, the body could arrive at the same decision.), but there is no alternative.

The PCA may present more variety and flexibility in his remedies, but the ultimate sanction of the Courts is lacking in that he cannot quash any decision; although he may suggest that the department review the particular decision in light of his findings. There is ultimately no power in his recommendations; all remedies are negotiated between his office and the department concerned, the Select Committee intervening if necessary. If there has

been a quantifiable loss on the part of the complainant, he can secure an ex-gratia payment as compensation; but he stops short of using financial penalties as a means of punishing the department for maladministration - it is simply a matter of reparation.

More often than not, the PCA produces the departmental apology as the only remedy. Quite often, it is claimed, that all complainants want is such vindication.

The PCA is free to decide what remedy will be appropriate, but it should not be imagined that the Courts will provide a more sure remedy. It has been observed that the Courts will use their discretion, to withhold remedies from undeserving applicants. The PCA can be identified as using a 'contributory negligence' scale against the complainant's own conduct, in articulating the appropriate remedy.

Another obvious contrast between the two mechanisms, is that the Courts will usually only be dealing with one particular error in each case; the PCA often identifies a number during his investigation. This is a consequence of the difference in his adopted approach. It has been observed, that the higher the number of errors, the more likely the PCA is to decide that there was maladministration in the case.

## Section IV - Evaluation

This Section will address the wider implications of the above findings in relation to the PCA's role in the administrative system.

The problems of the PCA are both self-imposed and superimposed. As has been seen, the PCA investigates a wide range of procedural error - in many cases he is critical of departments, though not always to the point of finding maladministration. The main limitation is, of course, the statutory framework which controls his office, which is superimposed. As has been seen, his jurisdiction is controlled, but this thesis is more concerned with the work within his remit; extending his jurisdiction would only increase the number of departments and subjects in his remit, it would not change the nature of procedural error.

### (a) Superimposed Limitations on the PCA

(1) Statutory Framework & The Constitutional Role. The statutory framework does first and foremost establish his constitutional position, and it is this role which limits the expansion of his work. At the moment, he is akin to an officer of Parliament. As such he is a device to assist M.P.s in their task of helping constituents with grievances against government departments. As such the

M.P. filter must remain in place, otherwise the connection with Parliament is loosened, if not severed. (This is not an argument in favour of the merits of the M.P. filter, but simply a statement of the facts of the PCA's life - you cannot alter the relationship with Parliament, without altering his constitutional role.)

One of his main assets is the Select Committee, with their associated powers. This is particularly true in relation to forcing departments into providing appropriate remedies. If the connection with the M.P.s, and thus with the power of the House, were loosened, the PCA's enforcement powers would be lessened. In reality these powers are quite considerable. Very few cases remain unremedied. At the moment, it is really quite unnecessary for the PCA to have enforcement powers based in the legal system. First of all, this is effectively barred by his constitutional role. He is part of the Legislature's checks against the Executive, and as such he draws authority from the Legislature. To attempt to cross into the Judicial arena, at the last stage of his investigation, makes very little constitutional sense. His function is to report to Parliament, this is usually in the form of the Select Committee who demand that their authority is recognised. To suggest that a legal remedy is required, would be to admit that Parliament is unequal to the task.

Secondly, such powers really do appear to be

unnecessary, because the withholding of remedies proposed by the PCA is rare. [It is perhaps true to say, that the PCA suggests remedies that need to be enforced rarely enough.] Even if such powers were placed in the PCA's hands, the Courts would no doubt require the more informal investigation procedures to go, thus a judicial structure could well be placed on investigations, and the PCA'S approach changed completely. The argument concludes with the idea that if a judicial structure is to be used, then why not just go to the Courts in the first place.

Thus the 1967 Act sets the PCA in a very firm constitutional position, which would take radical restructuring to remove. In effect, such innovations as direct access, and legal enforcement powers are more suited to ombudsmen; the Parliamentary Commissioner is a different beast.

Therefore the PCA's constitutional role is set as an adjunct to Parliament.

(2) Superimposed Limitations and His Jurisdiction. The 1967 Act allows the PCA's jurisdiction to be expanded. It has been expanded on several occasions, but this does not necessarily change the type of error that is encountered. Only rarely was it observed, that his imposed remit prevented the PCA from taking his investigations further. It is submitted that this is not a major obstacle to the PCA's work.

(b) Self-Imposed Limitations

These limitations are much more important, as they can be corrected without the intervention of outsiders. These are the limitations that the PCA has consciously, or unconsciously, placed on his work.

(i) Adherence to a case by case approach. A clearly self-imposed limitation, is the lack of coherence in his work. His approach is on a case-to-case basis, with very little attention being paid to his findings, other than on that individual basis. There is no attempt by him to gather together classification of maladministration, or to try to produce guidelines as to how to avoid it. JUSTICE has suggested that he is in a very good position to draw up guidelines for good administration, but successive PCAs see themselves as little more than investigators of maladministration - they are not the instigators of good administration. Yet, in such matters as delay, the PCA often considers the general state of the administrative process, to ensure that it is designed to detect delay early on, so they cannot claim to be exclusively interested in remedying the individual complaint alone.

Even in their preferred function, the use of even rough guidelines from past experience would surely aid investigation. It is not unknown for the PCA to make reference to previous cases involving the same error and

department, so it would not be difficult for them to expand on this slightly.

It would certainly aid the M.P.s in perhaps sending in more complaints realising that the problem is within the remit of the PCA, and to deter them from submitting those outwith his jurisdiction.

(ii) The Interpretation of His Remit. The main limitation identified on the PCA's work in the review of procedural error, is that of the statutory test of 'injustice' as a result of 'maladministration'.

It could be argued, that this is in fact a superimposed limitation, in that the formula is laid down in statute. It is submitted that it is in fact a self-imposed limitation, as a result of the interpretation, the PCA chooses to place on it. The PCA adopts the formula as a double test. First, maladministration has to be found, eg a procedural error of some kind, then the PCA decides whether this error has in fact caused injustice to the complainant. Injustice here seems to mean quantifiable loss or detriment of some kind. It is clearly possible for the PCA to accept that maladministration causes injustice; that it would be a rare occasion when one occurs without the other, yet the PCA persists in withholding remedies on account that 'no injustice was caused to the complainant'.

This does not only mean that he restricts his ability to help complainants: he involves himself unnecessarily in

the merits of the case. It has been stated on a number of occasions that the PCA does not wish to involve himself in the merits of the decision, and he is precluded by statute from doing so, without first finding maladministration. Yet, in deciding whether there has been injustice, the PCA would appear to be emerging himself unnecessarily in the substantive issues of the case.

(c) Strengths of the PCA

One of the PCA's strengths is his flexibility in providing remedies. The most obvious here has been the development of remedies in the case of misleading advice. It was such cases that Mitchell highlighted as one of the more serious problems facing administrative law - he obviously felt that it was beyond the reach of an ombudsman. Yet it has been to some extent a success story - the PCA has been able to deal with the requirements of the administrative situation, the need not to breach the doctrine of ultra vires in sanctioning illegal actions; the need to protect discretion, and yet not to allow departments to escape the consequences of incompetency, by negotiating compensation in the form of ex gratia payments. The Courts have been unable to tackle the same problem successfully, and commentators such as Wade and de Smith have noted how much more comfortably the PCA handles the matter.(3)

Of course, the PCA's flexibility can also mean that the remedies are not always forthcoming, they can be deemed unnecessary, or little more than an apology is secured. But as has been seen, the aggrieved citizen is also at the mercy of the Court's discretion, in relation to the prerogative remedies.

The other favourable asset of the PCA is the fact that he is dealing constantly with administrative matters, and as such gains more insight into the needs of the administration. His investigative role helps here. This means that he can evaluate claims of administrative constraints more effectively. The problem to be guarded against here, is that of 'institutionalism' in that the PCA could becomes too familiar with the problems of administration, and become overly sympathetic to them. There are occasions when this can be detected. One of the remedies to at least the suspicion of this, is to include the complainant more in the investigation procedure.

(d) Constructive Criticisms of the PCA's Work.

The PCA does suffer from a definitional problem as regards his role - it is not so much the lack but the transitory nature of the so-called definition. His constitutional role is set as the Parliamentary Commissioner, yet commentators persist in analysing his office in terms of the independent ombudsman principle. If

the office were independent, then the matters of the M.P. filter, and lack of enforcement powers would seem absurd, but that is ignoring constitutional fundamentals. It is not so much moving the goalposts as shifting the entire pitch. Instead of trying to move the immovable, more encouragement should be given to removing the self-imposed limitations. The PCA reviews a great variety of alleged procedural error, yet rarely is much comment directed to this.

It would be better if the comment was directed to why the PCA is so reluctant to call procedural errors maladministration, preferring instead to merely rebuke the department with criticism. Is there a possibility that he equates maladministration with illegality, and that is why he is so reluctant to use the term? Or is maladministration to be defined as a combination of procedural errors in the one case?

The other general observation that can be made is that many commentators, as well as M.P.s, appear to assume that the PCA is performing the role of an administrative appeal body. Many complaints are basically applications for reconsideration of an unpopular decision. The statutory framework categorically prevents this function for the Parliamentary Commissioner, yet the idea persists. It can be explained by the fact that many people have not yet grasped the fact that he is not an independent ombudsman.

(e) The Courts

(i) The Courts & the PCA. Undoubtedly the PCA moves into potential judicial review situations. The obvious example of this is the television licence debacle, that ended in the case of **Congreve v. Home Office**,(4) which the PCA also investigated. Successive PCAs have used judicial phrases such as 'natural justice' in their reports. Is such potential duplication necessary? Should the Courts be allowed to get on with such matters alone.?

Certainly, when Mitchell wrote in the early 1960s, the Courts were in no way going to be much help to the aggrieved citizen in resolving matters in the Procedural Error Catalogue, except for an extremely narrow band, occupied by the very limited principles of 'natural justice' formulated by the judges at this time. No doubt, the imposition of a public law system on these judges seemed to Mitchell to be the only solution. Yet something caused a revolution in judicial circles. It may have been the realisation that such a system might inevitably be foisted upon them by legislation, if the Executive continued to be unchecked. Perhaps it was the fear of a de facto establishment of such a regime, such as the PCA, along with the burgeoning tribunal system. Whatever the reason, it provoked a conservative backlash by the judges, determined to prove that 'droit administratif' was unnecessary.

(ii) Self-imposed limitations of the Courts. Whatever the reasons, judicial review expanded - many forms of procedural error were reviewed. But as has been seen, it was not a fully comprehensive list. Areas of the procedural error catalogue are still perceived as 'no-go' areas for the courts. Estoppel in relation to wrong advice, delay in the process are all areas where there has been little enthusiasm to whole-heartedly embrace the ideas; perhaps the saddest failure has been the lack of resolve to insist that decision-making bodies give reasons. Not only is the Courts' list of reviewable procedural error shorter than the PCA's, it is apparently getting shorter. It has been noted that doctrines such as legitimate expectation are reducing the opportunities for judicial review in traditional areas. These are self-imposed limitations placed by the judiciary.

It is not clear why these restrictions are being introduced, perhaps, the increase of litigation in this field is perceived to be a potential problem as per resources. What it does prove is that the principles of Administrative law are far from settled, and it is submitted that the law is still too volatile to be the only basis for the review of administrative error, even in the narrow spectrum, in which the Courts apply themselves. The judges are blowing hot and cold - the expansionist period may be over, and there may be an increase of aggrieved citizens finding that the Courts will not help

them. It is on this basis that the work of the PCA gains increasing importance in that it provides at least some cover for areas not deemed by the Courts to be within their jurisdiction.

(f) Concluding Observations or Mitchell Revisited.

In conclusion, it is time to discuss J.D.B. Mitchell's predictions.(5) It will be remembered that Mitchell felt that the ombudsman idea was a red herring. He did not believe that such 'tinkering' with the system would improve matters. His argument was that an administrative court system was the required. The answer lay in reform of the legal system and not the Administration.

The PCA has out performed Mitchell's expectations in relation to the problems he reviews. The PCA investigates areas such as estoppel, that Mitchell identified as a serious problem, which the Courts have not.(6)

It is not made clear why Mitchell felt that the law was the better solution, certainly if the alternative was merely an 'administrative palliative', then it would be understandable. But, as has been seen, that would now be an unworthy tag for the PCA. Perhaps he felt that a remedy would be guaranteed with the Courts but, as has been seen, even during the halcyon days of the Courts, this was never guaranteed.

Of course it can be argued that Mitchell accepted that the Courts, as they stood, could not perform the envisaged function, and that a separate system of public law courts was required. Without entering into this debate, it must be pointed out that the PCA's administrative orientated and investigative approach are more akin to an envisaged approach of such a system. So perhaps it is this approach that should be encouraged.

However, where Mitchell has been proved correct is in the fact that the underlying needs of the system have still not been articulated. Whether, the creation of the office of PCA is partly or wholly responsible for this, can probably never be answered satisfactorily. The U.K. system is not perfect. The cracks, as Mitchell predicted, have been successfully papered over. But it was only a temporary repair job, the structural imperfections, such as the absence of an administrative appeal body, were ignored, and are now resurfacing. As a result the office of the PCA is suffering, in that there is an attempt to force the office into a role which it cannot constitutionally perform. There is undoubtedly room for improvement both in the system in general, and the office of PCA specifically. Mitchell was right. It cannot all be performed by the PCA.

What the solution is for the overall problems of the U.K. administrative system, is not a topic for this thesis. What this thesis hopefully demonstrates is that

the PCA is performing a valuable role in the review of administrative procedural error; that this function can and should co-exist alongside the Courts' review of such matters, as the PCA's spectrum of review is greater; and, finally, that comment should be directed towards encouraging the development of this role in the areas indicated, instead of demanding the PCA to be something he is not.

FOOTNOTES

NOTE: (1) Two main works of reference are H.W.R.Wade, Administrative Law (6th.edition, 1988) and S.A. de.Smith, Judicial Review of Administrative Action (4th.edition,ed. Evans,). These are cited as Wade and de Smith respectively, throughout the footnotes.

(2) In presenting the cases reported by the PCA the following notation has been adopted: the number of the case, followed by the name and number of the volume of the PCA Reports in which it appears.

(3) References are made to interviews given to the writer by Sir Anthony Barrowclough, (then PCA) Sir Cecil Clothier (former PCA) on 16th.June, 1988; and by Mrs.de Ste Croix(then Clerk to the Select Committee on the PCA) on 17th. June, 1988.

CHAPTER ONE

(1) Parliamentary Commissioner Act 1967 S.5(1)(a)
(2) 'The Parliamentary Ombudsman' Gregory & Hutchesson, [1975]
(3) In particular see C.Harlow and G.Drewry, "A 'Cutting Edge'? The Parliamentary Commissioner and M.P.s" [1990] 53 MLR 745 which examines the working relationship between M.P.s and the PCA.
(4) The Parliamentary Commissioner Act 1967 Section 5
(5) [1982] 1 WLR 1155 at p1173.
(6) 'The Ombudsman Fallacy' J.D.B. Mitchell, [1962] PL 24 at 24
(7) The most important evaluation of the content of his work was that of Gregory & Hutchesson in 1975
(8) See Chapter 7 for full list of such sources.
(9) Resolution (77) 31 made on 28th.September, 1977, the annex to the Report was also useful.
(10) Recommendation No.R (80) 2, made on 11th.March, 1980
(11) JUSTICE Report, 1971
(12) Some commentators would argue that the courts are more concerned with substantive judicial review (see J.Jowell & A.Lester 'Beyond Wednesbury: Substantive Principles of Administrative Law. [1987] PL 368). Geoffrey Marshall has also argued that the PCA is also inextricably concerned with substantive matters - see 'Maladministration' [1973] PL 32
(13) See 'Constitutional Conventions' Chapter V
(14) Proportionality is listed as a basic principle in Recommendation No.R (80) 2 [Concerning the Exercise of Discretionary Powers by Administrative Authorities.]
(15) See Recommendation No.R.(80)2, the second principle listed requires that the relevant factors should be considered, and irrelevant factors ignored('factor' is to include the legal basis for the decision); and that the decision-making body should ascertain all material

information. See also, JUSTICE Report (1971), the third recommendation is that the body should take all reasonable steps to ascertain the material facts.
(16) This is contained in the third principle within Recommendation No.R(80)2, - the main principle is equality before the law; that like cases must be treated in a like manner, and discrimination avoided.
(17) Guidelines are specifically mentioned in the sixth heading in Recommendation No.R.(80)2, with the proviso that discretion should not be fettered. The seventh heading deals with the need for publicising of guidelines. The eighth heading, requires reasons to be given if there is a departure from the guidelines. Legal commentators have classified the departure from guidelines as a 'substantive' error (see Wade p.424, and C.F.Forsyth, 'The Provenance & Protection of Legitimate Expectation' [1988] CLJ 238 at 240/241), however, Forsyth's definition states that it does not involve the merits of the decision being considered, and therefore, there would not be a clash with the definition of 'procedural' error used here.
(18) See Resolution (77) 31 - first principle requires that parties should be notified of their right. The JUSTICE Report (1971) - first recommendation notes that the body must take all reasonable steps to inform the parties.
(19) See Resolution (77) 31 - first principle.
(20) The JUSTICE Report (1971) - first recommendation.
(21) See the JUSTICE Report (1971) - first recommendation; Resolution (77) 31 (first principle) is more definite, in that it does not make any qualification to this right, it merely states that the party shall be informed of this right.
(22) The three main sources are not specific as to whether a 'hearing' should be in written or oral form, for the purposes of the thesis, it will be assumed that some circumstances will dictate the choice of form, and thus there is room for error.
(23) Resolution (77) 31, first and second principles; the second principle states that if a person makes a request, he should be given access to the relevant factors of the case, the qualification here, is that it should be by appropriate means.
The JUSTICE Report (1971), heading 4, which requires the body to supply material information upon a reasonable request, is qualified by heading 8, which gives the exceptions to this duty as prejudice to national security, or delay in making the request (2 months is suggested).
(24) How far this isactually required is not clear, there is perhaps some indication that it would not necessarily be a fault. The JUSTICE Report (1971) requires that a person is given a reasonable opportunity to make representations (see first recommendation); in the fourth recommendation, concerning the supply of material information by the body, this only applies to requests for

information relating to the discharge of the body's duties, or the exercise of its powers. This may not include revealing evidence submitted by the other side.

Resolution (77) 31 requires that the relevant facts upon which the act (decision) is intended to be based, should be revealed, this may allow access to the other side's evidence (see second principle); the first principle also requires that the opportunity be given to put forward facts and arguments, and where appropriate evidence.

(25) Resolution (77) 31 (third principle) suggests that it should be possible for a person to be assisted or represented in the administrative process.

(26) Resolution (77) 31 (fourth principle) - if the act adversely affects the rights, duties, or interests of the person concerned, it is essential that it should be reasoned. The reasons should be given at the time the decision is taken, or subsequently on request.

Recommendation No.R(80) 2 (8th. recommendation) requires reasons where there is a departure from guidelines, where it will adversely affect the rights, liberties or interests of the person concerned,

The JUSTICE Report (1971) (9th. recommendation) requires that affected parties should at least be notified of the decision. Further the seventh recommendation requires that a written statement of reasons , justifying the decision, shoule be given on request, unless it would be (a) prejudicial to national security; (b) there has been two months' delay in making the request; and/or (c) the request is made by a person not particularly or materially affected by the decision, and the giving of such a statement would be contrary to the interests of any person so affected.

(27) See the JUSTICE Report (1971) seventh recommendation.

(28) Resolution (77) 31 fifth principle requires an indication of possible remedies should be given if it is the decision/act is a written one.

(29) The JUSTICE Report (1971) (5th.heading); see also 6th. heading, that a decision taken under a statutory power or discretion, (as opposed to a statutory duty) must be made within a reasonable time.

(30) Recommendation No.R(80)2 - 5th. recommendation

(31) See Recommendation No.R(80)2, - 10th. recommendation.

CHAPTER TWO

(1) See later chapter - this was a period of culmuniation eg Lord Hewart's 'The New Despotism' 1929.

(2) See 'Occasion for Ombudsman' by T.E.Utley, for The Society for Individual Freedom 1961.

(3) See the Report of the public inquiry into the disposal of land at Crichel Down [1954] Cmd 9176. One of Sir Andrew Clark's observations was extremely interesting - it was that the hostility against Commander Marten, engendered in

the officials, was the result of 'a feeling of irritation that any member of the public should have the temerity to oppose or even question the acts or decisions of officials of a Government or State Department." Sir Thomas Dugdale resigned over the matter. Commander Marten's tenacity was recognised in the preface of JUSTICE's 1961 Report - 'The citizen and the Administration' see below.
(4) Report of the Committee on Administrative Tribunals & Inquiries Cmnd 218 (1957) - their remit was " ...to consider and make recommendations on (a) the constitution and working of tribunals other than the ordinary courts of law, constituted under any Act of Parliament by a Minister of the Crown or for the purposes of the Minister's functions, (b) the working of such administrative procedures as include the holding of an enquiry or hearing by or on behalf of a Minister, or an appeal, or as the result of objections or representations, and in particular the procedure for the compulsory purchase of land."
(5) See Stacey; it should be noted that the English tradition of xenophobia in relation to ideas not originating at home, is obvious here. Administrative law has suffered from this, along with the British tradition, - in combination, this led to an unserving loyalty to arguably, a misinterpretation of the work of A.V. Dicey, and was probably largely responsible for the situation which Administrative law was in, in the 1950s.
(6) JUSTICE is the British section of the International Commission of Jurists. The interest in the institution continued, with 'Our Fettered Ombudsman' report in 1977, and the recommendations in the JUSTICE/All Souls report in 1988 (Administrative Justice - Some Necessary Reforms - Report of the Committee of the JUSTICE-All Souls review of Administrative law in the UK)
(7) "The citizen and the Administration" JUSTICE 1961 - the report was named after the original chairman, who died before the report's completion; the chairmanship was assumed by Lord Shawcross. The remarks are taken from his preface to the report.
(8) [1962] PL 24; see in general the 1962 edition of Public Law for a variety of articles on the ombudsman concept.
(9) See for instance Utley op.cit.
(10) Stacey, Gregory & Hutchesson; Douglas L. Capps, 'Britain'S Ombudsman: the politics of adoption', unpublished thesis, University of Glasgow.
(11) Schedule 2 of the 1967 Act - as amended by Parliamentary Commissioner (Consular Complaints) Act 1981, and Parliamentary & Health Service Commissioners Act 1987 see below.
(12) Sir Edmund Compton held this post from 1958 to 1966.
(13) This early appointment caused controversy, as it was seen as assuming that the Bill would be passed almost as it stood. The argument for the appointment was that this would allow the PCA to start his investigations almost

immediately after the successful passage of the Bill. See HC Deb. Vol. 733 Col 698.
(14) First Report of the PCA 1967/68 HC 6
(15) His comments to the author (Interview 16th.June 1988)
(16) Comment to the author during interview - for criticism see 'Our Fettered Ombudsman'
(17) Figures from interview (16th.June, 1988)
(18) See Section 4 (departments) & Section 5 (subjects) of the 1967 Act.
(19) 'Our Fettered Ombudsman' JUSTICE 1977
(20) Parliamentary Commissioner (Consular Complaints) Act 1981 & see previously SI 1979/915.
(21) Parliamentary & Health Service Commissioners Act 1987; and note also a change was made by stautory instrument to insert the new Office of the Minister for the Civil Service (SI 1987/2039.
(22) See Annual Report for 1988 Session 1988/89 HC 301, as well as comments made to author during interview.
(23) A device known as the M.P. filter, originally suggested as a temporary measure. Now, there is no real sign of it being removed, though Sir Cecil Clothier expressed a wish to the author, that the PCA should have the power to investigate cases on his own iniatative. Sir Anthony Barrowclough expressly stated that he did not want this power. Section 5 of the 1967 Act. The usual procedure on receiving such a request used to be to write to the member of the public concerned, and explain the situation, with the offer of forwarding their complaint to an M.P. for referral back. It should be noted that this did not have to be their own constituency M.P.. The present procedure is that the letter is referred to the constituency M.P., and he is given the opportunity to refer the case back.
(24) Section 6(3) of the 1967 Act.
(25) Section 5(2) of the 1967 Act.
(26) Sir Cecil Clothier used this example in conversation(interview 16th.June, 1988); that if I.C.I. approached him with a complaint, which gave grounds for judicial review, it is unlikely that he would have agreed to instigate an investigation on the grounds that they could well afford court action; however, if it were an ordinary member of the public, particularly a pensioner, there was more call for use of his discretion. Sir Cecil rejected complaints relating to the IR's agreement concerning the Fleet Street Casual Workers, who had evaded their obligations, the case eventually found its way to court as R.v.Inland Revenue Commissioners, ex p National Federation of Self-Employed [1982] AC 617
(27) Schedule 2 of the 1967 Act.
(28) Section 5(1)(a) of the 1967 Act.
(29) For further illumination see: Stacey.
(30) It is at this point that one can fully understand J.D.B. Mitchell's message. It would be wrong to try to achieve such a major aim through such an office. If the

principles of an administrative appeal court are what are desired, then such a desire should be translated into such, and not foisted on the PCA. Nor should the PCA/ombudsman be held up as the answer to all administrative law's problems.
(31) Debate on the Second Reading of the Parliamentary Commissioner Bill: 734 HC Deb. (5th. series) col. 51
(32) See eg. Beatson & Matthews, p.854/856 (2nd.Ed.).
(33) Second Report of the Select Committee on the PCA 1967/68 HC 350 paragraph 14. In the same report the Committee also suggested the concept of the 'Bad Rule' - ie a rule, which despite being applied correctly, caused injustice (which of course would be a prerequisite) & hardship. At paragraph 17 PCA should 'enquire whether given the effect of the rule in the case under his investigation, the Department had taken any action to review the rule. If found defective and revised, what action had been taken to remedy the hardship sustained by the complainant? If not revised, whether there had been due consideration by the Department of the grounds for maintaining the rule.'
(34) Second Report of the Select Committee on the PCA 1970/71 HC 513 paragraph 20
(35) See Geoffrey Marshall, 'Maladministration' [1973] PL 32; and more recently, 'Constitutional Conventions' Chapter V
(36) (1984) 61 L.S. Gaz. 3108
(37) See later chapter on the PCA's work
(38) The test suggested was that of "unreasonable, unjust or oppressive action" see 'Our Fettered Ombudsman' paragraph 67
The Select Committee felt that this would not cover any situation that was not now protected. See their 4th. Report for Session 1977/78 HC 615/444
(39) This procedure was adopted in 1978. It obviously circumvents the need to return the complaint to the complainant, and thus risk losing the complaint if the complainant loses heart as a result of the cumbersome procedure. The M.P. filter was envisaged as a temporary measure by the Whyatt Committee. It became a necessity to the Bill's continuing passage through Parliament. It has subsequently been criticised by JUSTICE in Our Fettered Ombudsman in 1977, and the JUSTICE ALL SOULS Report of 1988. Needless to say, the Select Committee on the PCA has not favoured its abolition - see the Select Committee on the Parliamentary Commissioner 4th. Report Session 1977/78 HC 615/444; and see also Session 1987/88 HC 706. See also Lionel Cohen, 'The Parliamentary Commissioner and the MP Filter.' [1972] PL 204
(40) Each decision of the Screening Unit is passed to Sir Anthony Barrowclough, via the Deputy Commissioner, his stated practice is to review each decision. He stated that he was unlikely to question a decision to investigate, but he might query whether a complaint was in fact within his

jurisdiction. Presumably, he will also consider whether to exercise discretionary powers here, if the possiblity has not already been indicated to him.
(41) In 1988, the director of the Inland Revenue unit was a qualified accountant, and had been recruited from outside the civil service. His successor had also been recruited from outwith the civil service ranks - although it is too soon to say whether a precedent has developed, it rather suggests that the experiment was succesful, in itself.
(42) The civil servants seconded to the Screening Unit are usually Executive Officers. All the civil servants are seconded on a three-year basis. The general consensus is that it is considered to be a popular career-move on their part, and from their superiors' point of view, they gain valuable insight into the principles of good administration. The selection process begins with notices circulated throughout the civil service, inviting applications. In 1988, the PCA had a staff of 86. There is no statutory rule which requires the office to be staffed in this way. However, successive encumbants of the office have found this to be the most satisfactory way, as their [the seconded civil servants] experience of the system is invaluable, particularly in relation to saving time (ie no need to learn the system before starting), as well as individual knowledge. Sir Cecil Clothier recounted to the author, a case where an officer, seconded fom M.A.F.F., rendered valuable assistance with his knowledge of sheep-dipping, acquired in his previous post.
(43) Negotiations are always conducted between the Permanent Secretary and the PCA - the office has resisted any suggestion of communications at a lower level.
(44) Section 8(3) of the 1967 Act.
(45) Section 8(4) of the 1967 Act reserves these papers. However, it has been suggested that the legislation does not preclude the PCA obtaining them, if (probably) the Prime Minister sanctioned this move, he merely cannot compel their production.(See Geoffrey Marshall, 'Constitutional Conventions' p.89). It is likely that if such permission were granted they would be 'for his eyes only', and a ban would be placed on revealing their contents to others.
(46) Section 8(2) & Section 9 (obstruction and contempt powers) of the 1967 Act gives these powers to the PCA. This view was expressed by Sir Anthony Barrowclough, in his Clydesdale Bank Public Law Seminar - 'The Ombudsman - My Office' delivered at the University of Glasgow, 22nd. February, 1988
(47) This has been continually emphasised, and is one of the reasons why those directly involved in the office are happy to see it continue at its present size - providing the personal 'Rolls-Royce' treatment to each case.
(48) There appears to be no statutory basis for this practice, Section 10(2) of the 1967 Act, imposes a duty to

send a copy of his report to the department, but there is no requirement for them to see the draft; Section 7(1) merely requires the department to have an opportunity to comment on the allegations.
(49) This reaction was recorded by Paul Burgess: 'Whose side is the ombudsman on?' [1983] 63 New Society 55. This stance has been dismissed as fallaciously based, in that the PCA is designed to be impartial, and not designed to be the citizen's champion at court. However, whilst that point is true, and the PCA is probably best described as an adjunct service to M.P.s, the procedure adopted on investigation can appear to be heavily-weighted towards the Administration, and their justification of their conduct. See also the views of the Select Committee on the matter of the Commissioner interviewing clients, and allowing them to cross-examine the departmental officials - 1st. Report for Session 1970/71 HC 240 paragraphs 3 & 4.
(50) This was explained during the interview with Sir Anthony Barrowclough, on 16th. June, 1988.
(51) See later for this procedure.
(52) This reasoning was adopted from the practice of the Comptroller and Auditor General, who obtains an agreed statement of facts before his report goes before the Public Accounts Committee.
(53) This approach will be by telephone, or if necessary, a visit by the investigating officer.
(54) See the complaints of Mrs. Ward and Mrs. Wilson in the Burgess article [op. cit.].
(55) Sir Anthony Barrowclough in conversation with the author. Such complaints/inquiries are directed to the Select Committee. The committee members will seek information from the PCA's office on the investigation, and seek to assure themselves that such action was not unreasonable, but they will refrain from interfering directly.
(56) Section 10(3) of the 1967 Act.
(57) Mrs. de St. Croix estimated that the Select Committee had a 90% success rate with the cases referred to it. The cases sent to the Committee would be around 6/7% of the PCA's total caseload, she estimated.
(58) The average time for a complaint to be processed was 10 months 18 days in 1987 and 12 months 2 days in 1988 - see Annual Report for 1988 Session 1988/89 HC 301
(59) The input of the Select Committee into the development of the PCA has been recorded elsewhere. The Select Committee on the PCA remained unchanged during the 1979 revamp of the select committee system. It is not one of the more glamourous committees, it rarely grabs the headlines; it does not involve foreign travel; and much of its work is perceived as boring, as many long documents have to be read. The result is that the membership is made up of younger Conservatives, in training for the more prestigous committees, and Labour members with a background in local health authorities (re Health Service

Commissioner side of the office). The Select Committee is chaired by Sir Anthony Buck who has been on the Committee since its inception. For more on the work of the Select Committee on the PCA, see Roy Gregory 1982 P.L. 49 - 'The Select Committee on the Parliamentary Commissioner 1967-1980'

CHAPTER THREE

(1) Case No.C.561/81 (Selected Cases 1982 Vol 4) p.84 paragraph 11; Case No.1B/882/77 (Investigations Aug/Oct 1978); Case No.C.404/G (5th. Report, 1972/73); Case No.C.447/G (5th. Report, 1972/73); Case No.C.235/G (3rd. Report, 1972/73); Case No.C.100/T (1st. Report, 1973/74); Case No.C.287/T (1st. Report, 1974); Case No.C.458/J (6th. Report, 1974/75); Case No.C.158/K (3rd. Report, 1976/77); Case No.5/184/78 (Investigations Aug/Oct 1978); Case No.C.978/80 (Selected Cases 1982 Vol 3); Case No.C.978/80 (selected Cases 1982 Vol 3); CASe No.1A/109/78 (Investigations Nov1978/Jan 1979); Case No.C.495/K (Investigations Aug/Oct 1977); Case No.1B/882/77 (Investigations Aug/Oct 1978); Case No.C.552/82 (Selected Cases 1984 Vol 1); Case No.C.461/85 (Selected Cases 1987 Vol 1); Case No.1A/418/78 (Investigations Feb/April 1979); Case No.5/538/78 (investigations Aug/Oct 1978); Case No.3B/745/77 (Investigations Aug/Oct 1978); Case No.5/394/77 (Investigations Feb/April 1978); Case no.5/228/78 (Investigations Feb/April 1979); Case No.C.167/B (4th. Report, 1971/72); Case No.C.467/G (5th. Report, 1972/73); Case No.C.146/G (4th. Report, 1972/73); Case No.C.40/T (1st. Report, 1974); Case no.3A/753/77 (5th. Report, 1977/78); Case No.1B/17/77 (5th. Report, 1977/78); Case No.C.74/79 (4th. Report, 1979/80); Case No.C.425/79 (8th. Report, 1979/80); Case No.C.391/80 (3rd. Report, 1980/81); Case No.C.29/81 (1st. Report, 1982/83); Case No.C.452/81 (2nd. Report, 1982/83); Case No.C.403/82 (1st. Report, 1983/84).

(2) Case No.C.287/T (1st. Report, 1974)

(3) Case No.C.5191/K (4th. Report, 1976/77); Case No.C.694/K (4th. Report, 1976/77); Case No.C.234/79 (Selected Cases 1980 vol 2); Case No.C.249/G ( 3rd. Report, 1972/73) p.115 paragraph 28 "There has obviously been unpleasantness at many of the interviews he has had with officials. from the evidence on both sides, I have formed the opinion that this stems from the fact that the Department do not treat the complainant differently from other claimants and do not accord him the exceptional degree of trust that he thinks would be reasonable. I consider that the Department's usual procedures for dealing with claims from people of an unsettled mode of life are reasonable and I see no reason for them to vary these, exceptionally, in the complainant's case." See also Case No.C.595/81 (2nd. Report, 1982/83)

(4) Case No.C.127/G (3rd. Report, 1972/73); and see Sir Idwal Pugh's approach in Case No.C.620/v (6th. Report, 1975/76) p.90 paragraph 15 "I cannot say what has happened between the complainant and officials at the office during the visits he has made since 1971. I can only say that I am not persuaded by such evidence as is available that he has been victimised or ill-treated by the Department's

officials. I recognise that he would prefer not to have to attend that office at all but he is in the category of claimants for whom it was all set up. I accept that it is within the Department's discretion to create such an office and that there may be advantage to claimants that justifies their doing so. I have found no shortcomings by the Department in dealing with the complainant's claims for benefit or evidence of discrimination against him in determining his claims."
(5) Case No.C.313/T (2nd. Report, 1974); Case No.C.177/V (3rd. Report, 1975/76); Case No.C.411/V (5th. Report, 1975/76); Case No.C.162/K (5th. Report, 1975/76); Case No.C.568/V (6th. Report, 1975/76); Case No.C.495/K (Investigations Aug/Oct 1977);Case No.C.396/81 (Selected Cases 1983 Vol 3); Case No.C.432/85 (Selected Cases 1986 Vol 4); Case No.C.204/G (4th. Report, 1972/73); Case No.C.875/V (3rd. Report, 1976/770; Case No.750/81 (Selected Cases 1984 Vol 2).
(6) Case No.C.549/J (6th. Report, 1974/75) p.80/81 paragraphs 17 & 19 -
"There were inexcusable shortcomings in the handling by the local office of the various claims made by the complainant between November 1973 and September 1974. He was put to unnecessary inconvenience over appointments. The fares reimbursement was wrongly calculated, and his request to appeal about this was mishandled. He was initially, denied payment of the increase in invalidity benefit for his wife, contrary to departmental instructions, and the arrears due for this were miscalculated and put right only belatedly. Arrears of supplementary benefit due for 1973 were also paid very belatedly. He was not informed of a decision for a later period to withhold supplementary benefit. And a request for an urgent visit in connection with another application for supplementary benefit was not met for three weeks. Failures of this kind are more inexcusable when the individuals affected are, or may be, in financial difficulty and deeply distressed.

From the series of errors that occurred I am not surprised that the complainant got the impression that there was a campaign of harassment against him. But I accept the Department's assurance that this was not so, and that the failures wer due to administrative weakness and human error."
See also Case No.C.517/84 (4th. Report, 1985/86) - PCA not altogether happy.
(7) Case No.C.546/T (3rd. Report, 1974/75) p.23 paragraph 37; see also Case No.5/843/77 (7th. Report, 1977/78) - anonymous letter, badly handled; Case No.2/443/77 (7th. Report, 1977/78); and see Case No.C.175/87 (1st. Report, 1988/89) p.8 paragraph 21; Sir Anthony Barrowclough commented: "I can understand Customs' feeling that Mr.X **ought** to have been liable to pay the duty which, if the packages had been declared explicitly as containing

lighters, the Post Office would undoubtedly have demanded as a condition of delivery to him the goods he had purchased. But it does not follow that the legislation in fact made him liable to pay that duty.... The issue is, of course, one of law which it would be for the courts and not for me to determine."
(8) Case No.C.561/81 (Selected Cases 1982 Vol 4) p.84 paragraph 11; Sir Cecil Clothier stated his approach as follows:

"I know from other cases which I have investigated that Inland Revenue inquiries into suspected non-disclosure of income can be extremely disquieting to the individuals concerned. But it is a necessary function of that Department to pursue inquiries where they have reason to believe that tax may have been lost because of the submission of inaccurate business accounts and returns. In this connection it is important that an Inspector's actions should not be judged with the benefit of hindsight;.... What I have to consider, therefore, is whether the actions of the Inspector at any particular stage in an inquiry are reasonable given the information held at that time."

(9) Case No.1B/882/77 (Investigations Aug/Oct 1978); Case No.C.396/81 (Selected Cases 1983 vol 3)
(10) Case No.C.396/81 (1st. Report, 1983/84)
(11) Case No.C.203/J (3rd. Report, 1974/75)
(12) Case No.C.123/J (3rd. Report, 1974/75)
(13) Case No.C.57/T (1st. Report,1973/74)
(14) Case No.C.911/80 (Selected Cases 1982 Vol 2)
(15) Case No.5/184/78 (Investigations Aug/Oct 1978) - allegations that the local DHSS office was prejudiced against the complainant's family; Case No.C.524/82 (Selected Cases 1984 Vol 1) - a vindictive and contemptous attitude towards the complainant's son, as a result of his previous conduct consisting of leaping over a counter and smashing the glass with a chair! Case No.C.561/81 (Selected Cases 1982 Vol 4) - younger tax inspectors were prejudiced in certain types of inquiry; Case No.C.276/82 (Selected Cases 1983 Vol 4) - discrimination against a prisoner as a result of alleged report of subversive activities; Case No.1A/1051/78 (Investigations May/July 1979) - vindictiveness of a tax Collector as a result of the complainant's disagreement with a colleague of his; Case No.C.127/84 (Selected Cases 1985 Vol 3) - allegation of harassment as complainant worked for a voluntary welfare organisation. Case No.C.309/T (3rd. Report, 1974) - allegations of collusion between Governors of a School and the School inspector, to remove teacher from office - neither Department nor HMI were responsible for the dispute; Case No.C.282/K (4th. Report, 1976) - allegations of prejudice as a result of complainant being epileptic; Case No.C.284/K (3rd. Report, 1976/77) - allegations of general bias against students.
(16) Case No.C.156/J (3rd. Report, 1974/75) - ethnic

dicrimination claim, in fact benefit cut because of complainant's refusal to have a medical examination; Case No.C.620/V (6th. Report, 1975/76) - no evidence.
(17) Case No.2/1021/78 (Investigations May/July 1979) p.179 paragraph 22, and see also Annual Report 1979
(18) Eg Case No.5/394/77 (5th. Report, 1977/78); Case No.3A/436/77 (5th. Report, 1977/78).
(19) Case No.2/476/77 (Investigations Aug/Oct 1978) pparagraphs 19,24,32 & 33 in particular. See also Case No.C.400/K (1st. Report, 1976/77) - discrimination against one group of prisoners by Prison officers - but not within the PCA's jurisdiction, though he agreed that there had been discrimination there was no evidence to suggest that the Northern Ireland Office had supported this; Case No.2/392/77 (5th. Report, 1977/78).
(20) One of the earliest PCA reports, in the time of Sir Edmund Compton, dealt with inconsistency of approach in dealing with claims for compensation for internment in the concentration camp at Sachsenhausen (3rd. Report, 1967/68). This would appear to a consideration for departments in formulating their administrative practices - eg. Case No.1B/685/77 (7th. Report, 1977/78); Case No.1B/706/77 (7th. REport, 1977/78); Case No.C.55/81 (3rd. Report, 1981/82).
(21) Case No. C.241/B (4th. Report, 1971/72); Case No.C.490/G (5th. Report, 1972/73); Case No.C.457/G (5th. Report, 1972/73); Case No.C.565/G (5th. Report,1972/73); Case No.C.22/T (5th. Report, 1972/73); Case No.C.402/G (3rd. Report, 1972/73);Case No.C.216/T (1st. Report, 1974); Case No.C.350/J (4th. Report, 1974/75); Case No.C.134/V (1st. Report, 1975/76) - similarity, but not enough to warrant comparison; Case No.C.512/V (5th. Report, 1975/76); Case No.C.914/V (6th. Report, 1975/76) p.228 paragraph 16 - "It would not be appropriate for me to discuss any other person's tax liablity in this report, but the evidence I have been given in the course of investigating the complainant's own case indicates that the circumstances were not in fact identical.";Case No.C.226/K (3rd. Report, 1976/77); Case No.C.280/k (4th. Report, 1976/77); Case No.C.525/80 (Selected Cases 1981 Vol 4); Case No.C.852/80 (Selected Cases 1981 Vol 4); Case No.C.451/79 (Selected Cases 1980 Vol 3); Case No.3B/759/78 (Investigations Feb/April 1979); Case No.C.759/K (Investigations Aug/Oct 1977); Case No.C.475/81 (Selected Cases 1983 vol 3)] - Also Case No.C.405/B (4th. Report, 1971/72); Case No.C.394/G (1st. Report, 1972/73) - accepted reasons for different treatment - but asked to be treated the same on the grounds of 'natural justice'; Case No.C.451/79 (8th. Report, 1979/80); Case No.C.83/80 (1st. Report, 1980/81); Case No.C.697/80 (3rd. Report, 1980/81); Case No.C.484/82 (4th. Report, 1982/83); Case No.C.91/86 (1st. Report, 1987/88); Case No.C.512/86 (1st. Report, 1987/88); Case No.C.893/80 (6th. Report, 1980/81).
(22) Case No.C.568/T (3rd. Report, 1974)

(23) Case No.C.919/78 (4th. Report, 1979/80).
(24) Case No.C.469/J (3rd. Report, 1974/75) p.81 paragraph 8; Case No.C.223/V (5th. Report, 1975/76) - policy on qualified teacher status varied according to requirements; Case No.C.54/V (1st. Report, 1976/77) - Department had to give effect to the new government policies in the Housing Act 1974 which created a duty to act in the way that they did - the Department were not responsible for the inconsistent situation.
(25) Case No. C.454/79 (6th. Report, 1979/80); Case No.C.741/85 (3rd. Report, 1987/88); Case No.3B/759/78 (1st. Report, 1979/80).
(26) Case No.C.120/j (3rd. Report, 1974)p.167/168 paragraphs 12 & 13; see also Case No.C.470/T (2nd. Report, 1974) p.39 paragraph 14 - "On the other hand I thought that I ought to invite the Department to consider further whether there had been sufficient justification for the distinction that had been between the case of the man from whom a late appeal was admitted and to whom a refund was made, and that of the complainant. They have reviewed the circumstances in both cases. They make the point that the other person raised the question of his tax liablity much earlier - in fact, over three years earlier - than the complainant after the relevant assessments had been made. Even so, it was 2½ years after his assessment that the other man first raised his objection, compared with the normal 30-day limit for appeals. And it is now the Department's view that they went too far in accepting an appeal from him (though there is no question now of going back on that). In the circumstances they remain of the view that the action they took in the other case would not justify their making a refund to the complainant." Case No.C.384/J 94th. Report, 1974/75) - the other case was a mistake, but ex-gratia payment was awarded; Case No.C443/B (4th. Report, 1971/72) - student grant paid in error, department tried to reclaim it, student successfully claimed that another student had been in same position but had not been asked to repay. Case No.C.20/G (4th. Report, 1972/73) - grant given to the Company's three establishments in England, but one not given in Scotland - grants given in error - remedy - did not seek repayments of the grants made; Case No.C.460/G (5th. Report, 1972/73)p.199 paragraph 18.
(27) Case No.C.487/T (3rd. Report, 1974) p.12/13 & 14 paragraphs 4,9 & 10
(28) Case No.C.253/86 (1st. Report, 1987/88).
(29) Case No.C.1216/78 (4th. Report, 1979/80) p.51 paragraph 12.
(30) Case No.C.117/77 (Investigations Aug/Oct 1977); & Case No.C.5/85 (Selected Cases 1986 Vol 2). In the former case all comparative cases had been dealt with according to guidelines issued; in the latter, one case had not.
(31) Case No.C.5/85 (Selected cases 1986 Vol 2) p.96 paragraph 32

(32) Case No.C.219/77 (1st. Report, 1977/78) p.275 paragraph 16.
(33) Case No.C.275/82 (Selected Cases 1984 vol 2) p.69 paragraph 35. See also Case No.C.420/G (1st. Report, 1973/74) p.169/170 paragraph 31 - Although in my opinion, the Department's attitude to their own starting date rule was inconsistent and tended to operate to the company's disadvantage, I do not consider that it can be shown to have directly influenced their decision that there were no special circumstances justifying the waiver of the time-bar." Case No.C.870/V (1st. Report, 1976/77) - where department agreed to reconsider decision as a result of representations made, including the point that had been treated differently from similar cases; Case No.C.462/G (5th. Report, 1972/73) p.32 paragraph 20 - "(I accept that in one other case .... a period of 12 weeks assistance was approved i error and was excessive and inconsistent with other cases and the Department have taken action to prevent a recurrence)."
(34) Case No.C.198/77 (1st. Report, 1977/78); Case No.C.378/77 (1st. Report, 1977/78); Case No.C.5/77 (1st. Report, 1977/78); Case No.C.213/77 (1st. Report, 1977/78); Case No.1B/326/77 (5th. Report, 1977/78); Case No.1A/649/77 (5th. Report, 1977/78); Cae No.1A/802/77 (5th. Report, 1977/78); Case No.1A/725/77 (5th. Report, 1977/78); Case No.3B/338/77 (5th. Report, 1977/78); Case No.C.3B/390/77 (5th. Report, 1977/78); Case No.3B/474/77 (5th. Report, 1977/78); Case No.3B/541/77 (5th. Report, 1977/78); Case No.5/821/77 (7th. Report, 1977/78); Case No.3A/897/77 (7th. Report, 1977/78); Case No.5/59/78 (1st. Report, 1978/79); Case No.1A/18/78 (4th. Report, 1978/79); Case No.3B/758/78 (4th. Report, 1978/79); Case No.Case No.2/770/78 (1st. Report, 1979/80); Case No.C.327/79 (4th. Report, 1979/80); Case No.C.516/80 (5th. Report, 1980/81); Case No.C.483/80 (1st. Report, 1981/82); Case Nos.C.611/80 & W.85/80-81 (3rd. Report, 1981/82); Case No.C.346/81 (3rd. Report, 1981/82); Case No.C.1004/80 (2nd. Report, 1982/83); Case No.C.581/82 (2nd. Report, 1983/84); Case No.C.398/82 (2nd. Report, 1983/84); Case No.C.252/82 (2nd. Report, 1983/84); Case No.C.188/83 (3rd. Report, 1983/84); Case No.C.314/83 (7th. Report, 1983/84); Case No.C.313/84 (1st. Report, 1984/850; Case No.C.466/84 (3rd. Report, 1984/85); Case No.C.292/83 (3rd. Report, 1984/85); Case No.C.157/84 (4th. Report, 1984/850; Case No.C.665/84 (5th. Report, 1984/85); Case No.C.773/84 (1st. Report, 1985/86); Case No.C.170/85 (1st. Report, 1985/86); Case No.C.459/83 (1st. Report, 1985/86); Case No.C.114/85 (3rd. Report, 1985/86); Case No.C.697/85 (5th. Report, 1985/86); Case No.C.554/85 (1st. Report, 1986/87); Case No.C.238/85 (3rd. Report, 1986/87); Case No.C.606/86 (2nd. Report, 1987/88); Case No.C.137/87 (3rd. Report, 1987/88); Case No.C.228/86 (3rd. Report, 1987/88); Case No.C.249/86 (5th. Report, 1987/88); Case No.C.264/82 (6th.Report, 1983/84).
Failure to give proper advice: Case No.C.254/79 (6th.

Report, 1979/80); Case No.C.716/81 (2nd. Report, 1982/83); Case No.C.823/81 (2nd. Report, 1982/83); Case NO.C.363/87 (1st. Report, 1983/84); Case No.C.367/82 (2nd. Report, 1983/84); Case No.C.457/82 (3rd. Report, 1983/84); Case No.C.202/83 (6th. Report, 1983/84); Case No.C.506/84 (5th. Report, 1984/85); Case No.C.277/86 (3rd. Report, 1986/87); Case No.C.589/86 (3rd. Report, 1987/88); Case No.C.201/86 (5th. Report, 1987/880; Case No.C.114/87 (5th. Report, 1987/88); Case No.C.605/87 (6th. Report, 1987/88); Case No.C.456/K (1st. Report, 1977/78); Case No.3A/1048/78 (2nd. Report, 1979/80).

(35) Case No.C.574/81 (5th. Report, 1981/82); Case No.1B/13/78 (1st. Report, 1978/79).

(36) Case No.C442/G (5th.Report, 1972/73); Case No.C.370/G (5th.Report, 1972/73); Case No.C.114/G (3rd.Report, 1972/73); Case No.C.122/T (1st.Report, 1973/74); Case No.C.118/T (1st. Report, 1973/74); Case No.C.486/T (3rd.Report, 1974); Case No.C.422/T (1st. Report, 1974) - PCA accepted that the enquiry was made, but could not establish what he was told; Case No.C.139/V (6th.Report, 1974/75); Case No.C.8/J (1st.Report, 1974/75); Case No.C.248/v (3rd.Report, 1975/76); Case No.C.225/V (5th.Report,1975/76); Case No.C.406/V (5th.Report, 1975/76); Case No.C.693/V (5th.Report, 1975/76); Case No.C.696/V (6th.Report, 1975/76); Case NO.C.709/V (6th.Report, 1975/76); Case No.C.249/V (1st. Report, 1976/77); Case No.C.493/K (4th.Report, 1976/77); Case No.C643/K (4th.Report, 1976/77); Case No.C.412/G (4th.Report, 1972/73); Case No.C.206/77 (1st. Report, 1977/78); Case No.C.355/77 (1st. Report, 1977/78); Case No.C.236/77 (1st. Report, 1977/78); Case No.2/451/77 (5th. Report, 1977/78); Case No.5/340/77 (5th. Report, 1977/78); Case No.5/857/77 (7th. Report, 1977/78); Case No.4/9/78 (7th. Report, 1977/78); Case No.3A/398/78 (1st. Report, 1978/79); Case No.5/501/78 (4th. Report, 1978/79); Case No.3A/288/78 (4th. Report, 1978/79); Case No.3A/873/78 (4th. Report, 1978/79); Case No.1A/465/78 (4th. Report, 1978/79); Case No.1B/474/78 (4th. Report, 1978/79); Case No.3A/644/78 (4th. Report, 1978/79); Case No.4/653/78 (1st. Report, 1979/80); Case No.5/733/78 (2nd. Report, 1979/80); Case No.3A/1034/78 (2nd. Report, 1979/80); Case No.5/1187/78 (2nd. Report, 1979/80); Case No.3A/81/79 (2nd. Report, 1979/80); Case No.1B/443/78 (2nd. Report, 1979/80); Case No.33/231/79 (2nd. Report, 1979/80); Case No.c.75/79 (4th. Report, 1979/80); Case No.C.39/79 (6th. Report, 1979/80); Case No.C.428/79 (6th. Report, 1979/80); Case No.c726/78 (8th. Report, 1979/80); Case No.C.347/79 (9th. Report, 1979/80); Case No.C.853/80 (3rd. Report, 1981/82); Case No.C.292/81 (5th. Report, 1981/82); Case No.C.222/82 (4th. Report, 1982/83); Case No.C.178/82 (1st. Report, 1983/84); Case No.C.406/82 (2nd. Report, 1983/84); Case No.C.84/82 (2nd. Report, 1983/84); Case No.C.329/82 (3rd. Report, 1983/84); Case No.C.598/82 (6th. Report, 1983/84); Case No.C.218/82 (7th. Report, 1983/84); Case

No.C.294/83 (7th. Report, 1983/84); Case No.C.624/82 (4th. Report, 1984/85); Case No.C.419/84 (5th. Report, 1984/85); Case No.C.688/84 (1st. Report, 1985/86); Case No.C.127/85 (4th. Report, 1985/86); Case No.C.220/85 (5th. Report, 1985/86); Case No.C.352/86 (3rd. Report, 1986/87); Case No.C.255/86 (1st. Report, 1987/88); Case No.C.566/86 (3rd. Report, 1987/88); Case No.C.383/87 (6th. Report, 1987/88); Case No.C.318/87 (1st. Report, 1988/89); Case No.C.631/83 (8th. Report, 1983/84).

(37) Case No.C.78/K (1st. Report, 1976/77) p.29 paragraph 13 - "Both the complainant and her friend agreed that what the friend said at the interview with my officer had been discussed between them. I therefore cannot regard this corroboration as conclusive." also the evidence was brought forward very late after the event, as well as the PCA's consideration that it would be very serious maladministration, if it were established. See also Case No.C318/T (2nd.Report, 1974) - where it was established that the witness could not speak to the facts; Case No.5/410/77 (5th. Report, 1977/78) p.97 paragraph 17 "I cannot uphold the solcitors' contention that the Department fabricated evidence to support their argument that there had been no misdirection on which ex gratia payment of arrears could be justified. That being so, I do not uphold their complaint."

(38) Case No.C.95/K (4th.Report, 1976/77) p.22 paragraph 17

(39) Case No.C.78/K (1st.report 1976/77) as regards new evidence; Case No.C.709/V (6th.Report, 1975/76); Case No.C.461/81 (3rd. Report, 1981/82).

(40) Case No.C.453/T (3rd.Report, 1974); Case No.C.262/V (3rd.Report, 1975/76); Case No.C.406/V (5th.Report, 1975/76); Case No.C.722/V (6th.Report, 1975/76); Case No.C.302/K (3rd.Report, 1976/77); Case No.5/600/78 (1st. Report, 1978/79); Case No.5/864/77 (1st. Report, 1978/79); Case No.1A/437/78 (4th. Report, 1978/79); Case No.C.461/81 (3rd. Report, 1981/82).

(41) Case No.C.166/J (3rd.Report, 1974/75) p.55 paragraph 6. See also Case No.C.228/G (1st.Report, 1972/73); Case No.C.62/J (1st.Report, 1974/75); Case No.C.195/K (3rd.Report, 1976/77); Case No.C.44/V (6th.Report, 1975/76); Case No.C.95/K (4th.Report, 1976/77); Case no.15/191/78 (7th. Report, 1977/78); Case No.C.595/80 (5th. Report, 1980/81); Case No.C.113/82 (1st. Report, 1982/83); Case No.C.834/81 (4th. Report, 1982/83); Case No.C.121/85 (1st. Report, 1985/86).

(42) Case No.C.368/J (4th.Report, 1974/75) - persistent wrong advice, led to a loss of pension, given extra-statutory equivalent. Case No.C.443/J (4th.Report, 1974/75); Case No.C.898/V (3rd.Report, 1976/77) - compensation paid; Case no.C.606/86 (2nd. Report, 1987/88); Case No.3A/57/79 (2nd. Report, 1979/80); Case No.C.356/82 (1st. Report, 1983/84); Case No.C.398/82 (2nd. Report, 1983/84).

(43) Eg. Case No.C.478/G (5th.Report, 1972/73) - agreed advice was misleading but legal advice allowed the Department to stand by it; Case No.C.243/T (3rd.Report,1974); Case No.C.81/T (1st.Report, 1973/74); Case No.C.131/T (1st.Report, 1974); Case No.C.262/V (3rd.Report, 1975/76); Case No.C.183/K (1st.Report, 1976/77) - established but no compensation; Case No.C.53/77 (5th.Report, 1976/77) - leaflet 'designed' for men, did not set out the different position for married women. See also Case No.C.515/G (4th.Report, 1972/73) - certificate issued.
(44) Case No.3A/57/79 (2nd. Report, 1979/80).
(45) Case No.C.131/ (1st.Report, 1974); Case No.C.207/K (3rd.Report, 1976/77); Case No.C.68/77 (5th.Report, 1976/77); Case No.C.191/77 (5th.Report,1976/77); Case No.C.409/K (1st. Report, 1977/78); Case No.C.26/77 (1st. Report, 1977/78); Case No.C.119/87 (1st. Report, 1988/89).
(46) Case No.C.377/V (1st.Report, 1975/760; Case No.C.307/K (1st.Report, 1976/77); Case No.C.268/K (1st.Report, 1976/77); cf. Case No.C.564/G (5th.Report, 1972/73) - Department not satisfied enough of their own error to award compensation - PCA agreed; Case No.3A/440/77 (5th. Report, 1977/78); Case No.3A/149/78 (7th. Report, 1977/78); Case No.5/76/79 (2nd. Report, 1979/80); Case No.3A/485/78 (1st. Report, 1979/80); Case No.C.541/81 (4th. Report, 1982/83)
(47) Case No.C.726/K (4th.Report, 1976/77) p.290/291 paragraphs 14 & 15. See also Case No.C.736/V (1st.Report, 1976/77); Case No.3B/977/78 (1st. Report, 1979/80) - exchange controls; Case No.2/709/78 (4th. Report, 1978/79) - government policy change; 4th. Report, 1980/81 - government policy change; Case No.1A/164/78 (7th. Report, 1977/78) - change in legislation; Case No.3A/199/78 (1st. Report, 1978/79) - law prevents advice being honoured; Case No.C.362/83 (7th. Report, 1983/84) - law prevented the present arrangement continuing; Case No.C.188/83 (3rd. Report, 1983/84).
(48) Case No.C.304/77 (1st. Report, 1977/78); Case No.3A/231/78 (1st. Report, 1978/79); Case No.C.164/85 (4th. Report, 1985/86); Case No.C.601/85 (1st. Report, 1986/87) p.84/85 paragraph 34: "I have seen that when Officer A took Mr A's telephone call.... he observed 'I got the impression he wants everything on the cheap - he doesn't want to pay solicitors' or court costs to have his maintenance payments settled in a manner that he can get maximum tax relief.' I think that fairly sums up Mr.A's approach to the matter..... Indeed , as I see it, it was Mr.A's reluctance to incur the cost of obtaining professional advice which was responsible initially at least, for the delay in putting the payments to his children on a tax-effective footing."
(49) Case No.C.279/79 (6th. Report, 1979/80).
(50) Case No.3A/343/78 (4th. Report, 1978/79) - pension; Case No.5/590/78 (4th. Report, 1978/79) - benefit; Case

No.C.251/87 (1st. Report, 1988/89) - benefit; Case No.C.827/80 (6th. Report, 1980/81).
(51) Case No.C.141/86 (1st. Report, 1987/88); cf. Case No.1A/1090/78 (2nd. Report, 1979/80) - where it was held not to be maladministration that the department failed to tell him that there was an alternative way to achieve his aims.
(52) Case No.C.598/79 (6th. Report, 1979/80) p.47 paragraph 4.
(53) Case No.C.829/81 (2nd. Report, 1982/83) p.76 paragraph 12; Case No.C.281/83 (1st. Report, 1984/85); Case No.C.156/84 (3rd. Report, 1985/86); Case No.3A/994/78 (2nd. Report, 1979/80).
(54) Case No.C.180/81 (1st. Report, 1981/82); Case No.C.567/84 (5th. Report, 1984/85); Case No.5/529/77 (5th. Report, 1977/78); Case No.3A/64/79 (2nd. Report, 1979/80); Case No.C.274/85 (4th. Report, 1985/86).
(55) Case No.5/1050/78 (2nd. Report, 1979/80); Case No.C.712/86 (2nd. Report, 1987/88).
(56) Case No.C.310/81 (1st. Report, 1982/83); Case No.C.610/79 (8th. Report, 1979/80).
(57) Case No.2/761/77 (7th. Report, 1977/78); Case No.2/803/77 (7th. Report, 1977/78).
(58) Case No.C.480/77 (1st. Report, 1977/78);Case No.3A/788/78 (4th. Report, 1978/79).
(59) Case No.C.342/81 (1st. Report, 1982/83); Case No.1B/533/77 (7th. Report, 1977/78).
(60) Case No.5/415/78 (1st. Report, 1979/80); Case No.C.544/80 (6th. Report, 1980/81).
(61) Case No.C.408/G (5th.Report, 1972/730; Case No.C.416/T (2nd.Report, 1974); Case No.C.910/v (6th.Report, 1975/76); Case No.53/77 (5th.Report, 1976/77).
(62) Case No.C.741/85 (3rd. Report, 1987/88) p.78 paragraph 24.
(63) Case No.1B/810/77 (1st. Report, 1977/78) p.188 paragraph 11.
(64) At one time a married woman could elect to pay half contributions, but as a result she lost the right to her own pension, and had to rely on her husband's contributions towards a joint pension.
(65) Case No.C.79/T (1st.Report, 1973/74); Case No.C.702/J (6th.Report, 1974/75); Case No.C.221/J (3rd.Report, 1974/750; Case No.C.438/V (3rd.Report, 1975/76); Case No.C.378/V (5th.Report, 1975/76); Case No.C.650/K (5th.Report, 1976/77); see also Case No.C.650/K (5th.Report, 1976/77) p.39 paragraph 9;

"But it is the practice of the Secretary of State to exercise discretion in this way only if there is evidence of official misdirection or failure to give the appropriate advice at a time when it would actually have been possible for the half-test to have been satisfied. The justification for this, which i have accepted in principle in other cases I have investigated, is that

otherwise the woman concerned would be in a better position than if, at the relevant time, she had been told correctly that she could not satisfy the half-test."
(66) Case No.C.438/V (3rd.Report, 1975/76); Case No.C.378/V (5th.Report,1975/76); Case No.C.650/K (5th.Report, 1976/77); Case No.C.454/77 (1st. Report, 1977/78) - no repayment as she had already obtained more than their value in sickness and unemployment benefit; Case No.C.667/85 (4th. Report, 1985/86)
(67) Case No.C.353/G (3rd.Report, 1972/73); Case No.C.678/V (3rd.Report, 1975/76); Case No.C.563/J (1st.Report, 1975/76); Case No.C.745/79 (9th. Report, 1979/80); Case No.C.412/83 (7th. Report, 1983/84); Case No.C.223/85 (5th. Report, 1984/85).
(68) Case No.C.479/J (6th.Report, 1974/750 p.76 paragraph 8; see also Case No.C.335/80 (3rd. Report, 1980/81); Case No.C.547/84 (3rd. Report, 1984/85).
(69) Case No.C.209/G (4th.Report, 1972/73) p.7 paragraphs 16 & 17. See also Case No.C.302/K (3rd.Report, 1976/77) - where reliance was a factor allowing misunderstanding to be established, but did not allow compensation for the loss of a job; Case No.C.728/V (6th.Report, 1975/76) - where prospective student continued with the course, even after learning that no supplementary benefit was payable to him; cf. Case No.C.566/K (4th.Report,1976/77) - where student was misled as to travelling expenses, and even although this was not the main reason for starting the course, the PCa obtained a review of her case.
(70) Case No.C.728/85 (1st. Report, 1986/87).
(71) Case No.C.494/83 (1st. Report, 1984/85) p.40 paragraphs 22 + 23.
(72) Case No.C.186/V (6th.Report, 1974/75) - she told the PCA that she would have done without the t.v., if she had been correctly advised; see also Case No.2/426/78 (7th. Report, 1977/78).
(73) Case No.c.368/V (1st.Report, 1975/76). See also in this area; Case No.C.143/G (4th.Report, 1971/72) - sickness benefit paid whilst abroad; Case No.C.508/B (4th.Report, 1971/72) - widow told that tax not due - half of the arrears remitted; Case No.C.515/G (4th.Report, 1972/73); Case No.C.502/T (2nd.Report, 1974); Case No.C.479/J (6th.Report, 1974/75); Case No.C.413/V (3rd.Report, 1975/76) - after the PCa presented new evidence as to hardship; Case No.C.377/V (1st.Report,1975/76); Case No.C.484/B (4th.Report, 1971/72); Case No.C.897/V (3rd.Report, 1976/77); Case No.C.779/V (4th.Report, 1976/77); see also Case No.C.566/K (4th.Report,1976/77) - where the PCA obtained a review of the case by the Department. Also Case No.C.169/B (4th.Report, 1971/72) - where IR would not agree to the remedy, & Sir Alan Marre recorded that there had been an injustice which had not been remedied.
(74) Case No.C.441/G (4th.Report, 1972/73).
(75) Case No.C.544/81 (5th. Report, 1981/82) p.72

paragraph 16.
(76) Case No.C.897/V (3rd.Report, 1976/77) p.66 paragraph 11
(77) Case No.C.87/K (1st. Report, 1976/77) p.79 paragraph 11
(78) Case No.C.283/G (4th. Report, 1972/73); Case No.C.118/G (3rd. Report, 1972/73); Case No.C.100/T (1st. Report, 1973/74) - tone of remarks made at a hearing before General Commissioners made complainant suspect collusion between Chairman & Inspector - PCa not upheld. Case No.C.200/T (3rd. Report, 1974) - claimed bias towards College in report - no evidence of this; Case No.C.126/T (2nd. Report, 1974); Case No.C.245/J (4th. Report, 1974/75) - p.47 paragraph 23 "As to the visit itself, I can understand that, since the complainant was disappointed with the outcome of the appeal, she should wonder whether the fact that the inspector had arrived and departed with the Board's representative had had any connection with the rejection. But there is no doubt in my mind that it was a coincidence that the inspector and the Board's representative should have met as they arrived for the visit, that they did not go off together to view the other site which had been mentioned, and that they did not at any time take the opportunity to discuss the case alone. Nor have I found any irregularities or shortcomings in the inspector's conduct of the site visit and his subsequent consideration of the case that would entitle me to question the merits of his decision."; Case No.C.558/T (1st. Report, 1974/75); Case No.C.843/V (1st. Report, 1976/77); CASe No.C.160/T (1st. Report, 1974); Case No.C.208/K (1st. Report, 1976/77) - claimed that his neighbour as a local officer had influenced local council against him - PCA held not a matter for the inspector; Case No.C.202/84 (Selected Cases 1985 Vol 1); Case No.C.4/787/78 (Investigations Feb/April 1979); Case No.C.4/749/77 (Investigations Feb/April 1978); Case No.C.4/453/78 (Investigations Nov 1978/Jan 1979)
(79) Case No.C.494/79 (Selected Cases 1980 Vol3) p.8 paragraph 16
(80) Case No.C.494/79 (Selected Cases 1980 Vol 3) p.6/7 paragraphs 6/7 - also appeared to be more worried about the lunchtime arrangements see p.7 paragraph 8 - but recorded there was to be a review of these practices; see also Case No.C.91/86 (1st. Report, 1987/88) - not present when other side put forward their case, but held that it did not affect the outcome.
(81) Case No.C.236/K (3rd.Report, 1976/77) p.45 paragraph 18
(82) Case No.C.508/J (6th. Report, 1974/75) p.45 paragraphs 10 & 12
(83) Case No.C.283/G (4th. report, 1972/73); Case No.C.245/J (4th. Report,1974/75); Case No.C.404/J (4th. Report, 1974/75); Case No.C.168/V (1st. Report,1975/76); Case No.C.783/V (5th. Report, 1975/76); Case No.C.140/K

(1st.Report,1976/77); Case No.C.267/K (3rd. Report, 1976/77) - though this attracted criticism of department's procedure. See also Case No.5/79/78 (Investigations Aug/Oct 1978); Case No.C731/K (Investigations Aug/Oct 1977); Case No.4/749/77 (5th. Report, 1977/78); Case No.4/787/78 (1st. Report, 1979/80) - complaint was made after the decision.
(84) Case No.C.9/T (5th. Report, 1972/73) p.63 paragraph 24. See also Case No.C.256/V (3rd. Report, 1975/76); Case No.C.894/80 (Selected Cases 1981 Vol 4); Case No.3B/638/78 (Investigations May/July 1979);
Also whether enough time given to his case - Case No.C.448/J (6th. Report, 1974/75) - allowing one party to much time to prepare case, to the detriment of objectors; Case No.C.350/K (4th.Report, 1976/770 - claimed not enough time to put case, not upheld; Case No.15/421/78 (Investigations Nov1978/Jan 1979) - complaint that the Department was allowed longer to prepare case for tribunal than he was - could have applied for an extension was the PCA's verdict.
(85) Case No.C.214/t (1st. Report, 1974) p.169/170 paragraph 13 - due to other errors the process had already been invalidated, so the PCA did not need to take further action. See also Case No.C.448/j (6th. Report, 1974/75) - where one party allowed too much time to prepare their case to the detriment of objectors, see p.31 paragraph 13; Case No.C.355/T/39/J (3rd. Report, 1974) - possible partiality in not consulting local authorities, or local amenitiy groups; cf. Case No.C.252/B (4th. 1971/72) - where the draft letter to the other potential purchaser was shown to the successful purchaser - not really criticised by the PCA; Case No.C.439/G (5th. Report, 1972/73) - where DTi refusal to refer company to Monopolies Commission, did not show bias towards that company.
(86) Case No.4/406/77 (5th. Report, 1977/78) p.41/42 paragraphs 12 & 13
(87) 7th. Report, 1979/80 p.18 paragraph 44
(88) Case No.C.86/G (1st. Report, 1972/73).
(89) Case No.C.328/87 (3rd. Report, 1988/89)
(90) 3rd. Report, 1967/68 p.18 paragraph 66; and see also Case No.1A/835/77 (7th. Report, 1977/78).
(91) Case No.C.64/77 (1st. Report, 1977/78) p.48 paragraph 25
(92) Case No.C.238/B (4th. Report, 1971/72); Case No.C.327/B (4th. Report, 1971/72); Case No.C.524/B (4th. Report, 1971/72); Case No.C.168/B (4th. Report, 1971/72); Case No.C.436/G (5th. Report, 1972/73); Case No.C.462/G (5th. Report, 1972/73); Case No.C.439/G (5th.Report, 1972/73); Case No.C.415/G ( 4th. Report, 1972/73); Case No.C.344/G (4th. Report, 1972/73); Case No.C.431/G (4th. Report, 1972/73); Case No.C.483/G (4th.Report,1972/73); Case No.C.424/G (4th.Report, 1972/73); Case Nos.C.116/195/G (3rd. Report, 1972/73);Case No.C.118/G

(3rd. Report, 1972/73); Case No.C.138/G (3rd. Report, 1972/73); Case No.C.366/G (3rd. Report, 1972/73); Case No.C.284/G (1st. Report, 1972/73); Case No.C.246/G (1st. Report, 1972/73); Case No.C.8/T (1st. Report, 1973/74); Case No.C.81/T (1st.Report, 1973/74); Case No.C.268/T (1st. Report, 1973/74); Case No.C.46/T (1st.Report, 1973/74); Case No.C.31/T (1st.Report, 1973/74); Case No.C.399/T (3rd. Report, 1974); Case No.C.444/T (2nd.Report, 1974); Case No.C.389/T (2nd.Report, 1974); Case no.C.292/T (2nd.Report, 19740; Case No.C.387/T (2nd. Report, 1974); Case No.C.543/T (2nd. Report, 1974); Case No.C.146/T (1st.Report, 1974); Case No.C.383/T (1st. Report, 1974); Case No.C.306/T (1st. Report, 1974); Case No.C.336/T (1st.report, 1974); Case Nos.C.71/125/175/T (1st.Report, 1974); Case No.C.449/J (6th. Report, 1974/75); Case No.C.514/J (6th. Report, 1974/75); Case No.W.304/74-75/C17/V (6th.Report, 1974/75); Case No.C.278/J (6th. Report, 1974/75); Case No.C.216/J (4th.Report, 1974/75); Case No.C.266/J (4th.report, 1974/75); Case No.C.350/J (4th.Report, 1974/75); Case No.C18/V/360/J (3rd. Report, 1974/75); Case No.C.94/J (3rd.Report, 1974/75); Case No.C.406/T (3rd. Report, 1974/75); Case No.C8/J (1st. Report, 1974/75); Case No.C.199/J (1st.Report, 1974/750; Case No.C.509/T (1st.Report, 1974/75); Case No.C.12/J (1st.Report, 1974/75); Case No.C.27/J (1st.Report, 1974/75); Case No.C.283/V (3rd.Report, 1975/76); Case No.C.847/V.W 18/75-76 (3rd.Report, 1975/76); Case No.C.357/J (1st.Report,1975/76); Case No.C.683/J (1st.Report,1975/76); Case No.C.276/v (1st. Report, 1975/76); Case No.C.268/V (1st. Report, 1975/760; Case No.C.134/V (1st.Report, 1975/76); Case No.C.434/V (6th. report, 1975/76); Case No.C.96/B (1st.Report, 1972/73); Case No.C.595/v (5th.Report, 1975/76); Case No.C.689/V (5th.Report, 1975/76); Case No.C.606/V (5th.Report, 1975/76); Case No.C.825/V (5th.Report, 1975/76); C.819/V (6th.Report, 1975/76); Case No.C.757/V (6th.Report, 1975/76); Case No.C.925/V (6th.Report, 1975/76); Case No.C.13/K (1st. Report, 1976/77); Case No.C.87/K (1st. Report, 1976/77); Case No.C.372/K (1st.Report, 1976/77); Case No.C.59/K (1st.Report, 1976/77); Case No.C.71/K (1st.Report, 1976/77); Case NO.C.513/K (3rd.Report, 1976/77); Case No.C.666/K (4th.Report, 1976/77); Case No.C.742/K (4th.Report, 1976/77); Case No.C.534/K (4th.Report, 1976/77); Case No. 672/K (5th.Report, 1976/77); Case No.C.805/K (5th.Report, 1976/77); [Case No.C.626/K (5th.Report, 1976/77)]; Case No.C.593/V (6th.Report, 1975/76); Case No.C.743/K (1st. Report, 1977/78); Case No.C.791/K (1st. Report, 1977/78); Case No.C.6/77 (1st. Report, 1977/78); Case No.C.89/77 (1st. Report, 1977/78); Case No.C.119/77 (1st. Report, 1977/78); Case No.C.46/K (1st. Report, 1977/78); Case No.C.120/77 (1st. Report, 1977/78); Case No.15/459/77 (5th. Report, 1977/78); Case No.4/845/77 (5th. Report, 1977/78); Case

No.2/216/77 (5th. Report, 1977/78); Case No.1B/614/77 (5th. Report, 1977/78);Case No.4/522/77 (5th. Report, 1977/78); Case No.3B/53/77 (5th. Report, 1977/78); CAse No.3B/398/77 (7th. Report, 1977/78); Case No.3A/633/77 (7th. Report, 1977/78); Case No.4/78/78 (7th. Report, 1977/78); Case No.C.4/189/78 (1st. Report, 1978/79); Case No.15/579/77 (1st. Report, 1978/79); Case No.2/752/77 (1st. Report, 1978/79); Case No.2/752/78 (1st. Report, 1978/79); Case No.1B/215/78 (1st. Report, 1978/79); Case No.2/789/77 (1st. Report, 1978/79); Case No.5/376/78 (4th. Report, 1978/79); Case No.15/226/78 (4th. Report, 1978/79); Case No.3B/553/78 (4th. Report, 1978/79); Case No.4/123/78 (1st. Report, 1979/80); Case No.C.4/158/78 (1st. Report, 1979/80); Case No.4/535/78 (1st. Report, 1979/80); Case No.4/793/K (2nd. Report, 1979/80); Case No.4/374/78 (2nd. Report, 1979/80); Case No.15/781/78 (2nd. Report, 1979/80); Case No.15/934/78 (2nd. Report, 1979/80); Case No.15/1023/78 (2nd. Report, 1979/80); Case No.4/171/78 (2nd. Report, 1979/80); Case No.C.394/78 (4th. Report, 1979/80); Case No.C.589/79 (9th. Report, 1979/80); Case No.C.68/80 (9th. Report, 1979/80); Case No.C.83/80 (1st. Report, 1980/81); Case Nos.C.13/80 & C.377/80 (3rd. Report, 1980/81); Case No.C.192/80 (3rd. Report, 1980/81); Case Nos.C.373/80 & C.511/80 (5th. Report, 1980/81); Case No.C.1031/80 (1st. Report, 1981/82); Case No.C.576J80 (1st. Report, 1981/82); Case No.C.1022/80 (3rd. Report, 1981/82); Case No.C.670/81 (5th. Report, 1981/82); Case No.C.799/81 (5th. Report, 1981/82); Case No.C.29/81 (1st. Report, 1982/83); Case No.C.87/82 (1st. Report, 1982/83); Case No.C.790/81 (1st. Report, 1982/83); Case No.C.595/81 (2nd. Report, 1982/83); Case No.C.379/81 (4th. Report, 1982/83); Case No.C.801/81 (4th. Report, 1982/83); Case No.C.890/81 (4th. Report, 1982/83); Case No.C.247/83 (8th. Report, 1983/84); Case No.C.414/83 (8th. Report, 1983/84); Case No.C.561/85 (5th. Report, 1985/86); Case No.C.93/85 (3rd. Report, 1986/87); Case No.C.431/87 (6th. Report, 1987/88); Case No.C.155/87 (6th. Report, 1987/88); Case No.2/515/77 (5th. Report, 1977/78); Case No.15/643/78 (4th. Report, 1978/79); Case No.C.496/87 (5th. Report, 1987/88); Case No.15/7/78 (5th. Report, 1977/78); Case No.C.462/G (5th. Report, 1972/73) p.32 paragraph 20

(93) Case No.776/82 (8th. Report, 1983/84).

(94) Case No.C.341/81 (3rd. Report, 1981/82).

(95) Case No.3/834/78 (4th. Report, 1978/79);Case No.C.133/81 (1st. Report, 1981/82); Case No.3B/31/78 (1st. Report, 1978/79).

(96) Case No.C.452/G (5th. Report, 1972/73); Case No.C.114/J (3rd. report, 1974/75); Case No.C.155/J (1st. Report, 1974/75); Case No. C.73/V (3rd. Report, 1975/76); Case No.C.526/K (3rd. Report, 1976/77); Case No.C.587/K (3rd. Report, 1976/77); Case No.C.300/K (3rd. Report, 1976/77); Case No.C.632/K (4th. Report, 1976/77); Case No.C.633/K (5th. Report, 1976/77); Case No.C.626/K (5th. Report, 1976/77); Case No.1A/683/77 (5th. Report,

1977/78); Case No.2/812/77 (7th. Report, 1977/78); Case No.4/19/78 (1st. Report, 1978/79).
(97) Case No.C.155/J (1st. Report, 1974/75) p.158 paragraph 6. Consider also, the war pension cases, and the guidelines for reopening tribunals - Case No.C.593/V (6th. Report, 1975/76) p.87 paragraph 8 " I know from previous complaints of this type that in deciding whether to join in an application to the President of the PATs, the Department are guided by what was said in the High Court case of 'Grand v. Minister of Pensions' in 1952. In that case the Judge said 'It is undesirable to send a case back for hearing by the Tribunal because new evidence has become available, unless that evidence is cogent and so strong that it is unlikely that the Tribunal would be able to disregard it. To do so would merely raise hopes in the mind of the appellant which would have no chance of being fulfilled.'" Also Case No.C417/J (4th. Report, 1974/75).
(98) Case No.C.258/K (1st. Report, 1977/78); Case No.5/813/77 (5th. Report, 1977/78); Case No.6/756/77 (7th. Report, 1977/78); Case No.15/620/78 (2nd. Report, 1979/80); Case No.C.108/79 (9th. Report, 1979/80); CAse No.C.193/80 (1st. Report, 1980/81); Case No.C.45/82 (2nd. Report, 1982/83); Case No.C.484/82 (4th. Report, 1982/83); Case No.C.627/85 (4th. Report, 1985/86); Case No.C.306/86 (1st. Report, 1986/87); Case No.C.93/86 (1st. Report, 1986/87); Case No.C.111/86 (3rd. Report, 1987/88); Case No.C.413/87 (6th. Report, 1987/88).
(99) Case No.C.546/G (5th. Report, 1972/73); Case No.C.47/T (5th. Report, 1972/73); Case No.C.304/G (1st. Report, 1972/73); Case No.C.527/T (3rd. Report, 1974); Case No.C.90/J (3rd. Report, 1974); Case No.C.405/J (4th. Report, 1974/75); Case No.C.717/V (5th. Report, 1975/76); Case No.15/607/77 (7th. Report, 1977/78); Case No.1B/475/77 (7th. Report, 1977/78); Case No.C.579/79 (8th. Report, 1979/80); Case No.C.230/80 (3rd. Report, 1980/81); Case No.C.381/80 (3rd. Report, 1980/81); Case No.C.624/80 (3rd. Report, 1980/81); Case No.C.610/80 (5th. Report, 1980/81); Case No.C.440/81 (1st. Report, 1982/83); Case No.C.634/82 (3rd. Report, 1983/84); Case No.C.432/85 (5th. Report, 1985/86); Case No.C.543/86 (3rd. Report, 1987/88); Case No.C.690/80 (6th. Report, 1980/81); Case No.C.233/77 (1st. Report, 1977/78); Case No.5/820/77 (1st. REport, 1978/79); Case No.C.301/86 (3rd. Report, 1987/88); Case No.C.815/K (1st. Report, 1977/78).
(100) Case No.C.90/J (3rd. Report, 1974) p.165 paragraph 14
(101) Case No.C.494/V (6th. Report, 1975/76) p.13 paragraph 18
(102) Case No.5/657/77 (7th. Report, 1977/78); Case No.2/443/77 (7th. Report, 1977/78); Case No.C.43/79 (4th. Report, 1979/80); Case No.C.644/80 (3rd. Report, 1981/82); Case No.C.316/83 (7th. Report, 1983/84); Case No.1A/472/78 (1st. Report, 1978/79); Case No.C.314/79 (6th. Report, 1979/80); Case No.5/608/78 (4th. Report, 1978/79).

(103) Case No.C.292/83 (3rd. Report, 1984/85) p.32/33 paragraph 21.
(104) Case No.C.66/V (6th. Report, 1974/75); see also CAse No.C.409/J (6th. Report, 1974/75); Case No.C.269/J (3rd. Report, 1974/75);Case No.C.473/J (6th. Report,1974/75); Case No.C.560/84 (4th. Report, 1984/85); Case No.C.175/84 (5th. Report, 1984/85); Case No.C.77/84 (3rd. Report, 1985/86); Case No.C.336/86 (2nd. Report, 1987/88).
(105) Case No.C.466/T (1st. Report, 1974/75); Case No.C.647/J (6th. Report, 1974/75); Case No.C.68/J (6th. Report, 1974/75).
(106) Case No.C.264/G (4th. Report, 1972/73); Case No. C.23/J (3rd. Report, 1974) - the PCA was not convinced that the Department did not confuse the sites and give the decision on the wrong one (as was the case in the decision letter, although the department claimed that the mistake was only in the decision letter); Case No.C.817/V (6th. Report, 1975/76); Case No.C.486/81 (1st. Report, 1982/83); Case No.15/39/77 (7th. Report, 1977/78); Case No.C.353/81 (6th. Report, 1980/81); Case No.C.225/81 (2nd. Report, 1982/83); Case No.6/727/77 (4th. Report, 1978/79); Case No.6/263/78 (4th. Report, 1978/79); Case No.C.133/79 (6th. Report, 1979/80).
(107) Case No.C.435/G (4th. Report, 1972/73); Case No.C.506/G (4th. Report, 1972/73); Case No.C.548/G (4th. Report, 1972/73); Case No.C.473/T (3rd. Report, 1974/75); Case No.C.196/K (1st. Report, 1976/77); other cases not necessarily war pension cases include, Case No.C.126/77 (1st. Report, 1977/78); Case No.15/454/78 (1st. Report, 1979/80); Case No.C.156/80 (6th. Report, 1980/81); Case No.C.246/83 (6th. Report, 1983/84); Case No.C.138/87 (6th. Report, 1987/88); Case No.C.251/87 (1st. Report, 1988/89); Case No.C.764/81 (2nd. Report, 1983/84) p.37 paragraph 29 "...I consider that it would have been wiser to have provided the Department and the tribunal with a full copy of the polimyelitis vaccination record card so that any question about the significance of the markings on the front and reverse of the card could have been given full consideration by the tribunal."; Case No.C.752/82 (3rd. Report, 1983/84); see also footnote (13)
(108) Case No.C.228/T (2nd. Report, 1974)
(109) Case No.C.468/G (5th. Report, 1972/73) p.22 paragraph 22
(110) Case No.C.499/K (5th. Report, 1976/77) p.18 paragraphs 12 & 13 & 14; see also in this area - Case No.C.121/B (4th. Report, 1971/72); Case No.C.257/G (4th. Report, 1972/73); Case No.C.500/G (1st. Report, 1974); Case No.C.484/J (4th. Report, 1974/75); Case No.C.154/V (5th. Report, 1975/76). [Also see Case No.C.870/V (1st.Report, 1976/77) - all decisions taken in ignorance of relevant facts.]
(111) Case No.R.532/83 (8th. Report, 1983/84).
(112) Case No.C.876/81 (1st. Report, 1983/84).
(113) Case No.C.481/B (1st.Report, 1972/73) p.27 & p.28

paragraphs 16 & 19; see also Case No.C.43/G (4th.Report, 1972/73) - where the complainant had had an argument with one examiner on a previous occasion, he requested not to have that examiner again, but necessity required it - PCA felt that the examiner would be able to compensate; Case No.C.568/84 (Selected Cases 1986 Vol 1) - a surveyor of a vessel had issued a bad report previously - PCA made no criticism, appreciation of the working practices and the possiblities of delay; Case No.C.190/J/51/V (3rd.Report, 1974/75) - necessity demanded that former DHSS officer employee 'signed on' at his former place of work, but the manager had offered to handle his case personally to save embarassment; cf. Case No.413/J (1st.Report, 1975/76) - where it was alleged that the DHSS office favoured former employees - not upheld.

(114) Case No.C.496/B (1st.Report, 1972/73) p.37 paragraph 26. See also Case No.C.173/G (3rd.Report, 1972/73) - where it was alleged that the inspector relied on a biased view put forward by the Council, the Council was biased as a result of the complainant's previous conduct as a local councillor. PCa did not uphold this complaint.

(115) Case No.C.111/J (6th.Report, 1974/750 p.66 paragraph 16

(116) Fourth Report, 1983/84 - 'Investigation of a complaint about delays in reviewing a conviction for murder.'

(117) Case No.C.483/J (6th.Report, 1974/750 p.39-41 paragraphs 12 & 17,18, & 19. See also Case No.C.265/83 (Selected Cases 1984 Vol 4) p.24 paragraph 18 - "In his complaint to the Member, the complainant questioned the propriety of allowing an officer whom he had already accused of victimising him to deal with his claim. I am told that the casepapers were held by this officer to protect the complainant's privacy and to ensure that they were not freely available to members of staff with whom he had previously worked. I am satisfied that in taking this course the officer's motives were perfectly proper, although with hindsight I think that it would have been wiser if he had asked someone else to take over the case."

(118) Case No.C.64/K (6th.Report, 1975/760 p.135 paragraph 6. He also noted that a new right of appeal to specifically constituted Medical Appeal Tribunals had been established.

(119) Case No.C.1022/80 (Selected Cases 1982 Vol 2) p.35/36 paragraph 11

(120) Case No.C.687/81 (1st. Report, 1983/84).

(121) Case No.C.268/T (1st. Report, 1973/74); Case No.C.306/T (1st.Report, 1974) - both cases were considered to concern local government matters.

(122) Case No.C.442/K (4th.Report, 1976/770 p.260 paragraph 10

(123) Case No.C.5/116/78 (Investigations Aug/Oct 1978); see also CAse No.C.518/V (3rd.Report, 1975/76) - a complaint that an independent inspector of an electricity

meter had stated 'that a fault was unlikely to be found' - what the inspector had actually said was 'that it was unlikely that a fault such as the complainant had suggested would be found'.
(124) Case No.C.162/V (3rd.Report, 1975/76) p.189 paragraph 19
(125) Case No.C.519/B (4th.Report, 1971/72)
(126) Case No.C.129/G (4th.Report, 1972/73) - he was informed that this procedure had now been adopted.
(127) Case No.C.597/85 (Selected Cases 1987 Vol 1) p.22 paragraph 18
- It might be suggested that with such statements Sir Anthony Barrowclough opens himself up to the charge of naivity in asking the Inspector if he was biased - the immortal "Well, he would say that, wouldn't he" springs to mind. There is no reason why he should not give the official a chance to state his view - it is part of his function - but he does seem to place heavier emphasis on this, rather than the objective evidence he could obtain.
(128) Case No.C.20/T (2nd.Report, 1974)p.41 & p.43 paragraphs 31,32,&40. See also Case No.C.46/T (1st.report, 1973/74) - where complainants had alleged that the Home Office had been unduly influenced by their connection with the Fire Service, into granting a cpo for a new fire station site - not upheld; Case No.C.316/T (1st. Report, 1974/75) - suggestion that change in a report had come about by undue influence by another department - but it was in fact the correction of an error, spotted by the other department.
(129) Case No.C.180/B (4th.Report, 1971/72) p.63 paragraphs 40 & 41
(130) Case No.C.802/84 (Selected Cases 1985 Vol 4) p.167 paragraph 19 - Discrimination may be alright as well, if it is a by-product of the administrative process - see Case No.C410/V (3rd.Report, 1975/76) p.61 paragraph 14 - "There is apparent discrimination in favour of wives where it is a first and recent marriage for both parties. However, I am satisfied that this arises not from any policy of sex discrimination but from a local management decision at Delhi to speed the entry certificate arrangements for a small group of applicants whose cases present little difficulty and can be dealt with without significantly affecting the time others have to wait." - Other cases are totally unfounded eg. Case No.C.9/T (5th.Report, 1972/73) - complainant alleged that Department were biased against the large out-of-town supermarkets he wanted to develop.
(131) Case No.C.220/K (1st.Report, 1976/77) p.226/227 paragraph 37.

(1) Case No.C.289/G (4th. Report,1972/73) - failure to follow the necessary guidelines, urgent action taken; Case No.C.361/T (3rd. Report,1974); Case No.C.419/T (3rd. Report, 1974/75); Case No.C.43/J (1st. Report,1974/75); Case No.C.331/T (3rd. Report,1974/75); Case No.C.9/V (5th.Report, 1975/76); Case No.C.367/K (4th. Report, 1976/77); Case No.C.777/K (5th. Report, 1976/77). Cases where there was no fault on the part of the department - Case No.3B/398/77 (7th. Report, 1977/78); Case No. 5/53/78 (7th. Report, 1977/78); Case No.1A/290/78 (4th. Report,1978/79); Case No.C82/80 (3rd. Report, 1980/81). See also Case No.C.568/84 (1st. Report, 1985/86) p.167 paragraph 39; Case No.3A/446/78 (4th. Report, 1978/79); Case No.C.333/80 (1st. Report, 1980/81); Case No.C.529/82 (6th. Report, 1983/84); Case No.C.395/85 (1st. Report, 1988/89); Case No.C.670/87 (1st. Report, 1988/89); Case No.C.328/88 (3rd. Report, 1988/89); Case No.C.249/81 (1st. Report, 1981/82) - notice was given late.
(2) Case No.C.43/G (4th. Report, 1972/73); Case No.C.644/V (5th. Report, 1975/76) - there is no obligation on department to notify a person that they are due to claim a pension, although there is a departmental practice which does this- department not at serious fault if this breaks down. Case No.C.714/K (1st. Report, 1977/78) - no legal duty to inform third party objectors that a planning appeal had been remitted to the Secretary of State for re-hearing & determination, by the High Court. Case No. 6/239/K (5th. Report, 1977/78) - procedure changed, introduced more consultation. Case No. 3A/640/77 (7th. Report, 1977/78) - did not need to be consulted before being removed from the Job Register. Case No.1B/493/78 (4th. Report, 1978/79); Case No.C304/80 (9th. Report,1979/80); Case No. C.136/81 (5th. Report, 1981/82) p.22 paragraph 15; Case No.C637/82 (6th. Report, 1983/84) p.22 paragraph 48; Case No. 1B/215/78 (1st. Report, 1978/79) - no duty to consult employee before the decision taken as to whether employer or employee liable for underpaid tax.( cf position of employer later ); Case No.3A/640/77 (7th. Report, 1977/78) - no need to inform before removal from employment register; Case No.C.82/80 (3rd. Report, 1980/81) - no need to inform about decision to handcuff at trial, his legal representative could have objected.
(3) Case No.C.324/T (3rd. Report, 1974) - but the PCA felt that they should at least be informed of their decision; on same subject see also Case No.C.278/V/430/J (4th. Report,1974/75) - complainant felt that urns were not buildings, but the PCA felt that was a matter for the courts, complainant alleged that he could not afford to go to court - Marre p70 paragraph 8 " It is, however, not open to me to act as an alternative court of appeal on

such an issue."
(4) Case No.C.72/K (1st. Report, 1976/77)
(5) Case No.C.72/K (1st. Report, 1976/77) p.19 paragraph 16
(6) Case No.C.236/K (3rd. Report, 1976/77) p.41/42 paragraphs 7/8
(7) Case No.C.167/G (3rd. Report,1972/73) - told of decision and reason for it; see also Case No.C.441/T (1st. Report,1974/75). Case No. C.288/K (4th. Report, 1976/77) - did not amount to maladministration, despite the failure to notify of roadworks blocking access to nursery business.
(8) Case No.C.676/78 (9th. Report,1979/80) p.22 paragraph 33
(9) Case No.C.215/K (3rd. Report, 1976/77) p.131 & 132/133 paragraphs 7&15
(10) Case No.C.213/T (1st. Report, 1973/74) - compensation was awarded for loss of amenity - this also has elements of bias. Case No.C.4/36/77 97th. Report, 1977/78) - failure to consult a local authority before a sale of land by the Department; Case No.C.313/81 (4th.Report, 1982/83) - failure to seek consent, ventillation system evidently thrust upon him.
(11) Case No.4/453/78 (4th. Report, 1978/79) p.17/18 paragraph 9;Case No.C.568/84 (1st. Report, 1985/86) - Sir Anthony Barrowclough felt that owners of a vessel should have received further warning after the Department's delay, that their vessel was likely to be confiscated. This was despite the fact that they had had a previous indication of the likely course of action.
(12) Case No.C.410/85 (5th. Report, 1987/88)
(13) Case No.4/36/77 (7th. Report, 1977/78) p.43 paragraph 15; cf Case No.C.113/80 (1st. Report, 1980/81) see p.57 paragraphs 17 & 18 - where promise to inform was not honoured, whilst criticism for this, Sir Cecil Clothier did not feel that it had caused injustice.
(14) Case No.C.140/81 (6th. Report, 1980/81)
(15) Case No.C.319/K (4th. Report, 1976/77)- PCA found the departmental requirements were a minimum of 4 days - still critical in this case.Also, Case No.3B/494/78 (4th. Report, 1978/79) p.244 & 248 paragraphs 10 & 21:

" The complainant claimed that he had received inadequate notice about the examination on 29 April 1977 ... and that he had not been given any information about the car. He told my officers that although he was available all day on 28 April he did not receive a telephone call from the Department until 4.30 and 5.00pm., when an official told him that at 11.00 am the following day he was examing a car following an appeal against the issue of a certificate by his testing station, and that he knew no details of the car. The complainant told my officers that if he had been given the information about the certificate and the car which the local authority passed to the Department prior to their examination... he

could have established from his own records whether the certificate was a 'pass' or a 'fail' and also which of the nominated testers had issued it. he maintained that if he had known that the examination involved an appeal against the issue of a MOT certificate (a'pass') he would have attended, but the Department were too vague and casual in providing information about their vehicle examinations: he felt that an examiner ought to be given prior warning by letter. The Drepartment have said that on 28 April 1977 they made a number of attempts to telephone the complainant's garage, but were unable to get through until late afternoon, and that the complainant was unable to attend the examination because of the short notice and a previously arranged appointment. The Department have no record of their offfical's telephone conversation with the complainant, but they have said that there is no reason why he should not have provided details about the certificate and car which had been provided by the local authority, if the complainant had requested it. The Department have told me that in order to be able to take action against the examiner or tester they must be able to show that when originally tested the vehicle could not have been in a condition to pass the test; an examination must therefore generally be arranged promptly, and certainly before the vehicle has been repaired of has had significant further use. Normally the Department try to carry out an examination within 14 days of the original MOT test or as soon as possible thereafter, and the telephone is used to give the examiner and tester the opportunity to attend if they wish. In a letter to the Member on 4 April 1978 the Secretary of State said that he did not consider it sensible to allow a delay by ensuring that a garage could have a written invitation to attend an examination. And the Department have told me that as little as one day's notice to an authorised examiner is not uncommon....

Since many of these complaints might have been resolved by the complainant's attending the vehicle inspections, it is unfortunate that on both occasions this did not happen, no doubt due to the very short notice. Although it is not now possible to establish exactly what occurred on the first occasion, he was aware in advance of the second inspection, and in his situation, having had one warning letter the4 previous year, it would have been wiser for him to attend in spite of the short notice and the other appointment."

(16) Case No.C.290/K (4th. Report, 1976/77) p.251/252 paragraph 9

(17) Case No.3B/1227/78 (2nd. Report, 1979/80) p.257 paragraph 15

(18) Case Nos.C.255/464/T (2nd. Report,1974); Case No.2/758/77 (5th. Report, 1977/78) - Department failed to honour a gratuitous undertaking to inform the complainant when inquiry would be held - but Sir Idwal Pugh concluded:

" but I do not consider that the Department's failings in these two respects caused the complainant any significant injustice. Along with the other actual and potential objectors, she had all the opportunities which the law required to be given for knowing when and where the joint inquiry into the rights of way order and the coal working authorisation was to be held. Indeed, she was present for part of the time at that joint inquiry. If she was not by then aware what it was all about, the main responsiblity for her unawareness must, in my judgment rest elsewhere than on the Department."
(19) Case No.C.755/K (5th. Report, 1976/77) p.56 paragraph 9.
See also Land Compensation Act 1973 - cases involving associated publicity arrangements - Case No.C.110/K (3rd. Report, 1976/77); Case No.C.2/K (1st. Report, 1976/77); Case No.5/687/78 (4th. Report, 1978/79); Case No. 4/1125/78 (2nd. Report, 1979/80); Case Nos.6/502/77, 6/617/77, 6/64/78 (1st. Report, 1978/79); Case No.4/1125/78 (2nd. Report, 1979/80);
cf. Sixth Report, 1977/78 - separate report to Parliament - Land Compensation Act 1973 - lack of publicity and notice of closing date, only one notice printed, at holiday time and the notice was not as eye-catching as others - injustice not remedied; Case No.6/165/77 (5th. Report, 1977/78); Case No.6/701/77 (5th. Report, 1977/78).
See also Case No.6/694/77 (7th. Report,1977/78) - where change in taxation practice of University lecturers' fees - announcement in Gazette was adequate, as far as the PCA was concerned, even though it omitted the right of appeal; Case No.5/448/78 (7th. Report, 1977/78); Case No.5/687/78 (4th. Report, 1978/79); Case No.15/781/78 (2nd. Report, 1979/80) - OK considering resource constraints; Case No.C.256/86 (3rd. Report, 1988/89).
Cases where publicity/information not adequate: 6th. Report, 1976/77; Case No.C.29/77 (1st. Report, 1977/78); 3rd. Report, 1978/79; Case No.3A/411/78 (4th. Report, 1978/79); Case No.5/376/78 (4th. Report, 1978/79); Case No.3B/86/78 (2nd. Report, 1979/80); Case No.C.654/83 (1st. Report, 1984/85); Case No.C.801/81 (4th. Report, 1982/83);[Select Committee on PCA 1st. Report for 1978/79].
(20) Case No.C.429/T (3rd. Report,1974) - see also Case No.C.169/T (1st. Report,1974) - where information was available to the complainant as to his right of appeal.
(21) Case No. C.441/T (1st. Report, 1974/75) p.40 paragraphs 9,12 & 13
(22) Case No.C.134/79 (6th. Report, 1979/80) p.15 paragraph 18; see also Case No.C.584/83 (1st. Report, 1984/85) - where plans incorrectly showed development further away than it would actually be, no public inquiry held as a result - compensation granted.
(23) Eg Case No.C.361/79 (9th. Report, 1979/80) - adequate notice before change in court fees.

(24) Case No.C.572/G (1st. report,1973/74) - direct party p.50 paragraph 17: " on the first point, the Department have explained that it used to be their practice (and still was when the appeals were lodged in 1971) to offer dates to parties for agreement before an inquiry was aaranged. But, following a review of procedure to cope with the increasing number of appeals and growing delays in the holding of inquiries, that practice (which was atime-consuming one) was abandoned and the parties are now simply informed of the intended date for an inquiry." Cf. Case No.C.652/J (1st. Report, 1975/76) - where promoters consulted as to timing.
(25) Case No.C.652/J (1st. report,1975/76) p.47 paragraph 22
(26) Case No.C.380/T (3rd. report,1974) - not less than 21 days notice - Town and Country Planning (Development Plans) Direction 1965 - this was satisfied; Case No.C.477/G (1st. Report,1973/74), and Case No.C.414/G (4th. Report,1972/73) - where errors admitted, PCA obtained further compensation.
(27) Case No.C.189/K (3rd. Report, 1976/77); cf Sir Cecil Clothier accepted that it was not the function of the Inland Revenue to advise on procedure before the General Commissioners, but added that IR could have told the complainant to consult the Clerk to the Commissioners - Case No.1B/865/78 (1st. Report, 1979/80)
(28) See footnote (3) Section I, Case No.C.324/T (3rd. report,1974); Case No.C.278/V/430/J (4th.Report,1974/75). See also Case No.C.458/B (1st. Report, 1972/73) - siting of P.O. Sorting Office-P.O. at the time was a government department - did not need planning permission from the local planning authority - but sought clearance under Circular 100 - not the practice of the LPA at the time to do so, see p.24 parargraph 13. See also, Case No.C.321/T/360/T (3rd. Report,1974/75) p.179 paragraph 51: " As regards the ore terminal, I recognise that the Secretary of State was under no statutory obligation to provide an opportunity for public representations about the application for planning permission for that development within that area which had already been zoned for industrial development following the public inquiries in 1969/70 into the proposed amendment of the Development Plan for the area. But, since the application was in respect of a site closer to the village of Fairlie than the one which had been shown on the plan used at the 1969/70 inquiry, I can understand why the Associations - especially the FCA - felt aggrieved that they had not been given an opportunity of further comment so that the full strength of their views in light of the revised siting could have been deployed. I accept, however, that before taking his decision on the application the Secretary of State was well aware of the fact that the revised siting would bring the terminal closer to Fairlie and would thus aggravate the adverse effect of the development on the

village. That being so, I cannot say that I think it likely that the outcome would have been different if an opportunity had in fact been given for further representations to be made."
(29) Case No.C.53/K (1st. Report, 1976/77) p.151 paragraph 9 - the ironic point here, was that the complaint was that the inquiry was unnecessary. ( consider a transfer to 17C - form of hearing)
(30) Case No.C.33/47 (5th. Report, 1987/88).
(31) Case No.C.714/K (1st. Report, 1977/78) p.30 paragraph 9
(32) Case No.C.56/T (5th. Report, 1972/73); Case No.C11/85 (3rd. Report, 1985/86) -(Sir Anthony Barrowclough) both the Town Council and the Parish Council should have been consulted as to which one should have responsiblity for the allotments concerned.
(33) Case No.C.371/J/W.11/74 (3rd. Report, 1974/75) p.187/188 paragraph 21; see also Case No.C.160/V (1st. Report, 1975/76)
(34) Case Nos.C.355/T/39/J (3rd. Report, 1974) p.187 paragraph 47
(35) Case No.C.214/T (1st.Report, 1974) p.168 paragraph 6 - Section 34 of the Coast Protection Act 1949
(36) Case No.C.367/V (3rd. Report, 1975/76) p.173 paragraph 9; Case No.C.140/81 (6th. Report, 1980/81)
(37) Case No.C.290/K (4th. Report, 1976/77) p.251 paragraph 8
(38) Case No.C.516/G (1st. Report, 1973/74) p.23 paragraph 26
(39) Case No.C.116/195/G (3rd. Report,1972/73)
(40) See also Case No.C.403/G (3rd. Report,1972/73); Case No.C.554/T (1st. Report,1974/75) - The PCA fully supported the Departmental contention that there is no duty to consult before the decision to 'call in' a proposal p.181 paragraph 15: " There is no requirement that objectors must be consulted by the Secretary of State or informed by him if he decides to leave the decision to the local planning authority, objections and other relevant evidence fall to be considered when the merits of the proposal itself come to be considered either by the Secretary of State, if he has 'called in ' the case or by the local planning authority if he has not."
See also on the limited grounds of intervention Case No.C.513/J (1st. Report, 1975/76) - decision of the local council, Department can only intervene if it failed in its duty to 'secure the expeditious,convenient and safe movement of traffic'
(41) Case No.C.71/125/175/T (1st. Report,1974) p.166/67 parargraph 104
(42) Case Nos.C.222/308/J (1st.Report, 1974/75)
(43) Case Nos.C.222/308/J (1st. Report, 1974/75) p.184 paragraph 11
(44) Case No. C.238/B (4th. Report, 1971/72) p.26/27 paragraphs 6-10; Case No.C.465/G (1st. Report, 1973/74)-

although the Department offered an oral hearing after reconsidering the case. Case No.C.380/T (3rd. Report,1974) - no statutory requirement for public inquiry - p.52 paragraph 15 " The Council had assumed that there would be an inquiry before the application was decided, because they understood that was the normal course of action and because they received no intimation that one would [not??] be held. The Department for their part were not aware that the Council were under the impression that there was sure to be an inquiry nor did they do anything themselves to lead the Council to expect that an inquiry would be held. I am satisfied that there is no legal requirement that a public inquiry must be held in such circumstances, and that the Department gave due consideration to all relevant facts before they decided that an inquiry was not justified here. From what I have seen in other cases I am also satisfied that that decision was consistent with normal practice, and I see no grounds to question it." Case No.C.444/K (1st. Report, 1976/77) - PCA satisfied that written representations offered a full and adequate opportunity.

(45) Case No.C,528/T (2nd. Report, 1974) p.16 paragraph 11

(46) Case No.C.337/K (4th. Report, 1976/77) p.293 paragraph 11

(47) Case No.C.337/K (4th. Report, 1976/77) p.294 paragraph 13 & 14

(48) Case No.C.886/81 (1st. Report, 1983/84) p.132 paragraph 54

(49) Case No. 4/814/77 (1st. Report,1978/79) - Section 45 of the Town and Country Planning (Sc) Act 1972 for guidelines on this provision

(50) Case No. 4/814/77 (1st. Report, 1978/79)

(51) Case No.2/918/78 (1st. Report, 1979/80) p.99 paragraph 20

(52) Case No.C.264/82 (6th. Report, 1983/84) p.88 paragraph 17 & p.92 paragraph 31. See also Case No.C.705/82 (7th. Report, 1983/84) p.81 paragraph 27 & p.83 paragraph 32: "Finally, consideration of the employer's past performance may play a part only where a doubt about 'reasonable care' or 'good faith' remains after all the facts have been obtained: a good record must not be taken to excuse an inadequate or superficial explanantion. I accept that Regulation 26(3) does not oblige the Collector to take the employee's views into account. But neither, I suggest, does it prevent his doing so if his examination of the empolyer's explanation suggests that course as a useful way of establishing the facts.

I conclude that Mr X has suffered injustice as aconsequence of the Collector's Regulation 26(3) direction and that his decision to make that direction was taken with maladministration."

(53) Case No.C.289/T (1st. Report,1974)

(54) Case No.C.293/B (4th. Report,1971/72); Case

No.C.180/B (4th. Report, 1971/72)
(55) Case No.C.293/B (4th. Report,1971/72) p.70 paragraphs 42 & 43
(56) Case No.3B/844/78 (1st. Report, 1979/80) p.176/177 paragraph 12
(57) Case No. C.620/J (5th. Report, 1975/76) p.156 paragraph 19
(58) Case no. C.579/80 (5th. Report, 1980/81) p.75 paragraph 31
(59) Case No.C.166/G (1st. Report,1972/73) p.69 paragraph 34
(60) Case No.C.316/G (3rd. Report, 1972/73); Sir Idwal Pugh criticised a similar action, but held that it was not enough to affect the decision - Case No.C.595/V (5th. Report, 1975/76) p.89 paragraph 19 - " It is not surprising, I think, that the complainant did not understand the position either then or when the inquiry took place. Nor is it surprising that when he subsequently saw the Technical Memorandum, and noted its date, it reinforced the scepticism he had already expressed about the validity of the RCU's [Road Construction Unit's evidence."
(61) Case No. 6/239/K (5th. Report,1977/78)p.335/336 paragraphs 28/29
(62) Case No.C.89/J (1st. Report, 1974/75) p178 paragraphs 8 & 9; on this area, see also Case No.C.40/T (1st. Report,1974) where the complaint of not knowing the case against him, was not upheld by the PCA.
(63) Case No.C.119/V (6th. Report, 1974/75) p.136 paragraph 9; Case No.C.403/82 (1st. Report, 1983/84) - Sir Cecil Clothier gave support to this view.
(64) Case No. C.162/83 (4th. Report, 1984/85) p.18/19 paragraph 37; Case No.C.162/83 (4th. Report, 1984/85)
(65) Case No.C.455/T (3rd. Report, 1974); Case No.C.211/J (6th. Report, 1974/75); Case No.C.481/79 (6th. Report, 1979/80) - Department of Transport - information as to the health of a driver; Case No.C.481/79 (6th. Report, 1979/89); Case No.5/608/78 (4th. Report, 1978/79) - caution.
(66) Case No.C.396/81 (1st. Report, 1983/84) p.81 paragraph 25 - though he has expressed support of Marre's views.
(67) Case No. 5/151/78 (1st. Re4port,1978/79) p.10 paragraph 18
(68) Case No.C.519/B (4th. REport, 1971/72) - copy of the appeal document sent to the complainant (as was the normal practice) not the Department's fault and the Department supported the application for a rehearing at the tribunal. Case No.C.258/V (5th. REport, 1975/76) see p.68 paragraph 17; Case No.1B/493/78 (4th. Report, 1978/79); Case No.4/893/77 (4th. Report, 1978/79); Case No.C.1B/232/78 (1st. Report, 1979/80).
(69) Case No.C.622/V (1st. Report, 1976/77) p.184 paragraph 5

(70) Case No.C.622/V (1st. Report, 1976/77) p.186 paragraphs 16 & 17
(71) Case No.C.314/T/580/J (3rd. Report, 1974/75) - PCA commented that the complainant's exertions in writing over 100 letters to try and obtain this information seemed rather unnecessary. See also Case No.5/692/77 (1st. Report 1978/79) - complainant mistakenly believed that his duty under the Official Secrets Act prevented him releasing important information regarding his health - PCA confirmed that he was mistaken in his belief - open to him to ask permission to disclose. Case No. 1B/882/77 (1st. report, 1978/79); Case No.C.481/79 (6th. Report, 1979/80)
(72) Case No.15/285/77 (5th. Report, 1977/78) p.13/14 paragraph 8
(73) Case No.C.467/86 (1st. Report, 1987/88) p.5/6 paragraph 16
(74) Case No.C.736/V (1st. Report, 1976/77) p.47 paragraph 10 & p.50 paragraph 16
(75) Case No.C.29/G (1st. Report, 1972/73) p.89 paragraph 9/10 "Rule 22 of the Pensions Appeals Tribunal Rules applies to any case where the medical history of the appellant includes material which in the opinion of the Secretary of state should not, in the appellant's interests, be disclosed to him. The rule provides that in such a case the undesirable material shall be omitted from the copy of the statement of Case sent to the appelllant by the Department but the copies of the Statement which are sent to the tribunal and to the appellant's representative shall contain the material omitted from the appellant's own copy.The Tribunal have to decide whether or not, in the interests of the appellant, the portions that were omitted from the appellant's copy should be disclosed to him. The Tribunal may order all or any of those portions to be communicated to him or they may hear the appeal without all or any of them being so communicated. But the Tribunal must take any omitted portions into consideration before deciding the appeal.

The Department rely on the advice of their doctors in deciding whether Rule 22 should be applied to any appeal proceedings and if so, what part of the medical evidence is likely to be injurious to the appellant. Obviously the omission of injurious material from the appellant's Statement of CAse requires considerable care if the purpose of the Rule is not to some extent defeated by the appellant's becoming aware of its application in his case. The Rule is applied not by altering the wording of medical records but by omitting parts that are considered to constitute harmful material. When it comes to giving in the Statement of Case the medical opinion of the Department's doctors and the reasons for rejecting the claim, these are so worded as to avoid references considered likely to prove injurious to the appellant; and if they include a true diagnosis of a condition which it is thought wrong to communicate to him, the diagnosis will

usually be referred to by a general term."
Also Case No.C.179/K (3rd. Report, 1976/77); Case No. C.5/53/78 (7th. Report, 1977/78); Case No.15/433/78 (2nd. Report, 1979/80) - difficulty and delay in receiving copy of Statement of Case before meeting with the local War Pensions Committtee - Sir Cecil Clothier felt confidentiality should be on lines with PAT procedure - Department agreed to revise.
(76) Case No.C.257/82 (6th. Report, 1983/84) p.36 paragraph 22
(77) See Case No.C.159/G (4th. Report, 1972/730 p.219 paragraph 51.
(78) Case No.C.346/T (3rd. Report, 1974); see also Case No.C.429/J (3rd. Report, 1974/75) - where standard procedure was not to issue medical reports, but in this particular case, it had formed part of the Statement of Case, freely available to the complainant and his representatives - 'Department acted with quite unnecessary rigidity' p.126 paragraph 5
(79) Case No.C.132/T (1st. Report,1973/74) p16 paragraph 21 - MOD - concerned the refusal of certificate of exemption from estate duty - perhaps the difference lies in the fact that it was an internal administrative matter - not before an outside tribunal.
(80) Quoted in Case No.C.363/T (1st. Report, 1974) p.14/15 paragraph 5.
(81) Quoted in Case No.C.569/G (1st. Report, 1973/74); see also Case No.C137/77 (1st. Report, 1977/78)
(82) Section 13 of the Education Act 1944 - "Under Section 13 of the Education Act 1944, proposals to establish, cease to maintain, significantly to enlarge, or significantly to change the character of county or voluntary schools require the approval of the Secretary of State. Section 13 also provides that:
(a) when such proposals are submitted by a local education authority, the authority must publish notices of the proposals in a prescribed manner, and any ten or more local government electors may, within two months of the publication, submit objections to the Secretary of State;
(b) proposals may be approved by the Secretary of State after making such modifications, if any, as appear to her to be desirable." - as quoted in Case No.C.363/T (1st. Report 1974); the procedure was changed in the Education Act 1980 which set up local appeals committees, thus removing the problem from the Department.
(83) Case No.C.569/G (1st. Report, 1973/740 p.28 paragraph 22; see also Case No.C.516/G (1st. Report, 1973/74); Case No.C.363/T (1st. Report, 1974); Case No.3B/53/77 (5th. Report, 1977/78). See also Case No. C.428/K (4th. Report, 1976/77) - not an education case but a plannig case. Further submissions p.42 paragraph 10 "The Department have explained to me that if an inspector considered any supplementary comments had a substantial bearing on the case it is unlikely that he would proceed to a decision

without giving the other party an opportunity to make further comment." Sir Cecil Clothier also supported this view see CAse No.C.90/82 (4th. Report, 1982/83)
(84) Case No.C.363/T (1st. Report, 1974) p.16 paragraph 10 - S.13 of the Education Act 1944; see also Case No. 4/374/77 (5th. Report, 1977/78) - where PCA did not feel that non-circulation of representations received after cut-off date, was a point of criticism. See also Case No.4/123/78 (1st. Report, 1979/80) - part of the history of the case, deals with this issue, and as a result before the PCA's intervention department had 'in interests of natural justice' decided to rehear the case. See also Case No.C.90/82 (4th. Report, 1982/83) for Sir Cecil Clothier's support.
(85) Case No.C.759/81 (2nd. Report, 1982/83) p.103 paragraph 24
(86) Case No.C.668/J (1st. Report, 1975/76) p.64 paragraphs 11 & 12
(87) Case No. C.843/V (1st. Report, 1976/77); Case No.C.483/K (4th. Report, 1976/77) - though Department should follow up these claims by complainant, if at all possible - Case No.3B/398/77 (7th. Report, 1977/78); Case No. 15/643/78 (4th. Report, 1978/79) - Department acceded to request by complainant to add documents to the Statement of Claim. Case No.4/1210/78 (2nd. Report, 1979/80) - PCA considered whether Department should have taken greater care in posting documents (Council's written statement of Case) to complainant: "The complainant considered that the Council's statement should have been sent by recorded delivery as it was an important document in the appeal process. This view has been put to the Department. They have told me that they do nowadays use the recorded delivery service for enforcement appeal **decision** letters, since these are documents of special importance; but that for reasons of economy it is not their normal practice to use the recorded delivery service for the very large amount of **procedural** correspondence in appeal cases, which for enforcement appeals alone averages more than 5,000 each year. They are not aware of any other instances in which their practice of sending out copies of local planning authority statements by ordinary post has appeared to have resulted in their not being received by appellants. I have no grounds for questioning the Department's general policy in this respect and accordingly I do not criticise them for using normal postal arrangements ...."
Also Case No.C.759/81 (2nd. Report, 1982/83); Case No.C.220/85 (5th. Report, 1985/86).
(88) Case Nos.C.255/464/T (2nd.Report, 1974); Case No.4/893/77 (4th. Report, 1978/79), p.237 paragraphs 19 & 20; Case No.C.152/84 (1st. Report, 1984/85) - interesting side issue of inablity to object as he was in prison at the time - not really resolved on this point; Case No.5/800/77 (5th. Report, 1977/78).

(89) Case No. C.851/V (6th. Report, 1975/76) p.66 paragraph 10
(90) Case No.4/893/77 (4th. Report,1978/79); Case No.4/347/78 (1st. Report, 1979/80)
(91) Case No.C.656/V (5th. Report, 1975/76); Case No.3A/4/79 (2nd. Report, 1979/80); Case No.4/742/77 (7th. Report, 1977/78); Case No.1A/853/77 (1st. Report, 1978/79); Case No.3A/4/79 (2nd. Report, 1979/80).
(92) Case No.C.350/K (4th. Report, 1976/77)
(93) Case No.4/893/77 (4th. Report,1978/79) p.235 paragraph 13; see also Case No.4/347/78 (1st. Report, 1979/80)
(94) Case No.4/374/77 (5th. Report,1977/78) p.35 paragraph 9; see also Case No.C.258/80 (6th. Report, 1980/81) - hearing in prison, complainant misinformed that witness had been discharged - only at court - PCA 'disturbed' but did not think his appearance would have helped the cause; Case No.C.600/84 (5th. Report, 1984/85) - Home Office consideration of petition of prisoner (really an example of all relevant facts and their consideration) - indirectly deals with the relevant rules concerning prison disciplinary offence hearings and witnesses p.63 paragraph 8 - "Under the Home Office Standing Orders a prisoner accused of a disciplinary offence is handed written notice of the charge against him and must be given the opportunity to make a written reply to the charge, to name any witnesses he wishes to give evidence and to prepare his defence. At the adjudication the accused prisoner must be given the opportunity to present his case and to question witnesses. Guidance on adjudications issued by the Prison Department to Governors states that if the prisoner asks to call witnesses, whether named in advance or during the adjudication, he should be asked to say what he thinks their evidence will show or prove. unless the Governor is satisfied (after any submission from the accused) that the witnesses will not be able to give useful evidence, they should be called. If the Governor decides not to call a witness requested by the accused, the accused should be told why and given the opportunity to comment. The reason for such a decision should be recorded in the record of adjudication." In the case the charge was dropped by the Governor in the interests of natural justice - he was not happy with the procedure.
(95) Case No.4/347/78 (1st. Report, 1979/80)
(96) Case No.C.147/J (4th. Report, 1974/75) p.37 paragraph 17; see also Case No.C.395/T (3rd. Report,1974) - where oral hearing finished and the Secretary of State making his decision, only a duty to consult parties if new evidence, or new issue of fact raised at this stage (other than government policy) - PCA agreed that availablity of housing land was not a new issue but a policy matter; Case No.6/694/77 (7th. report, 1977/78) - claimed that Department at inquiry produced new evidence apart from that needed for mere rebuttal of objectors' evidence - PCA

did not think so.
(97) Case No.C.631/K (5th. Report, 1976/77) p.19/20 paragraph 8; Case No.C.372/K (1st. Report, 1976/77) p.232 paragraph 8
(98) Case No.4/374/77 (5th. Report, 1977/78) p.36 paragraph 10
(99) Case No.4/347/78 (1st. Report, 1979/80)
(100) Case No.C.660/V (1st.Report, 1976/77) p.194 paragraph 7 + p.197 paragraph 15; Case No.2/848/77 (4th. Report, 1978/79) - letter from solicitor withheld, no permission from the Home Secretary as required by the Prison Rules, the PCA felt this action to be justified; cf. Case No.C.197/86 (2nd. Report, 1987/88) - letter stopped, felt that it was a means of circumventing a previous stoppage of a letter to a TV presenter, the PCA felt this was not enough to justify stopping a letter to the solicitor.
(101) Case No.C.2/J (3rd.Report, 1974)
(102) Select Committee on the Parliamentary Commissioner for Administration 1st. Report, 1974/75 HC 454 and the Chairman of IR's letter to the Committee of 16th. June, 1975; other professional fees are also included in this ruling, see Case No.1B/51/78 (4th. REport, 1978/79); Case No.1A/1013/78 (1st. Report, 1979/80); Case No.C.829/81 (2nd. Report, 1982/83); Case No.C.1026/80 (1st. Report, 1981/82).
(103) Case No.1B/855/77 (1st. Report, 1978/79) p.197 paragraph 12; Case No.C.456/79 (9th. Report, 1979/80); Case No.C.653/80 (1st. Report, 1981/82); Case No.C.87/82 (1st. Report, 1982/83); Case No.C.396/81 (1st. Report, 1983/84); Case No.C.828/81 (2nd. Report, 1983/84); Case No.C.509/82 (7th. Report, 1983/84); Case No.C.627/85 (4th. Report, 1985/86); Case No.C.363/82 (1st. Report, 1983/84). Cases where it was held not to be necessary to engage professional help: Case No.5/394/77 (5th. Report, 1977/78); Case No.C.579/80 (5th. Report, 1980/81)
(104) Case No.C.456/86 (1st. Report, 1988/89) p.32 paragraph 13 - this is presumably because the procedure is such that professional help should not be necessary to formulate the complaint.
(105) Case No.C.497/G (5th. Report, 1972/73) p.54 paragraph 32.
(106) Case No.C.447/V (5th. Report,1975/76)
(107) Case No.C.734/V (6th. Report, 1975/76) see p.57 paragraph 7
(108) Case No.C412/T (3rd. Report, 1974) p191/192 paragraphs 14,15 & 16; see also Case No.C.260/G (3rd. Report,1972/73)
(109) Case No.C.114/77 (1st. Report, 1977/78) p.314 paragraph 6
(110) Case No.C260/G (3rd. Report,1972/73) p.197 paragraph 10 "I note, however, that they made objections to the development proposals, that a Council officer commented on their objections, and that the inspector recorded the

exchange of views and made his recommendations."; Case No.C.284/G (1st. Report, 1972/73); Case No.C.94/J (3rd.Report, 1974/75); Case No.C.199/J (1st. Report,1974/75); Case No.C.606/V (5th. Report, 1975/76); Case No.C.71/K (1st. Report, 1976/77);[See also Case No. c.372/K (1st. Report, 1976/77) - re 'weight' given to written representations over oral representations]; Case No. 15/7/78 (5th. Report, 1977/78); Case No.2/752/78 (1st. Report, 1978/79); Case No.4/941/78 (2nd. Report, 1979/80) - legal provision preventeed the Department considering representation from person in the complainant's position - Department criticised for the clumsy way of handling it; Case No. C.192/80 (3rd. Report, 1980/81)

(111) Case No.C.203/86 (3rd. Report, 1986/87) p.70/71 paragraphs 18/19; Case No.C.45/87 (5th. Report, 1987/88).

(112) Case No.C.886/81 (1st. Report, 1983/84) p.132 & 136 paragraphs 54 & 66 (written representations)

(113) Case No.C.278/J (6th. Report, 1974/75); Case No.C.207/G (1st. Report, 1972/73) - not a public inquiry, therefore, the inspector entitled to exclude representations about the effect on general amenity from his report - where they were not relevant to the purpose of the inquiry; Case No.C.258/80 (6th. Report, 1980/81) - hearing on a disciplinary charge in prison - 2 questions out of 17 disallowed as not being relevant to the charge.

(114) Case No.C.549/87 (1st. Report, 1988/89).

(115) Case No.C.41/T (5th. Report, 1972/73); Case No.C.51/T (5th. Report, 1972/73); Case No.C.207/G (1st. Report, 1972/73) p.206 paragraph 21; Case No.C.508/K (3rd. Report, 1976/77)

(116) Case Nos.C.321/T/360/T (3rd. Report, 1974/750 p179 paragraph 50

(117) Rule 12 of the Town and Country Planning (Inquiries Procedure) Rules 1969 as explained in Case No.C.395/T (3rd. Report, 1974); Case No. C372/K (1st. report, 1976/77) - public meeting to hear local views on proposals for local government ward boundary changes - written representations accepted after public meeting and then 'followed' see p.232 paragraph 8 -"The Home Office consider that the procedure followed in these reviews affords very full opportunities for the expression of local views and differences of opinion. So far as it is open to me to comment on the procedural aspect **ie**on the part of the Home Office play, I share that view. But inevitably there comes a stage at which no further reconciliation of opposing views is possible, and the Home secretary must reach a final decision.... The decision he reached was one he was entitled to take and I am satisfied that, in reaching it, he took account of all the relevant facts and opinions that had been brought to the Home Office's attention. I can understand the complainant's concern, after he and other association representatives had taken the trouble to attend the public meeting on 19 May 1975, when he learned that later representations made

by others who had not attended the meeting had been taken into account. But this was not contrary to established practice and, from the Home Office's point of view, I do not think it would be fair to say that these later representations had been allowed to 'overide' .. the views of those who had attended the meeting. It seems to me that the Department considered the whole matter entirely on its merits. I therefore do not uphold the complaint about the way the Home Office dealt with the final phase of the consultative powers, although I consider the complainant was entitled to the courtesy of an earlier and more informative interim reply to his letter...."

(118) See for instance Case No.76/T (3rd. Report, 1974)

(119) Case No.C.347/J (4th. Report, 1974/75); Case No.C.437/T (2nd. Report, 1974)

(120) Case No.C.347/J (4th. Report, 1974/75) p.59 paragraph 25

(121) Case No.C.665/81 (5th. Report, 1981/82).

(122) Case No.C.683/J (1st. Report, 1975/76); Case No.C.256/V (3rd. Report,1975/76); Case No.4/613/77 (1st. Report, 1978/79); Case No.C.894/80 (6th. Report, 1980/81)

(123) Case No.C.96/T (1st. Report,1973/74)

(124) Case No.C.140/K (1st. Report, 1976/77); Case No.C.428/K (4th. Report, 1976/77) - where it was also established that the inspector had spent longer at the site than the complainant was aware; Case No.4/453/78 (4th. Report, 1978/79);Case No.4/787/78 (1st. Report, 1979/80)

(125) See Case no. C.894/80 (6th. Report, 1980/81) p.27 paragraph 19

CHAPTER FIVE

(1) Case No. C.104/T (1st. Report 1974)
(2) Case No. C.206/V (3rd. Report 1975/76)
(3) Case No.C320/V (5th. Report, 1975/76) p.119 paragraph 13, almost 6 months delay. See also Case No. C.719/V (6th.Report, 1975/76) - 2 year delay in awarding full entitlement to supplementary benefit 'inexcusable'.
(4) Case No. C.21/V (1st. Report 1975/76) p.163 paragraph 22; echoed in Case No.370/J (4th. Report 1974/75)[worried by delay in allowing prisoner to exercise permission to write to M.P.],and Case No. C.481/J (3rd. Report 1974/75- a four month delay in answering petition - p.128 paragraph 8 -"the more especially since the purpose of the petition was to secure a remedy for what he considered to be an illegal sentence of imprisonment." - however, c.f. Case No. C.573/V (3rd. Report 1975/76) same series of reports as first case - illustrates the difficulties in generalising as result of case-by-case approach. See also 4th. Report, 1983/84 Investigation of a complaint about delay in reviewing a conviction for murder.
(5) discussed later
(6) Case No. C683/J (1st. Report 1975/76)
(7) Eg Case No.5/795/77 (7th. Report, 1977/78); Case No.1A/72/78 (4th. Report, 1978/78) - though improvements in the system were suggested; Case No.2/917/78 (2nd. Report, 1979/80); Case No.C.701/79 (8th. Report, 1979/80) - review of the system; Case No.C336/80 (5th. Report, 1980/81) - seasonal peak but department had taken all economic measures to prevent delays; Case No.C.717/82 (6th. Report, 1983/84); Case No.C.460/83 (1st. Report, 1984/85).
(8) See Case No.C.139/K (1st. Report,1976/77); Case No.C. 170/K (3rd. Report, 1976/77)
(9) Case No.C.518/G (4th. Report 1972/73)p.159 paragraph 11
(10) Introduction of stricter documentary requirements equated acceptable delay in this area - see Case No. C.358/V (3rd. Report 1975/76) For other such IR cases see Case No.C108/77 (1st. Report, 1977/78)
(11) Case No. C.909/V (1st. Report,1976/77) p.206 paragraph 28, paragraph 8
"Although the administrative actions of the Home Office are in general within my jurisdiction, paragraph 7 of Schedule 3 to the Parliamentary Commissioner Act specifically debars me from investigating the exercise of the power of a Secretary of State to make a reference in respect of any person to the Court of Appeal. The advice I have been given is that this means not only that I am entitled to investigate the correctness of a decision whether to exercise the power, but also that I am not entitled to investigate whether the factors the Home Secretary took into account were the right factors; or whether advice which he, or his officials sought or

consultations which he, or they, made (in order to reach a decision whether to exercise the power) were properly sought or made. And I am advised that it follows that I am precluded from investigating the referral of the matter to the Lord Chief Justice. My investigation of the complaint set out in paragraph 6 has therefore been limited to establishing whether there was any avoidable delay by the Home Office in considering the information and representations between the various dates mentioned in the complaint and 18 June 1975, when the case was referred to the Appeal Court."
(12) Case No. C.206/G (3rd. Report 1972/73) where it took 6 months to prepare the lengthy statement of case.
(13) Case No. C.372/G (3rd. Report 1972/73) - prolonged representations by parties - no undue delay in comparison with time taken at other stages elsewhere; Case No.C.41/V (1st. Report 1975/76) - choice of inquiry procedure made by the Department caused delay, but was chosen to give the complainant a better opportunity of presenting his case;and the complainant added to the delay himself.
(14) Case No.C.217/V (1st. Report 1975/76); Case No.C.386/J (6th. Report 1974/75).Case No.C.252/V (3rd. Report 1975/76) - dealt with a prolonged period of uncertainty:"It is several years since the Department published their proposals for the motorway, and no final decision has yet been taken on that particular section of it. The planning of a major route through populated and attractive areas raises many problems, and the involvement of the public in the statutory procedures for choosing a route inevitably makes this a lengthy process. A balance must be struck between on the one hand the need for early decisions to remove uncertainty, and on the other hand the need to ensure that all the implications, and all points of view, are fully and properly considered. Meantime, unfortunately, the interests of individuals can be adversely affected until the lengthy processes are completed and a decision reached. Some measure of relief is afforded to those people whose property is directly affected by a route put forward by the Department, because the statutory blight provisions enable them to serve notice on the Department requiring them to buy the affected property. But the complainant's property is not within the scope of the existing statutory blight provisions and he can claim no relief for the inconvenience he is suffering. Only a change in the law could help people in his position. As matters stand, the Department cannot do more to bring the uncertainty to an end than to work as quickly as possible towards a final decision..... My investigation has satisfied me that so far there has been no unreasonable delay by the Department in their handling of the case." See also, Case No.C.53/K (1st. Report, 1976/77) - where it was Departmental policy to hold public inquiry, despite the fact that there were no statutory objectors - p.151 paragraph 9 "this seems to

me to be a reasonable policy provided proper consideration is given to the balance between the interests of those with statutory rights and those with none. I am satisfied from my investigations that the Department gave careful consideration to all factors, including the knowledge that both the complainant and the Council had reasons for wanting an early decision, before concluding that the balance in this case required an inquiry."
(15) See Case No.C.291/T (1st. Report, 1974) p.81 paragraph 11
(16) Case No.C.223/G (1st. Report 1972/73)p10 paragraph 10. See also Case No.C.503/J (1st. Report 1975/76), and Case No.C.61/J (3rd. Report 1974) - good reasons for delay in surtax assessment.
(17) Case No. C.517/K (5th. Report,1976/77) p.168 paragraph 225
(18) Case No.C.136/K (1st. Report, 1976/77); See also Case No.C.177/K (1st. Report, 1976/77) p.172 paragraph 9 and Case No.C.444/K (1st. Report,1976/77); Case No.C.859/V (6th. Report,1975/76) - part of the delay in this case due to this.
(19) See Case No.C.528/K (4th. Report, 1976/77); Case No. C.915/V (6th. Report, 1975/76); Case No.3A/648/77 (5th. Report, 1977/78); Case No.4/626/77 (7th. Report, 1977/78); Case No.5/501/78 (4th. Report, 1978/79); Case No.3A/872/78 (4th. Report, 1978/79); Case No.C.309/87 (5th. Report, 1987/88).
(20) Case No.C.448/J (6th. Report 1974/75)
(21) Case No.C.448/J (6th. Report 1974/75) p.31 paragraph 13
(22) Case No.C.145/G (1st. Report 1972/73)
(23) Another case where need for legal consultation has been deemed allowable - Case No.C.196/G (1st. Report 1972/73), where a delay of 7 weeks before the issue of a report from the DTi was allowed on grounds that the decision involved many considerations, including legal ones.
(24) Case No. C.356/G (3rd. Report 1972/73) - there was then a need to consult the County Council - however it is important to note that there was an earlier delay due to inaction, which the PCA criticised. See also Case No.C.141/K (1st. Report, 1976/77); Case No.C.55/77 (5th. report, 1976/77) - part of delay excusable on this ground.
(25) Case No. C.169/T (1st. Report 1974)
(26) Case No.3/86 (5th.Report, 1985/86) p.6 paragraph 11; see also Case No.C.196/85 (1st. Report, 1986/87)
(27) Case No.C.214/J (3rd. Report 1974/75); Case No.3A/773/77 (7th. Report, 1977/78)
(28) Case No.C.488/J (2nd. Report 1974); See also Case No.C.224/K (3rd. Report, 1976/77) - some criticism; Case No.C.528/K (4th. Report,1976/770 p.105 paragraph 20 - " My investigation has satisfied me that the time taken to conclude this complex case did not result from Departmental failings in handling the complainant's claim,

and that a minor omission on their part at a later stage of the case was not significant."
(29) Case No.C.573/V (3rd. Report 1975/76) cf. other statements as regards prisoners - a matter of balancing? See also Case No.C.536/V (1st. Report 1975/76). Other cases in this general area include: Case No.C.255/77 (1st. Report, 1977/78); Case No.5/880/77 (5th. Report, 1977/78); Case No.2/793/77 (1st. Report 1978/79) - decision to release a prisoner from Broadmoor. Case No.15/727/78 (4th. Report, 1978/79); CAse No.2/747/77 (4th. Report, 1978/79); Case No.15/27/78 (2nd. Report, 1979/80); Case No.2/917/78 (2nd. Report, 1979/80); Case No.C.409/80 (1st. Report, 1980/81); Case No.C.404/79 (8th. Report, 1979/80); Case No.C.385/80 (5th. Report, 1980/81); Case No.C.799/80 (1st. Report, 1981/82) - part dealing with complexity delay unavoidable; Case No.C.552/82 (4th. Report, 1982/83); Case No.C.269/82 (1st. Report, 1983/84); CAse No.C.291/82 (2nd. Report, 1983/84); Case No.C.313/82 (2nd. Report, 1983/84); Case No.C.717/82 (6th. Report, 1983/84); Case No.C.596/84 (5th. Report, 1984/85).
(30) Case No.C.494/B (4th. Report 1971/72); Case No. C.300/B (4th. Report 1971/72); Case No.C.541/T (3rd. Report 1974); Case No.C.386/J (6th. Report 1974/75); Case No.C.138/77 (1st. Report, 1977/78); Case No.C.229/77 (1st. Report, 1977/78); Case No.C.637/K (1st. Report, 1977/78); Case No.C.797/K (1st. Report, 1977/78); Case No.5/636/77 (5th. Report, 1977/78); Case No.5/842/77 (5th. Report, 1977/78); Case No.C.525/79 (8th. Report, 1979/80);
(31) Case No.C.425/J (3rd. Report 1974/75)
(32) Case No.C.294/J (3rd. Report 1974/75) although some element of delay is 'inescapable' in this area, there were inexplicable delays within the Investigation Section, when not waiting for information. See also Case No.5/636/77 (5th. Report, 1977/78); Case No.3A/698/77 (5th. Report, 1977/78); CAse No.3A/704/77 (5th. Report, 1977/78); Case No.3A/735/77 (5th. Report, 1977/78); Case No.15/757/78 (4th. Report, 1978/79); Case No.4/898/77 (4th. Report, 1978/79); Case No.5/30/78 (4th. Report, 1978/79); Case No.1A/1013/78 (1st. Report, 1979/80); Case No.3A/923/78 (2nd. Report, 1979/80); Case No.3A/208/78 (2nd. Report, 1979/80); Case No.2/499/78 (2nd. Report, 1979/80); Case No.C.610/79 (8th. Report, 1979/800 - clerical errors as well; Case No.C.104/80 (1st. Report, 1980/81) - 'lack of imagination' 'inexcusable'; Case No.C.152/81 (1st. Report, 1981/82); Case No.C.102/79 (9th. Report, 1979/80); Case No.77/82 (2nd. Report, 1982/83); Case No.C.398/83 (7th. Report, 1983/84); Case No.C.697/83 (1st. Report, 1984/85). Slightly less criticism made in the following cases: Case No.3B/953/78 (2nd. Report, 1979/80) - administrative shortcomings criticised; Case No.C.501/80 (6th. Report, 1980/81); Case No.C.38/83 (1st. Report, 1984/85) - lack of vigour; Case No.C.757/84 (3rd. Report,1985/86) - need to reorganise the system.
(33) Case No.C.347/V (1st. Report 1975/76); Case

No.C.368/77 (1st. Report, 1977/78)
(34) Case No C.877/V (3rd. Report 1976/77) p215 paragraph 21.
(35) Case No.C.347/J (4th. Report 1974/75)-over a six month period, one letter and two telephone calls were not deemed to be enough on the Department's part; Case No.C.776/V (3rd. Report 1975/76)-where delay of one month on the part of the Department was not excessive, considering negotiations between other parties going on for eight years! See also Case No.C.145/V (1st. Report 1975/76) delay on the part of accountants.
(36) Case No.C.347/J (4th. Report 1974/75); Case No.C.493/J (6th.Report 1974/75); Case No.C.559/J (6th. Report 1974/75). The PCA was also concerned that such a system had broken down in one of these cases.
(37) Case No.C.730/V (6th. Report, 1975/76) - not enough reminders to the solicitors concerned; Case No.C.539/79 (9th. Report, 1979/800; Case No.C.888/80 (5th. Report, 1980/81); Case No.C.152/81 (1st. Report, 1981/82); Case No.C.289/85 (1st. Report, 1985/86); Case No.C.656/87 (6th. Report, 1987/88).
(38) Case No.5/466/77 (5th. Report, 1977/78) p.115 paragraph 17
(39) Case No.C.915/V (6th. Report, 1975/76); Case No.C.331/K (4th. Report, 1976/77)
(40) Case No. C.290/T (1st. Report 1974); (8) Case No.C.513/V (1st.Report 1975/76); Case No.C.503/J (1st. Report 1975/76),when suggestion put to MAFF by complainant's solicitors they responded quickly. Also Case No.C.1/T (5th. Report 1972/73) - checks on public funds must be efficient - here there was an overlap of enquiries; Case No.C.528/K (4th. Report, 1976/77) - interim payment made; Case No.361/80 (5th. Report, 1980/81).
(41) Case No. C.444/J (3rd. Report 1974/75); Case No.C.358/V (3rd. Report 1975/76)
(42) Case No.C.308/V (3rd. Report,1975/76) at p.161, paragraph 3, and at p.162 paragraph 7 - the PCA did find a small delay within the control of the Public Trustee, but he considered it to be very small; and at p.162/163 paragraph 8 - however intrim distributions had been made. See also Case No.C.106/G (4th. Report 1972/73) - delay partly attributable to the disbanding of the Land Commission causing 'inevitable delays'. Also Case No.C.525/79 (8th. Report, 1979/80); Case No.C.631/83 (8th. Report, 1983/84); Case No.C.383/82 (1st. Report, 1983/84); Case No.C.460/83 (1st. Report, 1984/85) - sick leave; Case No.C.603/88 (3rd. Report, 1988/89).
(43) Case No.C.541/T (3rd. Report 1974) at p.114 paragraph 11 - the PCA went on to criticise the fact that the complainant had not been kept informed about the reasons for the delay.
(44) Case No.C.189/G (3rd.Report 1972/73) - Public trustee had mitigated the effects of 4½ years delay by making

interim payments, and most of the blame for the delay had been placed on the solicitors involved.
(45) Case No.2/380/78 (1st. Report, 1978/79); Case No.3B/768/78 (4th. Report, 1978/79); Case No.1A/455/78 (4th. Report, 1978/79).
(46) Case No.C.874/80 (6th. Report, 1980/81) - administrative error - failure to follow instructions; Case No.C.620/86 (2nd. Report, 1987/88) - remedial action not taken soon enough.
(47) Case No.C.473/84 (3rd. Report, 1984/85) p.44/45 paragraph 7
(48) Case No.C.288/T (1st. Report 1974) p.39 paragraph 13 - some of the delays in this case were held to be avoidable.
(49) Case No.C.313/J (4th. Report 1974/75) p.54 paragraph 12 - longer delay than necessary.
(50) Case No.C.86/K (1st.Report,1976/77) p75/76 paragraph 12
(51) Case No.C.182/T (1st. Report 1973/74) - part of major delays - training new inspectors to combat the delays; Case No.C.115/T (1st. Report 1973/74) p.60 paragraph 13 " Iam satisfied that the primary cause for complaint originated in the pressure which has affected all appeals recently."; Case No.C.542/T (1st. Report 1974/75).
(52) Case No.C.48/77 (5th. Report, 1976/77); Case No.C.724/V (6th. Report,1975/76); Case No.C.573/81 (5th. Report, 1981/82);
(53) Case No.C.300/K (3rd. Report, 1976/77)
(54) Case No.C137/J (1st. Report 1974/75) p.126 paragraph 12&13; Case No.C.549/T (1st. Report 1974/75); Case No.C.173/J (1st. Report 1974/75). Case No.C.187/T (1st. Report 1974) - experienced staff lost due to move of Nationality Division, and an abnormal workload. A third area where recurring delay was identified, was at the DVLC, in reissuing and renewing licences - the PCA discovered that they were the result of errors and the lack of a system for correction - this merited very strong criticism - " I am glad therefore to report that the procedures are being overhauled and amended to minimise the risks of repetition of errors and delays. Such an overhaul is clearly much needed." Case No.C.88/J (1st. Report 1974/75) at p.53 paragraph 10, and also Case No.C.186/J and Case No.C.255/J (1st. Report 1974/75).
(55) Case No.C.485/T (3rd.Report 1974) p.109 paragraph 14; Case No.C.128/J (4th. Report 1974/75) - unnecessary delay of over 8 months in answering a letter -held in spite of pressure of work and staff sickness.; Case No.C.440/J (4th. Report 1974/75) - delay of 3 months 'inexcusable', despite the reorganisation of local valuation offices, and the heavy pressure of work in this particular office; Case No.C.659/J (6th. Report 1974/75) - shortage of experienced staff at a time of heavy pressure, however 2 month delay in repayment of tax 'excessive'; Case No.C.460/T

(2nd.Report 1974) - 5 month delay in issuing a provisional driving licence, difficulties in the early months of the DVLC; Case No.C.278/T (1st. Report 1973/74) - delay still 'unjustifible' despite heavy pressure of work and staff summer leave; and Case No.C.208/G (1st. Report 1972/73) - heavy pressure of work, not an excuse for delay in notifying surtax office.
(56) Case No.C.429/G (3rd.Report 1972/73); see also Case No.C.113/G (3rd. Report 1972/73) (Public Trustee),heavy pressure - very little undue delay; case No.C.472/T (2nd. Report 1974) - delay of 3 months - responded on own intiative on realising the urgency; Case No.C.240/T (2nd. Report 1974) - 14 week delay, when complainant had been told that it would be 'within a short time' - number of factors including heavy pressure of work - still could have been more 'expedious'; Case No.C.208/G (3rd. Report 1974/75) - delay of 3 months 'unfortunate' - 'heavy administrative burden'; Case No.C.274/V (3rd. Report 1975/76) new local office with 'teething troubles' - but not enough to mitigate the delay totally.
(57) Case No.C.536/T (1st. Report 1974/75) Department of the Environment planning appeals section - heavy pressure of work - at p.46 paragraph 12
(58) Case No.C.540/V (5th. Report, 1975/76); case No.C.640/V (5th. Report, 1975/76); Case No.C366/K (1st. Report, 1976/77) - 'flu epidemic & increase in workload over the Christmas period still criticised. See also Case No.3B/652/77 (5th. Report, 1977/78); Case No.5/838/77 (7th. Report, 1977/78); Case No.5/576/78 (1st. Report, 1978/79); Case No.1A/842/78 (1st. Report, 1979/80) - 'inexcusable'; Case No.5/1044/78 (2nd. Report, 1979/80); Case No.3A/208/78 (2nd. Report, !979/80); Case No.C.57/81 (6th. Report, 1980/81) - periods of inaction; Case No.77/82 (2nd. Report, 1982/83); Case No.C.524/79 (8th. Report, 1979/80) - Land Registry; Case No.C.251/82 (4th. Report, 1982/83); Case No.C.610/87 (3rd. Report, 1988/89); Case No.C.656/87 (6th. Report, 1987/88) - explained but did not excuse 'appalling' delay; Case No.C.228/86 (3rd. Report, 1987/88); Case No.C.671/86 (1st. Report, 1987/88); Case No.C.413/87 (6th. Report, 1987/88);
(59) Case No.C.48/77 (5th.Report, 1976/77)
(60) In particular, Case No.C.44/77 (5th. Report, 1976/77); See also Case No.C.658/V (6th. Report, 1975/76). Although, presumably the department would have been well aware of the impending legislation in order to make suitable provision.
(61) Case No. C.55/77 (5th. Report, 1976/77) p.177 paragraph 9.
(62) Case No.C.876/81 (1st. Report, 1983/84) p.30 paragraph 45
(63) Case No.4/409/77 (5th. Report, 1977/78 p.46 paragraph 13. See also Case No.C.346/77 (1st. Report, 1977/78) - mild criticism from Sir Idwal Pugh; Case No.C.603/88 (3rd. Report, 1988/89).

(64) Case No.C.566/86 (3rd.Report, 1987/88) p.67 paragraph 21; see also Case No.C.343/84 (4th. Report, 1984/85); Case No.C.32/85 (1st. Report, 1985/86); Case No.C.318/87 (1st. Report, 1988/89).
(65) Case No.C.366/79 (6th. Report, 1979/80) p.19 paragraph 15
(66) Case No.C.525/79 (8th. Report, 1979/80)
(67) Case No.C.320/79 (8th. Report, 1979/80) p.80 paragraph 9
(68) Case No.C.447/80 (3rd. Report, 1980/81); Case No.C.560/81 (3rd. Report, 1981/82); Case No.C.748/81 (2nd.Report, 1982/83); Case No.C.248/82 (4th. Report, 1982/83); Case No.C.801/81 (4th. Report, 1982/83); Case No.C.581/82 (2nd. Report, 1983/84). Cf. Case No.C.223/85 (5th. Report, 1984/85); Case No.C.697/85 (5th. Report, 1985/86).
(69) Case No.C.782/V (3rd Report 1975/76)
(70) Case No.C.430/K (4th. Report,1976/77); see also Case No.5/406/78 (1st. Report, 1978/79).
(71) Case No.3B/505/77 (5th. Report, 1977/78) p.308 paragraph 17
(72) Case No.C.724/V (6th. Report, 1975/76); see also Case No.C.55/77 (5th. Report, 1976/77) - where there was the consideration of local government reorganisation. Also Case No.3B/839/77 (7th. Report, 1977/78). Other cases in this area: Case No.1A/864/78 (2nd. Report, 1979/80) - transfer of work - failure to pursue; Case No.C.265/79 (4th. Report, 1979/80); Case No.C.366/79 (6th. Report, 1979/80); Case No.C.799/80 (1st. Report, 1981/82)
(73) Case No.C.183/88 (3rd. Report, 1988/89).
(74) Case No. C.296/T (2nd. Report 1974); Case No.C.98/77 (1st. Report, 1977/78); Case No.C.434/77 (1st. Report, 1977/78); Case No.3A/38/79 (2nd. Report, 1979/80); Case No.C.155/80 (1st. Report, 1980/81); Case No.C.539/79 (9th. Report, 1979/80); Case No.C.707/80 (6th. Report,1980/81); Case No.C.874/80 (6th. Report, 1980/81); Case No.C.1022/80 (3rd. Report, 1981/82); Case No.C.280/81 (5th. Report, 1981/82); Case No.C.138/82 (2nd. Report, 1982/83); Case No.C.222/82 (4th. Report, 1982/83); Case No.C.672/82 (3rd. Report, 1983/84); Case No.C.432/84 (5th. Report, 1984/85); Case No.C.171/85 (3rd. Report, 1985/86); Case No.C.341/85 (3rd. Report, 1985/86); Case No.C.313/86 (2nd. Report, 1987/88); Case No.C.203/87 (1st. Report, 1988/89); Case No.5/67/78 (7th. Report, 1977/78).
(75) Case No. C.869/V (5th. report, 1975/76) paragraphs 4+5+6
(76) Case No.C.576/79 (1st. Report, 1980/81).
(77) Case No.C.496/67 (5th. Report, 1987/88).
(78) Case No. C.5/J (2nd. Report 1974); Case No.C.480/K (4th. Report, 1976/77); Case No.C.120/81 (1st. Report,1981/82); Case No.C.631/83 (8th. Report, 1983/84); Case No.C.512/86 (1st. Report, 1987/88); Case No.5/6/78 (7th. Report, 1977/78).
(79) Case No.C.142/K (6th. Report 1975/76) - 3 day delay

in contacting another office. See also Case No.C.875/80 (1st. Report, 1981/82); Case No.C.556/81 (5th. Report, 1981/82); Case No.C.187/81 (5th. Report, 1981/82) - possible fault; Case No.C.527/2(8)1 (1st. Report, 1982/83); Case No.C.192/81 (1st. Report, 1982/83); Case No.C.546/81 (4th. Report, 1982/83); Case No.C.687/81 (1st. Report, 1983/84); Case No.C.282/83 (8th. Report, 1983/84); Case No.C.817/81 (5th. Report, 1984/85); Case No.C.373/87 (6th. Report, 1987/88); Case No.C.242/83 (1st. Report, 1984/85).
(80) Case No.5/891/77 (1st. Report, 1978/79)
(81) Case No.1B/477/78 (4th. Report, 1978/79); Case No.C.456/86 (1st. Report, 1988/89)
(82) Case No. C.458/V (5th. Report,1975/76); see also CAse No.C.138/77 (1st. Report, 1977/78); Case No.C.282/77 (1st. Report, 1977/78); Case No.5/340/77 (5th. Report, 1977/78); Case No.C.5/405/77 (5th. Report, 1977/78); Case No.C.1A/720/77 (5th. Report, 1977/78); Case No.3B/869/77 (5th. Report, 1977/78); Case No.3A/871/77 (7th. Report, 1977/78); Case No.1B/567/77 (7th. Report, 1977/78); Case No.3B/85/78 (7th. Report, 1977/78);Case No.3A/414/78 (4th. Report, 1978/79); Case No.3B/496/78 (4th. report, 1978/79); Case No.1A/598/78 (4th. Report, 1978/79); Case No.1B/865/78 (1st. Report, 1979/80); Case No.C.446/79 (8th. Report, 1979/80); Case No.C.740/79 (8th. Report, 1979/80); Case No.C.239/80 (1st. Report, 1980/81); Case No.C.135/80 (5th. Report, 1980/81) - incorrect action; Case No.C.690/80 (6th. Report, 1980/81) Case No.C.36/81 (3rd. report, 1981/82); Case No.C.586/81 (1st. Report, 1982/83); Case No.C.251/82 (4th. Report, 1982/83); Case No.C.801/82 (3rd. Report, 1983/84); Case No.C.205/84 (1st. Report, 1984/85); Case No.C.573/84 (1st. Report, 1984/85); Case No.C.237/84 (4th. Report, 1984/85); Case No.C.343/84 (4th. Report, 1984/85); Case No.C.831/34(84?) (5th. Report, 1984/85); Case No.C.164/84 (1st. Report, 1985/86); Case No.C.782/84 (1st. Report, 1985/86); Case No.C.682/83 (1st. Report, 1985/86); Case No.C.431/85 (3rd. Report, 1985/86); CAse NO.C.288/85 (4th. Report, 1985/86); Case No.C.697/85 (5th. Report, 1985/86); Case No.C.33/86 (1st. Report, 1986/87); Case No.C.93/86 (1st. Report, 1986/87); Case No.C.601/85 (1st. Report, 1986/87); Case No.C.618/85 (3rd. Report, 1986/87); Case No.C.224/86 (3rd. Report, 1986/87); Case No.C.348/86 (1st. Report, 1987/88); Case No.C.388/86 (3rd. Report, 1987/88); Case No.C.498/86 (3rd. Report, 1987/88); Case No.C.410/85 (5th. Report,1987/88); Case NO.C.413/87 (6th. Report, 1987/88); Case No.C.414/87 (6th. Report, 1987/88); Case No.C.509/82 (7th. Report, 1983/84); Case No.C.590/85 (5th. Report, 1985/86); Case No.C.668/80 (6th. Report, 1980/81). Case No.1B/810/77 (1st. Report, 1978/79) - fault traced to one individual officer who was described as having personal difficulties; Case No.C.290/84 (3rd. Report, 1984/85); Case No.C.223/85 (5th. Report, 1984/85); Case No.C.515/87 (3rd. Report, 1988/89); Case No.C.142/86 (3rd. Report, 1986/87) -

assistant manager's inaction, Department's own investigation had shown that he had 'knowingly and delibrately failed to take the necessary action which led to claimants suffering unnecsssary delay in receiving benefit awarded to them.'
(83) Case No. C.497/J (4th. Report 1974/75) p.16 paragraph 18; Case No.C.640/V (5th. Report, 1975/76); Case No.C.249/81 (1st. Report, 1981/82); Case No.C.70/82 (2nd. Report, 1982/83)
(84) Case No. C.76/J (1st. Report 1974/75); Case No.1A/309/78 (1st. Report, 1978/79); Case No.C.166/80 (3rd. Report, 1980/81); Case No.C.405/80 (5th. Report, 1980/81); Case No.C.875/80 (1st. Report, 1981/82); Case No.C.433/81 (3rd. Report, 1981/82); Case No.C.288/83 (7th. Report, 1983/84); Case No.C.80/84 (1st. Report, 1984/85).
(85) Case No. C.558/J (1st. Report 1975/76)
(86) Case No.4/87/78 (2nd. Report, 1979/80)
(87) Case No. C.311/G (3rd. Report 1972/73); Case No.C.284/T (1st. Report 1974) - a periodic check was introduced. Case No.C.838/V (6th. report, 1975/76) - loss of letter; Case No.C.88/V (3rd. report, 1976/77) - papers going astray. Case No.C.772/K (1st. Report, 1977/78); Case No.C.434/77 (1st. Report, 1977/78); Case No.1B/39/78 (1st. Report, 1978/79); Case No.5/803/78 (1st. Report, 1979/80); Case No.C.3A/1228/78 (2nd. Report, 1979/80); Case No.C.329/79 (4th. Report, 1979/80); Case No.C.709/81 (2nd. Report, 1982/83) - not proven - given the benefit of the doubt; Case No.C.282/83 (8th. Report, 1983/84); Case No.C.413/85 (3rd. Report, 1985/86); CAse No.C.183/88 (3rd. Report, 1988/89).
(88) Case No.5/297/78 (7th. Report, 1977/78); Case No.1B/493/78 (4th. Report, 1978/79); Case No.C.395/85 (1st. Report, 1988/89).
(89) Case No.C.780/80 (6th. Report, 1980/81)
(90) Case No. C.284/T as above.
(91) Case No.C.500/V (5th. Report, 1975/76); Case No.C.780/80 (6th. Report, 1980/81); Case No.C.256/82 (4th. Report, 1982/83).
(92) Case No.C.878/V (6th. Report, 1975/76)
(93) Case No.C.212/77 (1st. Report, 1977/78)
(94) Case No.C.797/K (1st. Report, 1977/78); Case No.C.475/87 (1st. Report, 1988/89).
(95) Case No.C.772/K (1st. report, 1977/78); Case No.c.98/77 (1st. Report, 1977/78); Case No.C.212/77 (1st. Reprt, 1977/78); Case No.C.434/77 (1st. Report, 1977/78); Case No.C.190/77 (1st. Report, 1977/78); Case No.C.692/K (1st. Report, 1977/78); Case No.1A/566/77 (5th. Report, 1977/78); Case No.1A/321/78 (1st. Report, 1978/79) - slow to use information; Case No.15/787/77 (1st. Report, 1978/79) - slow to use the information; Case No.3A/1228/78 (2nd. Report, 1979/800; Case No.1A/1049/78 (2nd. Report, 1979/80); Case No.C.1129/78 (4th. Report, 1979/80); Case No.C.585/80 (5th. Report, 1980/81) - allowing matter to drift; Case No.C.500/80 (1st. Report, 1981/82) - 'half-

heartedness and neglect'; Case No.C.756/81 (3rd. Report, 1985/86); Case No.C.621/83 (8th. Report, 1983/84) - 'failure to keep things moving'; Case No.C.818/84 (4th. Report, 1985/86) - inefficiency in following up matters; Case No.C.722/85 (3rd. Report, 1986/87); Case No.77/82 (2nd. Report, 1982/83); Case No.C.6/83 (7th. Report, 1983/84); Case No.C.242/83 (1st. Report, 1984/85); Case No.C.440/86 (1st. Report, 1987/88).
(96) Case No.5/861/77 (1st. Report, 1978/79); Case No.3B/950/78 (1st. Report, 1979/80); Case No.C.354/84 (4th. Report, 1984/85);
(97) 4th.Report, 1983/84 p.23 paragraph 58. See also Case No.C.175/81 (4th. Report, 1982/83); Case No.C.267/82 (2nd. Report, 1983/84) - partly complainant's fault; Case No.C.828/81 (2nd. Report, 1983/840; Case No.C288/83 (7th. Report, 1983/84); Case No.C.672/83 (8th. Report, 1983/84); Case No.C.59/83 (4th. Report, 1985/86); Case No.C.357/85 (5th. Report, 1985/86); Case No.C.264/84 (1st. Report, 1986/87) - failure to provide proper guidelines; Case No.C.231/85 (1st. Report, 1986/87); Case No.C.454/85 (3rd. Report, 1986/87); Case No.C.220/86 (1st. Report, 1987/88); Case No.C.327/87 (5th. Report, 1987/88); Case No.C.346/86 (2nd. Report, 1987/88) - "Although I have not upheld the specific complaint against the immigration authorities at Heathrow, I am satisfied that the complainant's interests would have been better protected if the Home Office, having perceived the need for an improved Port Precautions Scheme, had pursued that objective more vigourously and introduced the new scheme within a much shorter time of the coming into force of the Child Abduction Act 1984 than was thye case. In regretting that the existing system had not perated as effectively as they would have wished on 9 April 1986 and that the new system was not by then in place, the Department have pointed out - and I accept - that the procedures, even under the revised arrangements, are very much a 'last ditch' attempt to prevent unlawful removal, and that thye HO have never been able able to guarantee that they would be effective in any given case. In the circumstances, I regard the apologies which the Principal Officer has offered as an appropriate outcome of my investigation."
(98) Case No.C.455/86 (2nd. Report, 1987/88) p.18 paragraph 17
(99) Case No.C.70/82 (2nd. Report, 1982/83); Case No.C.658/82 (1st. Report, 1983/84); Case No.C.757/80 (6th. Report, 1980/81) p.83 paragraph 17
(100) Case No.1B/990/78 (2nd. Report, 1979/80); Case No.C.206/79 (8th. Report, 1979/80)[IR]; Case No.2/422/78 (4th. Report, 1978/79); Case No.5/733/78 (2nd. Report, 1979/800; Case No.C.3B/540/78 (2nd. Report, 1979/80) - failure to take action; 3rd. Report, 1979/80 - failure to take action; Case No.C.14/80 (5th. Report, 1980/810; Case No.C.888/80 (5th. Report, 1980/81); Case No.C.57/81 (6th. Report, 1980/810; Case No.C.433/81 (3rd. Report, 1981/82);

Case No.C.586/81 (1st. Report, 1982/83); Case No.C.225/81 (2nd. Report, 1982/83); Case No.77/82 (2nd. Report, 1982/83); Case No.C.197/82 (1st. Report, 1983/84) - 10 years to collect tax after assessment; Case No.C.355/82 (2nd. Report, 1983/84); Case No.C.764/82 (6th. Report, 1983/840; Case No.C.798/82 (6th. Report, 1983/84); Case No.C.615/82 (6th. Report, 1983/84); Case No.C.697/83 (1st. Report, 1984/85); Case No.C.713/84 (5th. Report, 1984/85); Case No.C32/85 (1st. Report, 1985/86); Case No.C289/85 (1st. Report, 1985/86) - case overlooked; Case No.C.72/85 (3rd. Report, 1985/86); Case No.C.171/85 (3rd. Report, 1985/86); Case No.C.34/85 (3rd. report, 1985/86); Case No.C.306/86 (1st. Report, 1986/87); Case No.C.330/86 (2nd. Report, 1987/88); Case No.C.410/85 (5th. Report, 1987/88); Case No.C.610/87 (3rd. Report, 1988/89); Case No.C.515/87 (3rd. Report, 1988/89); Case No.C.119/88 (3rd. Report,1988/89).

(101) Case No. C.367/B (4th. Report 1971/72); also Case No. C.144/G (1st. Report 1972/73); or Case No.C.177/T (5th. Report 1972/73) - industrial action whilst introducing a new system.

(102) Case No. C.434/G (4th. Report 1972/73); Case No. C.546/G (5th. Report 1972/73); Case No. C.47/T (5th. Report 1972/73); Case No. C.366/T (2nd. Report 1974); Case No. C.2/J (3rd. Report 1974); Case No. C.459/T (3rd. Report 1974); Case No. C.127/J (1st. Report 1974/75); Case No. C.303/J (3rd. Report 1974/75); Case No. C.387/J (3rd. Report 1974/75); Case No. C.61/V (4th. Report 1974/75); Case No. C.645/J (6th. Report 1974/75); Case No. C.694/J (6th. Report 1974/75); Case No. C65/V (6th. Report 1974/75); Case No.C.192/V (6th. Report 1974/75); Case No.C.637/K (1st. Report, 1977/78); Case No.5/782/77 (5th. Report, 1977/78); Case No.1B/605/77 (5th. Report, 1977/78) Case No.1B/766/77 (7th. Report, 1977/78); Case No.C.539/79 (9th. Report, 1979/80); Case No.C.118/83 (3rd. Report, 1983/84); case No.C.672/83 (8th. Report, 1983/84); Case No.C.510/85 (3rd. Report, 1985/86); Case No.C.729/85 (6th. Report, 1987/88); Case No.C.549/87 (1st. Report, 1988/89); Case No.C.446/88 (3rd.Report, 1988/89).

(103) Case No. C.459/T (3rd. Report 1974); and also 4½ months delay in issuing a family allowance book - Case No. C.303/J (3rd. Report 1974/75)

(104) Case No. C.434/G (4th. Report 1972/73) - no follow up action taken after relative apparently repudiated the claim.

(105) Case No. C.694/J (6th. Report 1974/75)

(106) Case No. C.65/V (6th. Report 1974/75)

(107) Case No. C.366/T (2nd. Report 1974) - failure to claim PAYE tax by the IR; and Case No.C.546/G (5th. Report 1972/73) - failure to note liablity for 4 years.

(108) Discussed below. See Case No.C.859/V (6th. report, 1975/76); Case No.C730/V (6th. Report, !975/76); Case No.C.690/79 (9th. Report, 1979/80).

(109) Case No.C.645/J (6th. Report 1974/75)

(110) Case No.C.602/84 (1st. Report, 1985/86).
(111) Case No.C.724/V (6th.Report, 1975/76) - not keeping informed of the reasons for the delay; Case No.C.541/T (3rd.Report,1974); Case No.C.494/B (4th.Report, 1971/720; Case No.C.48/77 (5th.Report, 1976/77); Case No.C.138/77 (1st. Report, 1977/78); Case No.C.229/77 (1st. Report, 1977/78); Case No.C.637/K (1st. Report, 1977/78); Case No.1B/832/77 (7th. Report, 1977/78); Case No.1A/872/77 (7th. Report, 1977/78); Case No.1B/477/78 (4th. Report, 1978/79); Case No.2/709/78 (4th. Report, 1978/79); Case No.3A/823/78 (1st. Report, 1979/80); Case No.3A/1002/78 (1st. Report, 1979/80); Case No.5/1074/78 (2nd. Report, 1979/80); Case No.5/1153/78 (2nd. Report, 1979/80); Case No.3A/81/79 (2nd. Report, 1979/80); Case No.C.271/79 (4th. Report, 1979/80); Case No.C.726/78 (8th. Report, 1979/80); Case No.C.921/80 (1st. Report, 1981/82); Case No.C.500/80 (1st. Report, 1981/820; Case no.C.433/81 (3rd. Report, 1981/82); Case No.C.876/81 (1st. Report, 1983/84); Case No.C.291/82 (2nd. Report, 1983/84); Case No.C.615/82 (6th. Report, 1983/84); Case No.C.621/83 (8th. Report, 1983/84); Case No.C.205/84 (1st. Report, 1984/85); Case No.C.624/82 (4th. Report, 1984/85); Case No.C.65/85 (1st. Report, 1985/86); Case No.C.77/84 (3rd. Report, 1985/86); Case No.C.273/85 (3rd. Report, 1986/87); Case No.C.348/86 (1st. Report, 1987/88); Case No.C.729/85 (6th. Report, 1987/88); Case No.C.183/88 (3rd. Report, 1988/89); Case No.5/795/77 (7th. Report, 1977/78); Case No.1A/1049/78 (2nd. Report, 1979/80).
(112) Case No.C.250/77 (1st. Report, 1977/78); Case No.C.756/K (1st. Report, 1977/78); Case No.C.456/K (1st. Report, 1977/78); Case No.C.495/K (1st. Report, 1977/78); Case No.3B/134/77 (5th. Report, 1977/78); Case No.15/607/77 (7th. Report, 1977/78); Case No.5/30/78 (4th. Report, 1978/79); Case No.1B/284/78 (4th. Report, 1978/79); Case No.5/228/78 (1st. report, 1979/80); Case No.4/135/78 (1st. Report, 1979/80); Case No5/733/78 (2nd. Report, 1979/80); Case No.C.1222/78 (4th. Report, 1979/80); Case No.C.312/79 (6th. report, 1979/80); Case No.C.85/81 (3rd. Report, 1981/82); Case No.C.274/81 (5th. Report, 1981/82); Case No.C.556/81 (5th. Report, 1981/82); Case No.C.636/81 (5th. Report, 1981/82); Case No.C.414/83 (8th. Report, 1983/84); Case No.C.113/84 (3rd. Report, 1984/85); Case No.C.157/84 (4th. Report, 1984/85); Case No.C.365/86 (3rd. Report, 1986/87); Case No.C.741/85 (3rd. Report, 1987/88); Case No.C.542/87 (3rd. Report, 1988/89).
(113) Case No.C.723/K (1st. Report, 1977/78); Case No.15/390/78 (4th. Report, 1978/79); Case No.15/421/78 (4th. Report, 1978/79); Case No.C.451/80 (1st. Report, 1981/82); Case No.C.586/81 (1st. Report, 1982/83); Case No.C.556/83 (5th. Report, 1984/85); Case No.C.155/87 (6th. Report, 1987/88); Case No.C.20/82 (2nd. Report, 1982/83).
(114) Case No.C.791/K (1st. report, 1977/78); Case No.C.461/K (1st. Report, 1977/78); Case No.C.421/77 (1st. Report, 1977/78); Case No.C.120/77 (1st. Report, 1977/78);

Case No.5/647/77 (5th. Report, 1977/78); Case No.1A/23/78 (7th. Report, 1977/78); Case No.6/756/77 (7th. Report, 1977/78); Case No.6/119/78 (1st. Report, 1978/79); Case No.5/117/78 (4th. report, 1978/79); Case No.4/787/78 (1st. Report, 1979/80); Case No.3B/86/78 (2nd. Report, 1979/80); Case No.C.193/80 (1st. Report, 1980/81); Case No.C.341/81 (3rd. Report, 1981/82); Case No.C.178/82 (1st. Report, 1983/84); Case No.C.268/82 (1st. Report, 1983/84); Case No.C.634/82 (3rd. Report, 1983/84); Case No.C.605/82 (3rd. Report, 1983/84); Case No.R.532/83 (8th. Report, 1983/84); Case No.C.461/85 (1st. Report, 1986/87); Case No.C.60/86 (3rd. Report, 1986/87); Case No.C.286/86 (3rd. Report, 1987/88); Case No.C.729/85 (6th. Report, 1987/88).

(115) Case No.C.355/K & C.443/K (3rd.Report, 1976/77).

(116) Case No.C.524/B (4th.Report, 1971/72) p.41 paragraph 16 & p.42 paragraph 18. See also CAse No.C.357/J (1st.Report,1975/76)

(117) Case No.C.384/T (3rd.Report, 1974) p.59 paragraph 25. See also Case No.C.132/T (1st.Report, 1973/74) p.16 paragraph 21 "I think, however, that it would have led to a load better understanding of the issues involved if the Ministry had been more forthcoming in explaining the reasons for their decision....."; Case No.C.200/T (3rd.Report, 1974); Case No.C.5/J (2nd.Report, 1974); Case No.C.218/T (1st.report, 1974); Case No.C.29/V (6th.Report, 1974/75); Case No.C.128/J (4th.Report, 1974/75); Case No.C.409/T (3rd.Report, 1974/75); Case No.C.94/K (1st.Report, 1976/77); Case No.C.466/K (3rd.Report, 1976/77); Case No.C.319/K (4th.Report, 1976/77); Case No.C.520/K (4th.Report, 1976/77); Case No.C.234/79 (Selected Cases 1980 vol2).

(118) Case No.4/535/78 (1st. Report, 1979/80) p.199 paragraph 13

(119) Case No.C.817/V (6th.Report, 1975/76) p.32 paragraph 12 - in the end the PCA helped establish that the complainant was in fact eligible for the grant. See also Case No.C.587/K (3rd.Report, 1976/77) - where the more important reasons for a decision were not stated in the decision letter; Case No.C.626/K (5th.Report, 1976/77) - errors in reasons given for failure on a MSC training course.

(120) Case No.C.495/T (2nd.Report, 1974).

(121) Case No.15/439/77 (7th. Report, 1977/78) p.221 paragraph 13.

(122) Case No.C.666/K (4th.Report, 1976/77); see also Case No.C.350/80 (1st. Report, 1980/81); Case Nos.C.13/80 & C.377/80 (3rd. Report, 1980/81); Case No.C.268/82 (1st. Report, 1983/84).

(123) Case No.C.517/K (5th.Report, 1976/77) see p.170 paragraph 32.

(1) Case No.2/601/77 (7th. Report, 1977/780; Case No.3B/534/77 (1st. Report, 1978/79) - paid private medical bills; Case No.15/787/77 (1st. Report, 1978/790; Case No.3B/950/78 (1st. Report, 1979/80); Case No.2/770/78 (1st. Report, 1979/80): Case No.C.346/81 (3rd. Report, 1981/82); Case No.C.828/81 (2nd. Report, 1983/84); Case No.C.756/81 (3rd. Report, 1983/84); Case No.C.457/82 (3rd. Report, 1983/84); Case No.C.188/83 (3rd. Report, 1983/84); Case No.C.752/82 (3rd.Report, 1983/84); Case No.C.455/86 (2nd. Report, 1987/88); Case No.C.413/87 (6th. Report, 1987/88); Case No.C.183/88 (3rd. Report, 1988/89).
(2) Case No.C.356/82 (2nd. Report, 1983/84) p.13 paragraph 25.
(3) Eg Case No.C.665/84 (5th. Report, 1984/85); and other cases dealind with inconsistency within cases.
(4) Case No.C.402/G (3rd. Report, 1972/73); Case No.C.601/85 (1st. Report, 1986/87); Case No.6/239/K (5th. Report, 1977/78) - alternative footway provided; Case No.6/727/77 (4th. Report, 1978/79); Case No.6/263/78 (4th. Report, 1978/79) - insulation obtained.
(5) See also under Right to Legal Representation.
(6) Case No.C.112/J (3rd. Report, 1974) p.81 paragraph 7
(7) Case No.1A/725/77 (5th. Report, 1977/78); Case No.C773/84 (1st. Report, 1985/86) - waiver of overpayment; Case No.C.672/84 (4th. Report, 1985/86).
(8) Case No.3B/869/77 (5th. Report, 1977/78).
(9) Case No.C.441/B (4th. Report, 1971/72); Case No.C.492/B (4th.Report, 1971/72) - delay, as a result contract was subject to betterment levy - ex gratia compensation and interest paid; Case No.C.331/B (4th. Report 1971/72) - delay means loss of pension - compensation equal to amount of lost pension.
(10) Case No.C.646/J (6th. Report, 1974/75) p.55 paragraphs 10 & 11; see also Case No.C.405/80 (5th. Report, 1980/81).
(11) Case No.C.112/J (3rd. Report, 1974); Case No.C.2/J (3rd. Report, 1974) - solicitors engaged in delay in receiving a driving licence for work - fees paid. Case No.C.522/V (3rd. Report, 1975/76) expenses paid, incurred trying to recoup loss of stolen girocheque, (seemed to help that she could produce a copy of her letter and acknowledgement card, when the Department claimed no knowledge.); Case No.C.539/79 (9th. Report, 1979/80); Case No.C.186/80 (3rd. Report, 1980/81); Case No.C.921/80 (1st. Report, 1981/82); Case No.C.80/84 (1st. Report, 1984/85); Case No.C.138/87 (6th. Report, 1987/88).
(12) Case No.C.114/J (3rd. Report, 1974/75) - not the Department's fault that the complainant was unable to get Local Authority grant for work (for which he needed relaxation of Building Regulations from the Department) at 75% - in fact 50% grant obtained - a loss of £600. See

also Case No.C.372/G (4th. Report, 1972/73) - financial loss due to vandalisation - could not accept vandalisation as direct result of the delay; Case No.C.183/77 (1st. Report, 1977/78); Case No.5/216/78 (7th. Report, 1977/78); Case No.4/898/77 (4th. Report, 1978/79); Case No.3B/756/78 (1st. Report, 1979/80) - only compensation for the expenses incurred in trying to register 'cherished numberplate' - "For my part, however, I can see no pssible ground on which I could ask the Department to accept responsiblity for such a payment[£250 to buy back number] or for other expenses which the complainant may have chosen to incur. I consider their apology, together with their offer - which still stands - of registration of the complainant's car under one of two alternative special numbers if available, without payment of the £50 fee; to be a quite sufficient outcome to the investigation." p.174 paragraph 17; Case No.C.454/85 (3rd. Report, 1986/87) see p.35 paragraph 25; Case No.C.348/86 (1st. Report, 1987/88); Case No.C.379/84 (1st. Report, 1985/86) - where woman only made complaint in terms of her children so that PCA did not feel that he could award compensation to her at the end of his investigation;

(13) Case No.C.50/G (4th. Report, 1971/72) p.183 paragraph 8 "And I accept the Inland Revenue's view that they can make assessments only on the basis of the established facts, and not on the position as it might have been."; Case No.C.427/G (3rd. report, 1972/73) - subsequent rearrangement of affairs - no influence; Case No.C.276/T (3rd. report, 1974) - surtax assessment delay. Case No.C.21/V (1st. Report, 1975/76) - ex gratia compensation paid to the complainant for extra unnecessary time spent in prison as result of administrative error by the Home Office - but this was before the PCA's intervention - apologies added; Case No.C.456/86 (1st. Report, 1988/89) p.28 paragraph 25 "Whether the complainant would have succeeded in avoiding bankruptcy proceedings if he had received his payment from the Redundancy Fund in the first part of 1986 can only be a matter of speculation. However, given the scale of his financial difficulties, I am not myself persuaded that the administrative failings of DTI and DE, and the consequent delay in receipt of that payment, can realistically be seen as the cause of his having been made bankrupt."; Case No.C.175/81 (4th. Report, 1982/83).

(14) Case No.C.356/82 (2nd. Report, 1983/84) p.13 paragraph 26.

(15) Case No.5/821/77 (7th. Report, 1977/78); Case No.C.113/84 (3rd. Report, 1984/85); Case No.C.36/85 (5th. Report, 1985/86).

(16) Case No.C.307/K (1st.Report, 1976/77) p.44 paragraph 16.

(17) Case No.C.183/K (1st.Report, 1976/770.

(18) Case No.C.71/V (1st.Report, 1975/76). See also Case No.C.262/V (3rd.Report, 1975/76) - where a leaflet was

misleading, but there was evidence that the complainant was warned that he went ahead at his own risk, if he proceded without official permission from the department; Case No.3A/57/79 (2nd. Report, 1979/80); Case No.C.823/81 (2nd. Report, 1982/83); and see Case No.C.463/T (3rd.Report, 19740 p.31/32 paragraph 15; "Had I concluded nevertheless that he had been led by the terms of the leaflet he obtained to adopt a course he would not otherwise have taken, I should have been prepared to ask whether the Department should not accept some liablity for the expenses. But it does not seem to me from his evidence that he had been led to negotiate for a house on that basis."

(19) Case No.C.278/87 (5th. Report, 1987/88); Case No.5/283/78 (1st. Report, 1978/79); Case No.2/528/78 (1st. Report, 1979/80); Case No.C.150/80 (1st. Report, 1980/81); Case No.C.320/81 (3rd. Report, 1981/82); Case No.C.253/81 (1st. Report, 1982/83); Case No.C.591/81 (1st. Report, 1982/83); Case No.C.186/82 (3rd. Report, 1983/84); Case No.C.605/87 (6th. Report, 1987/88); Case No.C.794/84 (4th. Report, 1985/86).

(20) Case No.C.6/G (1st.Report, 1972/73); see also Case No.C.728/V (6th.Report, 1975/76) - no financial loss.

(21) Case No.C.329/G (4th.Report, 1972/73); Case No.557/79 (9th. Report, 1979/80).

(22) Case No.C.275/83 (7th. Report, 1983/84) p.124 paragraph 29.

(23) Case No.C.45/87 (5th. Report, 1987/88) p.31 paragraph 24.

(24) Case No.C.121/B (4th. Report, 1971/72); Case No.C.500/G (1st. report, 1974); Case No.C.154/V (5th. Report, 1975/76) - review not successful

(25) Case No.C.484/J (4th. Report, 1974/75)

(26) Eg Case No.C.465/G (1st. Report, 1973/74)

(27) Case No.C.160/V (1st. Report, 1975/76)

(28) Case No.C.372/G (4th. Report, 1972/73) - delay, alleged that this led to house concerned being vandalised to the point of demolition (also obviously financial loss) - PCA felt that the blame could not be laid at the Department's door entirely.

(29) In this case - Section 245 of the Town and Country Planning Act 1971 - appeal within six weeks of the decision.

(30) Case No.C.23/J (3rd. report, 1974) p.76 paragraph 8 - "I should add that thjis does not mean that permission would necessarily be given; indeed from the inspector's comments in paragraph 6 it might be inferred that having regard to the character of the area, permission would be unlikely to be given. But it is for the appellant to decide in this situation whether it is practicable or desirable to follow such a course."

(31) Case No.C.141/J (1st. Report, 1974/75)

(32) It is interesting to speculate what the effect of an adverse PCA report would be. See also Case No.C.561/J

(4th. Report, 1974/75) - delay in informing complainant of refusal of application for postgraduate student grant, led to loss of job - "But the complainant, for his part, has not claimed that his decision to reject the offer of a teacher felloship would have been affected if he had been told of the outcome of his application by the date he had expected."p.21 paragraph 16. Surely, this was the point of the complaint!!!
(33) Case No.C.500/78 (4th. Report, 1979/80) p.64/65 paragraph 18
(34) Eg Case No.C.316/G 93rd. Report, 1972/730; Case No.C.371/J/W.11/74 (3rd. Report, 1974/75) [fair hearing]; Case No.C.267/K (3rd. Report, 1976/77); Case No.C.736/V (1st. Report, 1976/77) [impartiality cases] - Although, it has been observed that several complainants did address their letters in such terms ie 'to prevent the same thing happening to others'; Case No.C.35/77 (1st. Report, 1977/78); Case No.15/580/77 (7th. Report, 19777/78); Case No.2/747/77 (4th. Report, 1978/79); Case No.C.75/79 (4th. Report, 1979/80); Case No.C.539/79 (9th. Report, 1979/80); Case No.C.433/81 (3rd. Report, 1981/82); Case No.C.556/81 (5th. Report, 1981/82); Case No.C.828/81 (2nd. Report, 1983/84); Case No.C.205/84 (1st. Report, 1984/85); Case No.C.242/83 (1st. Report, 1984/85); Case No.C.290/84 (3rd. Report, 1984/85); Case No.C.596/84 (5th. Report, 1984/85); Case No.C.697/85 (5th. Report, 1984/85); Case No.C.306/86 (1st. Report, 1986/87); Case No.C.741/85 (3rd. Report, 1987/88); Case No.C.549/87 (1st. Report, 1988/89); Case No.C.475/87 (1st. Report, 1988/89).
(35) Case No.C.327/79 (4th. Report, 1979/80); Case No.C.398/82 (2nd. Report, 1983/84); Case No.C.256/86 (3rd. Report, 1988/89); Case No.C.620/84 (1st. Report, 1985/86).
(36) Case No.C.658/82 (1st. Report, 1983/84).
(37) Select Committee on the Parliamentary Commisssioner for Administration 4th. Report, 1977/78 (HC 615).
(38) Case No.3B/338/77 (5th. Report, 1977/78) p.291 paragraph 11.
(39) Case No.3B/1244/78 (1st. Report, 1979/80).
(40) Case No.C.644/80 (3rd. Report, 1981/82) p.32 paragraph 28; see also Case No.C.373/87 (6th. Report, 1987/88).
(41) Case No.C.876/81 (1st. Report, 1983/84).
(42) Case No.3A/841/77 (4th. Report, 1978/79); Case No.C.127/84 (4th. Report, 1984/85); Case No.C.432/84 (5th. Report, 1984/85)
(43) Case No.C.333/G (4th. Report, 1972/73); see also Case No.C.486/B (1st. Report, 1972/73); Case No.C.386/G (1st. Report, 1972/73); Case No.C.258/T (3rd. Report, 1974); Case No.C.515/J (1st. Report, 1975/76); Case No.6/788/77 (7th. Report, 1977/78); Case No.C.385/80 (5th. Report, 1980/81); Case No.C.175/87 (1st. Report, 1988/89).[See also Case No.C.691/J (1st. Report, 1975/76) - where a four month delay in receiving a pension, followed after an intimation of retiral two days before the event (but other

shortcomings as well); and Case No.C.55/G (4th. Report, 1971/72) - applied for a renewal of driving licence less than one week before a driving test, which had to be cancelled - no grounds for criticism.]
(44) Fair hearing cases where did not take the opportunity to give evidence/information.
(45) Case No.C.342/J (1st. Report, 1974/75); Case No.C.200/J (3rd. Report, 1974/75); Case No.C.24/V (6th. Report, 1974/75); Case No.C.499/82 (3rd. Report, 1983/84); Case No.2/380/78 (1st. Report, 1978/79); Case No.C.306/77 (1st. Report, 1977/78).
(46) Case No.C.159/J (3rd. Report, 1974); Case No.C.57/81 (6th. Report, 1980/81).
(47) Case No.C.125/V (6th. Report, 1974/75)
(48) Case No.C.466/J (3rd. Report, 1974/75) - errors in certificates to support a claim for tax allowances for wife and children abroad; Case No.C.621/83 (8th. Report, 1983/84).
(49) Case No.C.169/77 (1st. Report, 1977/78); Case No.3A/1064/78 (2nd. Report, 1979/80); Case No.C.236/80 (9th. Report, 1979/80); Case No.C.50/82 (2nd. Report, 1983/84); Case No.C.196/85 (1st. Report, 1986/87).
(50) Case No.C410/81 (1st. Report, 1981/82).
(51) Case No.C.244/79 (4th. Report, 1979/80); Case No.C.172/80 (5th. Report, 1980/81).
(52) Case No.C.594/85 (5th. Report, 1985/86); Case No.C.352/86 (3rd. Report, 1986/87); Case No.C.252/82 (2nd. Report, 1983/84); Case No.6/511/77 (1st. Report, 1978/79).
(53) Case No.C.608/83 (1st. Report, 1984/85).
(54) Case No.C.342/J (1st. Report, 1974/75) - special circumstances - family allowance book for family of 8 children and a high reliance on benefit; and Case No.C.24/V (6th. Report, 1974/75) - another DHSS case; Case No.C.465/81 (1st. Report, 1981/82).
(55) Case No.1A/161/78 (7th. Report, 1977/78); Case No.C.387/81 (3rd. Report, 1981/820; Case No.C.45/82 (2nd. Report, 1982/830; Case No.C.252/82 (2nd. Report, 1983/84).
(56) Case No.C.232/G (3rd. Report, 1972/73) p.145 paragraph 9; see also Case No.C.125/G (1st. Report, 1972/73); & Case No.C.206/V (3rd. Report, 1975/76) - DHSS case, not supplying information when requested by the Department - partial blame for the delay. It can also lead to equal apportionment of the blame - Case No.C.194/V (3rd. Report, 1975/76); Case No.3A/648/77 (5th. report, 1977/78); Case No.3A/784/77 (7th. Report, 1977/78); Case No.C.1A/169/78 (7th. Report, 1977/78); Case No.3B/568/77 (7th. Report, 1977/78); Case No.3A/430/78 (4th. Report, 1978/79); Case No.5/755/78 (2nd. Report, 1979/80); Case No.C.391/80 (3rd. Report, 1980/81); Case No.C.752/79 (3rd. Report, 1980/81); Case No.C.14/80 (5th. Report, 1980/81); Case No.C.875/80 (1st. Report, 1981/82); Case No.C.978/80 (5th. Report, 1981/82): Case No.C.561/81 (1st. Report, 1982/83); Case No.C.7/82 (1st. Report, 1983/84); Case No.C.38/83 (1st. Report, 1984/85); Case No.C.343/84 (4th.

Report, 1984/85); Case No.C.817/81 (5th. Report, 1984/85); Case No.C.309/87 (5th. Report, 1987/88).
(57) Case No.C.781/77 (4th. Report, 1979/80).
(58) Case No.C.337/J (1st. Report, 1974/75); see also Case No.5/15/78 (1st. Report, 1978/79); Case No.3A/800/78 (1st. Report, 1979/80).
(59) Case No.C.106/G (4th. Report, 1972/73); Case No.C.136/G (1st. Report, 1972/73) - tax could have been paid on time, delay of the Collector only caused slight increase in the interest charges - no need for more than an apology; Case No.C.192/V (6th. Report, 1974/75) - mitigating action could have been taken by solicitors - not the Department's fault. Case No.C.497/J (4th. Report, 1974/75) - loss of education by daughter during dispute over choice of schools - complainant refused to register her at school offered - PCA felt that he could have registered her there without prejudice to the final decision; Case No.C.728/V (6th. Report, 1975/76) - did not take evasive action to avoid the alleged hardship; Case No.C.197/82 (1st. Report, 1983/84).
(60) Case No.C.364/82 (7th. Report, 1983/84) p.70 paragraph 41; Case No.C.656/79 (9th. Report, 1979/80) - complainant had broken immigration law and had been allowed to stay, could not claim of injustice; Case No.C.119/88 (3rd. Report, 1988/89).
(61) Case No.C.72/80 (1st. Report, 1980/81).
(62) Case No.C.972/80 (1st. Report, 1981/82).
(63) Case No.C.404/79 (8th. Report, 1979/80) p.51 paragraph 14.
(64) Case No.C.145/B (4th. Report, 1971/72) see p.42; Case No.2/216/77 (5th. Report, 1977/78); Case No.1B/722/77 (7th. Report, 1977/78); Case No.C.865/80 (1st. Report, 1981/82); Case No.C.591/81 (1st. Report, 1982/83); Case No.C.798/82 (6th. Report, 1983/84); Case No.C.529/84 (1st. Report, 1985/86).
(65) Case No.C.311/G (3rd. Report, 1972/73); see also CAse No.C.230/J (3rd. Report, 1974/75) p.74 paragraph 16 - "But I am satisfied that the delay had no effect on the outcome."
(66) Case No.C.293/B (4th. Report, 1971/72) p.70 paragraph 43. See also Case No.C.497/G (5th. Report, 1972/73); Case No.C.96/T (1st. Report, 1973/74); Case No.C.43/G (4th. Report, 1972/73); Case No.C.167/G (3rd. report, 1972/73); Case No.C.441/T (1st. Report, 1974/75) see p.41 paragraph 13; Case Nos.C.71/125/175/T (1st. report, 1974) see p.166 paragraph 107.
(67) Case No.1B/483/78 (2nd. Report, 1979/80); Case No.3B/338/77 (5th. Report, 1977/78); Case No.3B/390/77 (5th. Report, 1977/78); Case No.3B/474/77 (5th. Report, 1977/78).
(68) Case No.C.166/G (1st. Report, 1972/73); Case No.4/19/78 (1st. Report, 1978/79); Case No.4/406/77 (5th. Report, 1977/78) - house demolished before it could be

listed.
(69) Case No.C.39/79 (6th. Report, 1979/80).

CHAPTER SEVEN

(1) See Patrick Birkinshaw, 'Grievances, Remedies and the State' (1985) particularly Chapter 1; Wade (6th.ed.) p.12-22; de Smith (4th.ed.) Chapter 1 in general.
(2) Northcote-Trevelyan Report (1854) - The recommendations were put into effect in 1870. In general, it called for competitive examination rather than patronage for entry; promotion on the basis of merit as opposed to seniority; unified control of the service; and definite distinctions drawn between manual and intellectual occupation. The Report is reprinted in the Fulton Report (1968) Cmnd 3638 - the next major report on the Civil Service.
(3) See also, Sir Carleton Allen, 'Bureaucracy Triumphant' (1931). There followed the Donoughmore Report - Committee on Ministers' Powers (1932) Cmd 4060, which failed to make the necessary impact.
(4) See Wade p.19 and references therein.
(5) The Franks Report - Committee on Tribunals & Enquiries (1957) Cmnd 218; The Whyatt Report - 'The Citizen and the Administration' JUSTICE Report 1961 - recommendation for an ombudsman scheme.
(6) Eg such Scottish cases as Walsh v. Pollokshaws Magistrates 1907 SC(HL) 1 per Lord Loreburn at 3 "... They are entitiled to do both these things. Their duty is in the main administrative. And in coming to an administrative conclusion on questions of licensing policy, they may use their own judgment and hear whom they please."
(7) See Wade p.46-49; de Smith (4th.ed.) Chapter 2
(8) Anisminic v. Foreign Compensation Commission [1969] 2 AC 147
(9) Ridge v. Baldwin [1964] AC 40
(10) Re H.K.(An Infant) [1967] 2 QB 617 - this is seen as the first 'modern' case in this field.
(11) Such a concept can be traced from early decisions such as Board of Education v. Rice [1911] AC 179, Lord Loreburn at 182 "I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything."
See also, D.J.Mullan, 'Fairness, the New Natural Justice." (1975) 25 University of Toronto Law Journal 281; Martin Loughlin, 'Procedural Fairness - A Study of the Crisis in Administrative Law Theory."
(12) See R.v.Amber Valley DC, ex p Jackson [1985] 1 WLR 298; R.v.St. Edmondsbury BC, ex p Investors in Industry Commercial Properties Ltd. [1985] 1 WLR 1168;
R.v.Sevenoaks DC, ex p Terry [1985] 3 All ER 226 - where it resumed importance in the test for bias.
(13) Nakkuda Ali v.Jayaratne [1951] AC 66;
R.v.Metropolitan Police Commissioners, ex p Parker [1953]

1 WLR 1150; in a slightly more modified form in R.v.Gaming Board of Great Britain, ex p Beniam & Khaida [1970] 2 QB 417; R.v. Barnsley MBC, ex p Hook [1976] 1 WLR 1052.
(14) See Lord Reid in Ridge v. Baldwin [1964] AC 40 at 65-68
(15) Re H.K.(An Infant) [1967] 2 QB 617
(16) In 1977, Order 53 of the Rules of the Supreme Court SI 1977 No.1955; supplemented by Section 31 of the Supreme Court Act 1981.
(17) Schmidt v. Home Secretary [1969] 2 Ch 149
(18) In general see, Wade p.520-522; Brigid Hadfield, 'Judicial Review & the Concept of Legitimate Expectation' [1988] 39 NILQ 103; C.F. Forsyth, 'The Provenance & Protection of Legitimate Expectation' [1988] 47 CLJ 238.
(19) Wade, Administrative Law (6th.ed.)[Wade]; de Smith, Judicial Review of Administrative Action (4th.ed.)[de Smith]; Jackson, Natural Justice (2nd.ed.1979).
(20) (1852) 3 HLC 759
(21) (1852) 3 HLC 759. Cf. R v. Barnsley Licensing Justices ex p Barnsley & District Licensed Victuallers' Association [1960] 2 QB 167 - a decision to grant a spirits licence to a local co-op society was held to be unobjectionable, despite the fact that 6 out of 7 justices were members of the society, and could as such, expect significant discounts on purchases of spirits if a licence was granted. This was so held under the terms of the relevant statute, but Wade has suggested that this is a borderline case.
(22) R. v. Hendon RDC, ex p Chorley [1933] 2 KB 696
(23) The rules are contained in the Declinature Act 1594, & the Declinature Act 1681; for the limits of these rules see: Moubray's Trustees v. Moubray (1883) 10 R 460; Sir John Preston v. Mr. Robert Rule (June 21 1699) M 3421; Maxwell v. Lord Newton, March 1682 M 3420, Erskine v. Drummond 1787 M 2418; Calder v. Ogilvy 1712 M 197; William Dalgairns 1776 July 26, Bro Sup Vol 5 424; Sir A. Moncrieff v. Lord Moncrieff (1904) 6 F 1021; Sir William Binny v. Hope (December 1687) M 3420; Goldie v. Hamilton 16th. Feb. 1816 F.C.
(24) [1939] 2 All ER 535 - de Smith suggests that this is a marginal case. This does not preclude an appeal, if bias is obviously shown.
(25) R. v. Nailsworth Licensing J.J. ex p Bird [1953] 1 WLR 1046; Goodall v. Bilsland 1909 SC 1152; M'Geehan v. Knox 1913 SC 688. See also cases of Ex p. Wilder (1902) 61 DLR 656 - prejudice against motorists as a class, was not enough to disqualify; R. v. Deal Justices (1881) 45 LT 439 - membership of a society for preventing cruelty to animals, did not prevent a justice sitting on a case brought by that society (it is a different if as a member, or an office-bearer, he made the decision to prosecute - see later). Cf Bradford v. McLeod 1985 SCCR 379 - where Sheriff made remark at social function to the effect that he would not give legal aid to striking miners, this was

held to be enough to disqualify him from hearing legal aid cases involving striking miners.
(26) R. v. Halifax J.J. ex p Robinson (1912) 76 JP 233
(27) See Goodall v. Bilsland 1909 SC 1152; M'Geehan v. Knox 1913 SC 688.
(28) R. v. Reading BC ex p Quietlynn Ltd. (1986) 85 LGR 387; see also Bradford v. McLeod 1985 SCCR 379
(29) Lord Methven v. Lord Gray March 4 1545 M 3417 - deadly feud between a party and an inferior judge, was found a good reason for objection. See also Scheill v. Gudelad (6th. Feb.1561) M 3418 - where a judge's decision had been held inequitable, it was held that the party affected would be entitled to object to that judge in future cases.
(30) Hawthorn v. McLeod 1986 SCCR 150 - accused was asked to sing the version of 'The Sash' he had sung, the accused refused, upon which the Sheriff himself sang two verses from both versions. It was held that although such conduct in a sheriff was reprehensible, it had not prejudiced a fair trial for the accused. See also early case of Master of Glencairn v. Prior of St. Andrews (15th. Feb.1532) M 3417 - biased remarks by judge gave grounds for disqualification - not just in criminal cases.
(31) R. v. Kent Police Authority, ex p Godden [1971] 2 QB 662; see also R. v. Oxford Regional Mental Health Review Tribunal
ex p Mackman [1986] The Times 2 June; cf. R. v. Downham Market Magistrates Court, ex p Nudd [1988] The Times 14 April. On the undesirablity of prejudgment see, R. v. Barnsley MBC ex p Hook
[1976] 1 WLR 1052; McInnes v. Onslow-Fane [1978] 1 WLR 1520
(32) R. v. Pwllheli Justices ex p Soane [1948] 2 All ER 815 - present at the meeting, but took no active part in the decision; R. v. Deal Justices (1881) 45 LT 439; R. v. Camborne Justices ex p Pearce [1955] 1 QB 41 - membership of prosecuting body.
(33) R. v. Gaisford [1892] 1 QB 381; R. v. Milledge (1879) 4 QBD 332; R.v. Lee ex p Shaw (1882) 9 QBD 394
(34) See R. v. Altrincham J.J. ex p Pennington [1975] QB 549 - a magistrate disqualified from hearing case concerning short measures of goods being delivered to schools, as he was a member of the local authority's education committee.
(35) R. v. Sussex J.J. ex p McCarthy [1924] 1 KB 256
(36) [1924] 1 KB 256 as per Lord Hewart C.J. "It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only

be done, but should manifestly and undoubtedly be seen to be done."
(37) Hannam v. Bradford Corpn. [1970] 1 WLR 937; cf Ward v. Bradford Corpn. [1970] 70 LGR 27
(38) R. v. London County Council ex p Altkersdyk [1892] 1 QB 190 - members of sub-committee employed lawyers to argue against an application before the full council; Frome United Breweries Co. Ltd. v. Bath Justices [1926] AC 586
(39) R. v. Assessment Committee for NE Surrey ex p F.W. Woolworth & Co. Ltd. [1933] 1 KB 776 - held that a valuation officer should not sit with the Assessment Committee when deliberating on an objection to an entry on the valuation list; Cooper v. Wilson [1937] 2 KB 309.
(40) Metropolitan Properties Co.(FGC).Ltd v. Lannon [1969] 1 QB 577 per Lord Denning MR " There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would or did, favour one side unfairly at the expense of the other. The court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think that he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.' "
(41) R. v. Camborne J.J. ex p Pearce [1955] 1 QB 41; R. v. Barnsley Licensing J.J. [1960] 2QB 417 per Devlin L.J. - real likelihood test was to be "determined on the probablities to be inferred from the circumstances, not upon the basis of the impressionsthat might reasonably be left on the minds of the party aggrieved, or the public at large."
(42) See the cases of R. v. Amber Valley DC ex p Jackson [1985] 1 WLR 298; R. v. St. Edmundsbury BC ex p Investors in Industry Commercial Properties Ltd. [1985] 1 WLR 1168; R. v. Sevenoaks DC ex p Terry [1985] 3 All ER 226; Steeples v. Derbyshire CC [1985] 1 WLR 256
(43) Peter Cane, An Introduction to Administrative Law, 1986 p.109. See also de Smith (4th. ed.) p.264 - " 'Reasonable suspicion' tests mainly look to outward appearances, 'real likelihood' tests focus on the court's own evaluation of the probablities, but in practice the tests have much in common with one another, and in the vast majority of cases they will lead to the same result." For more detail on previous cases in this area see J. Beatson & M.H.Matthews, Administrative Law - Cases & Materials (1989 2nd. ed.) p.282/292
(44) It would certainly seem to be an established principle in Scotland eg Hercules Ins. Co. v. Hunter (1837) 15 S 800
See also de Smith p.276/277
(45) (1937) TLR 464
(46) R. v. Cumberland J.J. (1882) 52 JP 502. For more details see de Smith p.275/276; Wade p.482/483. However,

it should be noted that there is authority in Scotland for the proposition that waiver cannot be exercised in cases where disqualification is due to family relationship: see Commissioners of Highland Roads v. Machray, Croall & Co. (1858) 20 D 1165 per Lord Ivory at p.116; Ommanney v. Smith (1851) 13 D 678 (cited by Lord Ivory above). See also D. Maxwell, The Practice of the Court of Session p.119

(47) See de Smith p.275/276

(48) de Smith p.261

(49) [1948] AC 87

(50) [1948] AC 87 at 103

(51) Wade p.491/492 & Wade "Quasi-judicial & its Background" (1949) 10 CLJ 216. See Woolf J (as he then was) in R. v. City of London Corpn. ex p Allan (1981) 79 LGR 223 where he refers to Franklin as the 'low-water mark of administrative law'. It is very much the reasoning of the 'twilight' period.

(52) Cmd. 4060 (1932) p.78 - The Committee on Ministers' Powers. The Franks Committee also considered this problem - see Committee on Administrative Tribunals & Enquiries Cmnd 218 1957 59-61, 88-83.

(53) Re Manchester (Ringway Airport) Compulsory Purchase Order (1935) 153 LT 219

(54) London & Clydeside Estates Ltd. v. Secretary of State for Scotland 1987 SLT 459

(55) R. v. Amber Valley DC ex p Jackson [1985] 1 WLR 298 esp. p.307/308

(56) [1987] 2 WLR 961 at 968; see also Stringer v. Minister of Housing & Local Government [1970] 1 WLR 1281 at 1298 - where a Minister deciding an appeal from a local planning authority. A general policy was allowable so long as it did not "preclude him from fairly judging all the issues which are relevant to each individual case as it comes up for decision." Also in this area, see Secretary of State for Education & Science v. Tameside MBC [1977] AC 1014 - (decision on reasonableness, but noted Minister's own policy, and as a result must adopt suitable neutrality; CREEDNZ Inc. v. Governor-General [1981] 1 NZLR 172 - a case similar to Franklin, but Wade believes the reasoning to be superior (Wade p.429); Bushell v. Secretary of State for the Environment [1981] AC 75 - natural justice does apply to administrative acts in general; Lim v. Minister of the Interior, Malaya [1964] 1 WLR 554

(57) Lower Hutt City Council v. Bank [1974] 1 NZLR 545

(58) Eckersley v. Secretary of State for the Environment [1977] JPL 580; Prest v. Secretary of State for Wales (1982) 81 LGR 193; R.v.Brent LBC ex p Gunning (1985) 84 LGR 168; see also Brown v. Secretary of State for the Environment (1978) 40 P & CR 285 - did not consider the availablity of more suitable land; City Cabs (Edinburgh)Ltd v. Edinburgh DC 1988 SLT 184

(59) R.v.Immigration Appeal Tribunal, ex p Bakhtaur Singh

[1986] 1 WLR 910; also R.v.Immigration Appeal Tribunal, ex p Kumar [1986] The Times 13 August - no note taken of evidence of husband's devotion, in case of alleged marriage of convenience; R.v.Home Secretary, ex p Bugdaycay [1987] AC 514 - did not consider danger to deportee; R.v Immigration Appeal Tribunal, ex p Bastiampillai [1983] 2 All ER 844.
(60) R.v.Home Secretary, ex p R [1987] The Times 8 June
(61) Rother Valley Railway Co Ltd v. Ministry of Transport [1971] 1 Ch 515
(62) South Oxfordshire DC v. Secretary of State for the Environment [1981] 1 WLR 1092; cf Westminster Renslade Ltd. v. Secretary of State for the Environment (1983) 48 P & Cr 255; Surrey Heath BC v. Secretary of State for the Environment [1986] The Times 3 November.
(63) R.v Ealing LBC ex p Times Newspapers Ltd. (1986) 85 LGR 316 - see also R.v.Secretary of State for Education & Science, ex p Inner London Education Authority [1985] 84 LGR 454
(64) Hanks v. Minister for Housing & Local Government. [1963] 1 QB 999
(65) R.v Broadcasting Complaints Commission, ex p Owen [1985] QB 1153; R.v Secretary of State for Social Services, ex p Wellcome Foundation Ltd. [1987] 1 WLR 1166.
(66) Hanks v. Minister for Housing & Local Government [1963] 1 QB 999.
(67) [1949] 1 KB 227
(68) See Howell v. Falmouth Boat Construction Co.Ltd. [1951] AC 837
(69) Southend-on-Sea Corporation v. Hodgson (Wickford) Ltd.[1962] 1 QB 416 - where confirmation was given to the view that no planning permission was needed to operate newly purchased builder's yard - held that authority was not bound by this advice given by the borough engineer. Also, Rootkin v. Kent CC [1981] 1 WLR 1186 - a decision to pay a pupil's school transport costs, could be revoked, when it was decided that it was based on an error of facts.
(70) In Western Fish Products Ltd. v. Penwith DC (1978) 38 P & CR 7 also at [1981] 2 All ER 204 - the applicant was unsuccessful here, the Co had relied on the chief planning officer's oral assertion that an application for 'an established use' certificate was a 'mere formlity'.
(71) This explained the decision in Lever Finance Ltd. v. Westminster LBC [1971] 1 QB 222. However, it meant that Lord Denning's assertion in Robertson v. Ministry of Pensions [1949] 1KB 227, that the mere holding of office was enough, no longer stood.
(72) The Court cited Wells v.Minister of Housing & Local Government [1967] 1 WLR 1000, as an example of this.
(73) See Gowa v. attorney-General [1984] The Times 27 December - Court of Appeal held that a colonial governor's letter could be binding, as a result of its misleading/incorrect contents; but see the House of Lords

decision [1985] 1 WLR 1003 where the House reached the same result, by different reasoning.
(74) See R.v.west Glamorgan CC ex p Gheissary [1985] The Times 18 December, this of course may also be seen as an example of not considering the relevant facts as to why the applications were late.
(75) There has been some comment that a distinction could be drawn between promised actions which are ultrs vires, and those intra vires - this is put forward in de Smith, 'Constitutional and Administrative Law' (4th.ed.) p.402; and M.A.Fazal, 'Reliability of Official Acts & Advice' [1972] PL 43. However, Wade strongly dismisses this idea, as the public interest must also be protected, see Wade p.386
(76) Wade suggests this course, see p.385/387 - he also suggests that the PCA has shown the correct approach here; de Smith goes further and suggests that the appropriate redress would be through the associated ombudsman(p.105).
(77) The doctrine was originally propounded in Hedley Byrne & Co. Ltd. v. Heeler & Partners Ltd.[1964] AC 465; other relevant cases include Ministry of Housing & Local Government v. Sharp [1970] 2 QB 223 - where a local authority was held liable for the careless search of land charge register, by a clerk; Culford Metal Industries Ltd. v. Export Credits Guarantee Dept. [1981] The Times 25 March - government department held liable for negligently telling an exporter that he would be insured for loss.
(78) HTV Ltd. v. Price Commission [1976] ICR 170; A-G for Hong Kong v Ng Yuen Shiu [1983] 2 AC 629; R.v.Home Secretary, ex p Asif Mahmood Khan [1984] 1 WLR 1337 - if the matter was to be decided on an entirely different ground from those circulared, then the party should be informed of this fact; R.v.Home Secretary, ex p Ruddock [1988] QB 000.
(79) R.vHome Secretary, ex p Asif Mahmood Khan [1984] 1 WLR 1337
(80) See C.F.Forsyth, 'The Provenance and Protection of Legitimate Expectation' [1988] CLJ 238
(81) [1988] QB 000; see also A-G for Hong Kong v. Ng Yuen Shiu [1983] 2 AC 629. Previously, cases were decided on the basis that it was unfair to depart from guidelines - see HTV Ltd. v. Price Commission [1976] ICR 170.
(82) See de Smith p.196; Wade p.540; see R.v.Oxfordshire Mental Health Review Tribunal ex p Home Secretary [1986] 1 WLR 1180 (affirmed [1988] AC 120) - where Secretary of State not notified of hearing which decided to discharge patient, decision quashed.
(83) See R.v.Kensington & Chelsea Rent Tribunal, ex p MacFarlane [1974] 1 WLR 1486 - where the notice was served, but not received, the proceedings were held not to have been invalidated, but that the tribunal had discretion to reconsider its decision in light of representations made to it subsequently by the absent party.

(84) Davis v. Carew-Pole [1956] 1 WLR 833, but see de Smith's doubt in this area, p.197
(85) R.v.Thames Magistrates' Court, ex p Polemis [1974] 1 WLR 1371; Brentnall v. Free Presbyterian Church of Scotland 1986 SLT 471; Mahon v. Air New Zealand Ltd. [1984] AC 808; R.v.Liverpool Corpn., ex p Liverpool Taxi Fleet Operators' Association [1972] 2 QB 299; R.v.Merseyside Chief Constable, ex p Calveley [1986] QB 424
(86) Hopkens v. Smethwick Board of Health (1890) 2 QBD 712 at 715
(87) M'Donald v. Lanarkshire Fire Brigade Joint Committee 1959 SC 141; Hoggard v Worsbrough UDC [1962] 2 QB 93 - insufficient warning of what was proposed to be done to plaintiff's detriment.
(88) Lau Liat Meng v. Disciplinary Committee [1968] AC 391; nor is it permissible for thetrue charge only to be revealed at the appeal stage - Annamunthodo v. Oilfields Workers Union [1961] AC 945.
(89) Eg. the provisions of the Town & Country Planning Act 1971
(90) See McCowan v. Secretary of State for Scotland 1972 SLT 163; Wilson v. Secretary of State for Environment [1973] 1 WLR 1083; Gordonvale Investments Ltd. v. Secretary of State for Environment (1971) 70 LGR 158. Statutory example, the provisions of the Town & Country Planning Act 1971.
(91) Compulsory Purchase Orders see SI 1976 No.746 rule 5, allows owner, lessee or occupier of the land, who has made formal objections, and the acquiring authority. Planning Appeals see SI 1974 No.419, rule 7; No.420, rule 9; 1981 No.1743, rule 8; all as amended by 1986 No.420; persons allowed to appear are the appelllant, the local planning authority, certain other local authorities in some circumstances, certain other people with legal rights in the land concerned, persons who have made formal objections in cases where advertisement of the application is required, and any person on whom the Secretary of State has required notice of it to be served.
(92) R.v.Liverpool Corpn., ex p Liverpool Taxi Fleet Operators' Assoc. [1972] 2 QB 299; R.v.Great Yarmouth BC ex p Botton Bros. Arcades Ltd. [1987] The Times 31 July.
(93) See R.v.Liverpool Corpn., ex p Liverpool Taxi Fleet Operators' Assoc. [1972] 2 QB 299.
(94) Fredman v. Minister of Health (1935) 154 LT 240 - order was inoperative until approved by Minister; see also Hanily v. minister of Local Government & Planning [1952] 2 QB 444 - where it was held that as an objector had a right to a hearing, if he appealed to the Secretary of state, then the local planning authority did not have to afford him a hearing, when they took over their initial decision; however, contrast R.v.Great Yarmouth BC ex p Botton Bros Arcades Ltd. [1987] The Times 31 July. Also in a more general sense, see R.v.Secretary of State for Environment

ex p Brent LBC [1982] QB 593 - an earlier 'hearing' does not preclude the necessity to hear the parties at a later stage as well.
(95) See Furnell v. Whangarei High School Board [1973] AC 660 - suspension from job as teacher; Lewis v.Heffer [1978] 1 WLR 1061 - suspension of officers from constituency party pending an inquiry. In this area generally, see Pearlberg v. Varty [1972] 1 WLR 534 - no right to be heard, when initial measures taken to impose back taxation.
(96) [1971] Ch 34, per Megarry J (as he then was), and also see Glynn v. Keele University [1971] 1 WLR 487; R.v.Aston University Senate ex p Roffey [1969] 2 QB 538
(97) [1980] Ac 574 - where Lord Wilberforce identified three situations: (a) where original body or larger component of it reheard the case, this would be satisfactory; (b) situation where the relevant procedural structure required a fair hearing at both outset and appeal, this may be subject to review; (c) cases where theend result was fair despite procedural irregularity.
(98) Lloyd v. MacMahon [1987] AC 625
(99) See R.v.Immigration Tribunal ex p Mehmet [1977] 1 WLR 795 - tribunal's decision and resulting deportation order quashed for failure to afford an oral hearing. It should be noted that it may not be possible for a party to waive their right to a hearing - Hanson v. Church Commissioners [1978] QB 823, R.v.Deputy Industrial Injuries Commissioner ex p Moore [1965] 1 QB 456 at 489/490.
(100) R.v.Kingston-upon-Hull, ex p Black (1949) 65 TLR 209
(101) R.v.Local Government Board ex p Arlidge [1914] 1 KB 160 at 191; R.v.Immigration Appeal Tribunal ex p Jones (Ross) [1988] 1 WLR 477; Brighton Corpn. v. Parry (1972) 70 LGR 576; Kavanagh v. Chief Constable of Devon & Cornwall [1974] QB 624; British Oxygen Co.Ltd. v. Board of Trade [1971] AC 610; R.v.Huntingdon DC ex p Cowan [1984] 1 WLR 501; Fairmount Investments Ltd. v. Secretary of State for Environment [1976] 1 WLR 1255 at 1266; Lloyd v. McMahon [1987] AC 625; Attorney-General v. Ryan [1980] AC 718.
(102) R.v.Secretary of State for Wales, ex p Green (1969) 67 LGR 560
(103) Brighton Corpn. v. Parry (1972) 70 LGR 576
(104) Kavanagh v. Chief Constable of Devon & Cornwall [1974] QB 624; British Oxygen Co.Ltd. v. Board of Trade [1971] AC 610 at 625; R.v. Huntingdon DC ex p Cowan [1984] 1 WLR 501.
(105) [1987] AC 625.
(106) Kanda v. Government of Malaya [1962] AC 322, per Lord Denning: "If the right to be heard is to be a real right which is worth anything, it must carry with it a right inthe acused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him, and then he must be given a fair opportunity to correct or contradict

them."
See also Chief Constable of the North Wales Police v. Evans [1982] 1 WLR 115; R.v.Home Secretary, ex p Benwell [1985] QB 554; R.v.Chief Constable of Thames Valley Police ex p Stevenson [1986] The Times 22 april; R.v.Chief Constable of Avon & Somerset ex p Clarke [1986] The Independent 27 November; Maradana Mosque Trustees v.Mahmud [1967] 1 AC 13 - the Minister based his decision on part of the charges not revealed to the party; R.v.Home Secretary, ex p Awuku [1987] The Times 3 October - decision quashed as based on facts which party was not given full opportunity to explain; R.v.Bedfordshire CC ex p C (1986) 85 LGR 218 - decision not to return a child to its father quashed after the mother's allegations (upon which the decision was based) were not put to him.
(107) Kanda v. Government of Malaya [1962] AC 322 - decision based on a report not made available to the party, decision quashed; R.v.Deputy Industrial Injuries Commissioner ex p Jones [1962] 2 QB 677; R.v. Assistant Metropolitan Police Commissioner ex p Howell [1986] RTR 52 - decision based on adverse medical report not available to party; R.v.Kent Police Authority, ex p Godden [1971] 2 QB 662 - no access to medical report; R.v.Huntingdon DC ex p Cowan [1984] 1 WLR 501 - licensing authority decision quashed, as did not reveal objections to the applicant.
(108) Sabey(H) & Co v. Secretary of State for the Environment [1978] 1 All ER 586; TLG Building Materials v. secretary of State for Environment (1980) 41 P & CR 243.
(109) R.v.Paddington & c Rent Tribunal, ex p Bell London Properties Ltd. [1949] 1 KB 666; Fairmount Investments Ltd. v. Secretary of State for Environment [1976] 1 WLR 1255. See in general, Winchester CC v. Secretary of State for Environment (1978) 36 P & CR 455 - site inspection and new evidence.
(110) R.v.Criminal Injuries Compensation Board ex p Ince [1973] 1 WLR 1334 at 1345.
(111) In general see R.v.National Insurance Commissioners ex p Viscusi [1974] 1 WLR 646; Freeland v. Glasgow Licensing Board 1980 SLT 101.
(112) R.v.Gaming Board for Great Britain, ex p Beniam & Khaida [1970] 2 QB 417; see also R.v.Home Secretary, ex p Hosenball [1977] 1 WLR 766; McInnes v. Onslow-Fane [1978] 1 WLR 1520 held that Council of Boxing Board of Control did not have to give an applicant for a manager's licence an outline of their objections to him.
(113) Eg Re Pergamon Press Ltd. [1971] Ch 388 - Board of Trade investigators did not need to disclose names of witnesses, nor transcripts of evidence, nor show adverse passages in draft report; R.v.Race Relations Board ex p Selvarajan [1975] 1 WLR 1686; R.v. Home Secretary, ex p Mughal [1974] QB 313 - suspected illegal immigrant did not have reports disclosed to him, but given full opportunity to understand and contradict case against him; Public Disclosure Board v. Issacs [1989] 1 All ER 137 where the

Commission was held to be inquisitorial, thus they did not need to give the plaintiff the opportunity of rebutting a finding that the complaint made against the declarant was not made out before the Commission reached its decision.
R.v.Home Secretary, ex p Gunnell [1984] The Times 7 November - recommendation by Parole Board that prisoner be recalled to prison, the duty to act fairly does not require full disclosure of all adverse evidence. This decision has been criticised in Weeks v. UK [1987] ECHR Series A vol 114 (decision 2 March) as depriving the prisoner of a judicial decision, which is required under the European Convention.
(114) R.v.Monopolies & Mergers Commission, ex p Matthew Brown [1987] 1 WLR 1235.
(115) See R.v.Kent Police Authority, ex p Godden [1971] 2 QB 662
(116) Errington v. Minister of Health [1935] 1 KB 249; Lake District Special Planning Board v. Secretary of State for Environment (1975) 236 EG 417; Reading BC v. Secretary of State for Environment (1985) 52 P & CR 385
(117) Hibernian Property Co Ltd. v. Secretary of State for Environment (1973) 27 P & CR 197.
(118) de Smith p.207 -212
(119) This point would have been discussed in Buxton v. Minister of Housing & Local Government [1961] 1 QB 278 but the case failed on locus standi issue.
(120) Kent CC v. Secretary of State for Environment (1977) 75 LGR 452
(121) Nelsovil Ltd. v. Minister of Housing & Local Government [1962] 1 WLR 404; Wipperman v. Barking LBC (1966) 17 P & CR 225.
(122) Coleen Properties Ltd.v. Minister of Housing & Local Government [1971] 1 WLR 433.
(123) French Kier Developments Ltd. v. Secretary of State for Environment [1977] 1 All Er 296.
(124) Gibbs (W.H.) Ltd. v. Secretary of State for Environment (1973) 229 EG 103; North Surrey Water Co. v. Secretary of State for Environment (1977) 34 P & CR 140.
(125) Priddle v. Fisher & Sons [1968] 1 WLR 1478; Re M (an infant) [1968] 1 WLR 1897; Rose v. Humbles [1972] 1 WLR 33; Gill & Co (London) Ltd. v. Secretary of State for Environment [1978] JPL 373 - a c.p.o. was quashed as the inspector had refused an adjournment when an objector had become ill, despite the fact that there had been no objection to the adjournment from the other side.
(126) Ostreicher v. Secretary of State for the Environment [1978] 1 WLR 810
(127) R.v.Medical Appeal Tribunal (Midland Region), ex p Carrarini [1966] 1 WLR 883; R.v. Thames Magistrates Court ex p Polemis [1974] 1 WLR 1371.
(128) Howard v. Secretary of State for Environment [1975] QB 235 at 245 - appellant in planning appeal who fails to state grounds of his appeal risks summary dismissal on merits.

(129) Osgood v. Nelson (1872) LR 5HL 636 at 646 & 660; Marriott v. Minister of Health (1936) 154 LT 47 at 50; R.v.Newmarket Assessment Committee [1945] 2 All Er 371 at 373; Magistrates of Ayr v. Lord Advocate 1950 SC 102 at 109; Nicholson v. Secretary of State for Energy (1978) 76 LGR 693; Errington v. Minister of Health [1935] 1 KB 249 at 272; Wednesbury Corpn. v. Minister of Housing and Local Government (No.2) [1979] 1 WLR 1401; R.v.Gartree Prison Visitors ex p Mealy [1981] The Times 14 November; R.v.Blundeston Prison Visitors ex p Fox-Taylor [1982] 1 All ER 646 (witness known to investigating officer, unknown to the prisoner, officer did not revealthis to the Board of Visitors); R.v. Deputy Industrial Injuries Commissioner ex p Moore [1965] 1 QB 456 at 490.
(130) Nicholson v. Secretary of State for Energy (1977) 76 LGR 693.
(131) Ceylon University v. Fernando [1960] 1 WLR 223 at 253 - this is perhaps an example of the unsatisfactory twilight period.
(132) Bushell v. Secretary of State for Environment [1981] AC 75
(133) Re Pergamon Press Ltd. [1971] Ch 388 at 400; see also R.v.Commission for Racial Equality ex p Cottrell & Rothon [1980] 1 WLR 1580 - an offer of a hearing was made by the Commission, after an investigation by them, it was held that at this hearing, the Commission were not required to produce witnesses for cross-examination. See also Herring v. Templeman [1973] 3 All ER 569; Kavanagh v. Chief Constable of Devon & Cornwall [1974] QB 624; Public Disclosure Commission v. Issacs [1989] 1 All ER 137; Chilton v. Saga Holidays plc [1986] 1 All ER 841; R.v.Secretary of State for the Home Department, ex p Tarrant [1985] QB 251 at 288-289.
(134) Enderby Town Football Club v. Football Association Ltd.[1971] Ch 591 at 609.
(135) R.v.Assessment Committee of St. Mary Abbotts, Kensington [1891] 1 QB 378 - right to appoint anyone other than someone obviously unsuitable to act on their behalf.
(136) The main argument against reliance on this theory is that it means that such agency could be excluded by tribunal rules, whereas it has been held that the principles of natural justice cannot be so excluded.(Edwards v. SOGAT [1971] Ch 354) For discussion of this point, and topic in general see J.E. Alder, 'Representation before Tribunals' [1972] PL 278
(137) See Cairns LJ in Enderby Town Football Club Ltd. [1971] Ch 591; see also Pett v. Greyhound Racing Association (No.2) [1970] 1 QB 46; Maynard v. Osmond [1977] QB 240 - police disciplinary regulation, no discretion to allow legal representation; London Passenger Transport Board v. Moscrop [1942] AC 332; Taxi v. Central Radio Taxis (Tollcross) Ltd. 1987 SLT 506
(138) In Enderby Town Football Club Ltd. v. Football Association Ltd. [1971] Ch 591; Pett v. Greyhound Racing

Association [1969] 1 QB 125 at 132; and to a certain extent in Maynard v. Osmond [1977] QB 240 at 252 (there was allowance for legal representation in a further appeal to the Home Secretary, in the circumstances of the case).
(139) See R.v.Race Relations Board, ex p Selvarajan [1975] 1 WLR 1686 at 1693-1694, other examples used were the work of the Gaming Board - it could be said to apply to functions where there is only a duty to act fairly so that allowing legal representation may not fall into the duty to act fairly.
(140) [1975] 1 WLR 1132 - there was also consideration for the need for a speedy decision in this case. See also R.v.Board of Visitors for HM Prison, The Maze, ex p Hone [1988] 2 WLR 177
(141) R.v.Board of Visitors for HM Prison, The Maze, ex p Hone [1988] 2 WLR 177 - the House of Lords ruled that the European Court of Human Rights decision in Campbell & Fell v. UK (1984) 7 EHRR 165 did not support an absolute right to legal representation for prisoners in this country.
(142) R.v.Secretary of State for the Home Department, ex p Tarrant [1985] QB 251; approved in R.v.Board of Visitors for HM Prison, The Maze, ex p Hone [1988] 2 WLR 177
(143) See R.v.Secretary of State for the Home Department, ex p Tarrant [1985] QB 251; see also R.v.secretary of State for the Home Department, ex p Anderson [1984] QB 778
(144) Enderby Town Football Club Ltd. v. Football Association Ltd. [1971] Ch 591 at 605
(145) Pett v. Greyhound Racing Association Ltd. [1969] 1 QB 125 at 132.
(146) Eg Fraser v. Mudge [1975] 1 WLR 1132; R.v.Secretary of State for the Home Department, ex p Tarrant [1985] QB 251
(147) Lord Denning in R.V.Race Relations Board, ex p Selvarajan [1975] 1 WLR 1686; and R.v.Secretary of State for the Home Department, ex p Tarrant.[1985] QB 251
(148) Local Government Board v. Arlidge [1915] AC 120
(149) Jeffs v. New Zealand Dairy Production Marketing Board [1967] 1 AC 551 - Privy Council decided that the Board's decision on zoning orders could not stand, as it had been based on the report of the committee of inquiry acting on its own initiative. R.v.Preston B.C. ex p Quietlynn Ltd. (1974) 83 LGR 308 - delegation was permitted under statutory rules, but the sub-group failed to report all the submissions and objections to the licensing committee making the decision, decision was quashed.
(150) Eg Metropolitan Properties (FGC) Ltd. v. Lannon [1969] 1 QB 577
(151) R.v.Secretary of State for Environment, ex p Hackney LBC [1984] 1 WLR 592 - Secretary of State decided case after the decision was quashed for not hearing objections at proper stage; for cases where new procedral defects arise, see Ridge v. Baldwin [1964] AC 40 at 79
(152) See R.v. Home Secretary, ex p Phansopkar [1976] QB

606; for the position on total inactivity see Teh Cheng Poh v. Public Prosecutor, Malaysia [1980] AC 458.
(153) R.v. Inland Revenue Commissioners, ex p Preston [1985] AC 835 - however, it was not in this case; see also R.v.Merseyside Chief Constable, ex p Calveley [1986] QB 424 - where formal notice of complaints was not given for over two years, this excessive delay was held to invalidate the proceedings.
(154) R.v.Secretary of State for Social Services, ex p Child Poverty Action Group [1989] 1 All ER 1047 per Woolf LJ at p.1055 - case mentioned is Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223 - the 'test' is set out by Lord Greene MR at p.229 - "It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his considerations matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in Short v Poole Corporation ([1926] Ch 66) gave the example of the red-headed teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."
(155) R.v.Gaming Board of Great Britain ex p Beniam & Khaida [1970] 2 QB 417 at431; Payne v. Lord Harris [1981] 1WLR 754; R.v.Bristol CC ex p Pearce (1984) 83 LGR 711; R.v.Secretary of State for Social Services ex p Connelly [1986] 1 WLR 421 at 431; Crake v. Supplementary Benefits Commission [1982] 1 All ER 498; Cannock Chase DC v. Kelly [1978] 1 WLR 1; McInnes v. Onslow-Fane [1978] 1 WLR 1520 at 1532-1535; Macdonald v. R. [1977] 2 SCR 665; Wilkinson v. Barking Corporation [1948] 1 KB 721 at 728; Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch 149 at 171 & 173; O'Reilly v. Mackman [1983] 2 AC 237 at 277.
(156) Committee on Ministers' Powers (Cmd 4060 (1932)) p.80
(157) Breen v. Amalgamated Engineering Union [1971] 2 QB 175 at 191
(158) Woolf LJ criticised the Home Secretary's refusal to give reasons in cases of refusal of political asylum in R.v.Home Secretary ex p Singh [1987] The Times 8 June. See

also Pepys v. London Transport Executive [1975] 1 WLR 234.
(159) [1968] AC 997 at 1053
(160) Minister of National Revenue v. Wright's Canadian Ropes [1947] AC 109 at 123
(161) [1986] 2 ALL ER 941 - the special nature of this particular case, it was stated, allowed the court to accept this statement, albeit with reluctance; see A.W. Bradley [1986] PL 508 for comment.
(162) Committee on Administrative Tribunals & Enquiries (Cmnd 218 (1957)) - on tribunals see p.24 paragraph 98, and on enquiries see p.75-76 paragraph 351.
(163) Section 12 of the 1971 Act, consolidating the original provisions in the Tribunals & Enquiries Act of 1958, which followed the Franks Report.
(164) These are listed in Schedule 1 of the 1971 Act.
(165) See cases of R.v.Sykes (1875) 1 QB 52 at 54; R.v.Thomas [1892] 1 QB 426; Ex p Gorman [1894] AC 23 - there was a statutory duty on Licensing Justices to state which of four specified grounds of refusal, they had based their decision on, the Court insisted that, at least, the ground should be specified, even if actual reasons were not given. This of course, reflects upon the first category discussed as it affected the party's chances of further redress.
(166) R.v.Social Security Commissioner ex p Sewell (The Times [1985] 2 Jan & 2 Feb)
(167) R.v.Social Security Commissioner, ex p Connelly [1986] 1 WLR 421.
(168) See R.v.Immigration Appeal Tribunal, ex p Khan [1983] QB 790; also Givaudan & Co. v. Minister of Housing & Local Government [1967] 1 WLR 250, where it was held that reasons which were partly inconsistent and unintelligible was a failure to conform to the requirements of legislation; Elliott v. Southwark LBC [1976] 1 WLR 499; Norton Tool Co Ltd. v. Tewson [1973] 1 WLR 45; Alexander Machinery (Dudley) Ltd. v. Crabtree [1974] ICR 120; Albyn Properties v. Knox 1977 SC 108 (see Young & Watchman 1978 SLT 201); Cairns (RW) Ltd. v. Busby Session 1985 SLT 493; Re Poyser & Mills Arbitration [1964] 2 QB 467 - 'proper' 'adequate' & 'intelligible' reasons required; Edwin H. Bradley & Sons Ltd. v. Secretary of State for the Environment [1982] JPL 43; French Kier Develpoments v. Secretary of State for the Environment [1977] 1 All ER 296 - vague, inadequate and unintelligible reasons given.
(169) [1964] 1 QB 395 at 410
(170) Elliott v. Southwark LBC [1976] 1 WLR 499; see also Westminster CC v. Great Portland Estates plc [1985] AC 661 - tribunal cannot be expected to give fuller reasons than the case allows.
(171) Bone v. Mental Health Review Tribunal [1985] 3 All ER 330; R.v.Mental Health Review Tribunal, ex p Clatworthy [1985] 3 All ER 699
(172) See R.v.Home Secretary, ex p Swati [1986] 1 WLR 477.
(173) There are some cases which suggest that the decision

is voidable, but the leading academic commentators are quick to criticise the logic in this theory - see Wade p.493-495, & p.526-529; de Smith p.273-276. The reasoning would appear to have allowed the court only to act if there was no substantial prejudice or the like to the party, otherwise they could decline to interfere - see below on this point generally.
(174) The possible objections to this were discussed in the section relating to the duty to consult section, in particular relating to the competency of the tribunal.
(175) However, as has been seen the Court may well decide that the absence of a reasoned decision is a sign of arbitrariness and proceed accordingly
(176) See below.
(177) The doctrine of negligent mistatement can be found in Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. [1964] AC 465; other cases include, Ministry of Housing and Local Government v. Sharp [1970] 2 QB 223; Culford Metal Industries Ltd. v. Export Credits Guarantee Dept. [1981] The Times 25 March. Wade supports this move towards compensation, as a solution to a difficult area in administrative law(p.385/387).
(178) John v. Rees [1970] Ch 345 at 402; see also Lord Wright in General Medical Council v. Spackman [1943] AC 627 at 644 - "If the principles of natural justice are violated in respect of any decision it is indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared no decision." - see recently, R.v.secretary of State for the Environment, ex p Brent LBC [1982] QB 593; Wade points out that the hearing eventually afforded in Ridge v. Baldwin ([1963] 1 QB 566) resulted in three members of the Watch Committee changing their minds; see also de Smith p.197
(179) Malloch v. Aberdeen Corporation [1971] 1 WLR 1578 - where teacher refused to register under statutory scheme, no choice but to dismiss him.
(180) R.v.Bristol CC ex p Pearce (1984) 83 LGR 711. Also see the judgment of Lord Evershed (& the lower courts) in Ridge v. Baldwin ([1963] 1 QB 566) where he suggested that there could no probable effect on the outcome; see also Byrne v. Kinematograph Society Ltd. [1958] 1 WLR 762.
(181) See Lord Denning MR in Hoffman- La Roche v.Secretary of State for Trade and Industry [1975] AC 295 at 320; see in general, J.A.G. Griffiths, 'The Politics of the Judiciary'.
(182) R. v. Aston University Senate ex p Roffey [1969] 2 QB 538. Cf the approach taken in R. v. Diggines, ex p Rahmani [1985] QB 1109 confirmed [1986] AC 475 - where a mistake by the applicant's solicitors led to a hearing in their absence, this was held to be a procedural error; however, this decision was overturned in Al-Mehdawi v. Secretary of State for the Home Department [1989] 3 All ER

843 - it was not a procedural impropriety if a person lost the opportunity of a hearing as a result of a mistake on the part of their advisors.
(183) Glynn v. Keele University [1971] 1 WLR 487. (NB the applicant had also failed to notify his address to the University, hence he coule not be contacted re the hearing.)
(184) Cinnamond v. British Airports Authority [1980] 1 WLR 582
(185) Ward v. Bradford Corporation (1971) 70 LGR 27 - a female trainee teacher had a man living with her, in college, against the regulations, there was a serious breach of natural justice in the conduct of the proceedings, the Court held that regardless of this, the correct decision had been reached. It appears that the Court was much influenced by the concern that the girl should not be allowed to continue training as a teacher.
(186) See Wade at p.535.

CHAPTER EIGHT

(1) Cmd 4060 (1932) p.80
(2) Administration Under Law, p.23. The call was renewed in the JUSTICE/All Souls Report, p.24; the importance of the duty was also noted in the Franks Report, Cmnd 218 (1957) p.75-76 para.351
(3) See Wade p.385/387 and de Smith p.105
(4) [1976] QB 629
(5) See Chapter One and J.D.B.Mitchell, 'The Ombudsman Fallacy' [1962] PL 24
(6) J.D.B. Mitchell, The Ombudsman Fallacy, [1962] PL 24 at28

## APPENDIX 1

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These are listed in chronological order. They are also grouped under the author (the encumbent PCA)

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| 1st. Report, | 1972/73 | HC 18 | Investigations completed August/October 1972 |
| 3rd. Report, | 1972/73 | HC 178 | Investigations completed November 1972/January 1973 |
| 4th. Report, | 1972/73 | HC 290 | Investigations completed February/April 1973 |
| 5th. Report, | 1972/73 | HC 406 | Investigations completed May/July 1973 |
| 1st. Report, | 1973/74 | HC 42 | Investigations completed August/October 1973 |
| 1st. Report, | 1974 | HC 2 | Investigations completed November 1973/January 1974 |
| 2nd. Report, | 1974 | HC 170 | Investigations completed February/April 1974 |
| 3rd. Report, | 1974 | HC 281 | Investigations completed May/July 1974 |
| 1st. Report, | 1974/75 | HC 49 | Investigations completed August/October 1974 |
| 3rd. Report, | 1974/75 | HC 241 | Investigations completed November 1974/January 1975 |
| 4th. Report, | 1974/75 | HC 405 | Investigations completed February/April 1975 |
| 6th. Report, | 1974/75 | HC 529 | Investigations completed May/July 1975 |
| 1st. Report, | 1975/76 | HC 37 | Investigations completed August/October 1975 |
| 3rd. Report, | 1975/76 | HC 259 | Investigations completed November 1975/January 1976 |

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| 5th. Report, | 1975/76 | HC 496 | Investigations completed February/April 1976 |
| 6th. Report, | 1975/76 | HC 665 | Investigations completed May/July 1976 |
| 1st. Report, | 1976/77 | HC 46 | Investigations completed August/October 1976 |
| 3rd. Report, | 1976/77 | HC 223 | Investigations completed November 1976/January 1977 |
| 4th. Report, | 1976/77 | HC 413 | Investigations completed February/April 1977 |
| 5th. Report, | 1976/77 | HC 528 | Investigations completed May/July 1977 |
| 6th. Report, | 1976/77 | HC 571 | Whooping Cough Vaccination |
| 1st. Report, | 1977/78 | HC 126 | Investigations completed August/October 1977 |
| 5th. Report, | 1977/78 | HC 524 | Investigations completed February/April 1978 |
| 6th. Report, | 1977/78 | HC 598 | Rochester Way, Bexley. Refusal to meet late claims for compensation |
| 7th. Report, | 1977/78 | HC 664 | Investigations completed May/July 1978 |
| 1st. Report, | 1978/79 | HC 111 | Investigations completed August/October 1978 |

SIR CECIL CLOTHIER

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| 3rd. Report, | 1978/79 | HC 247 | Investigation of complaints about a Department of Transport Scheme for partial repayment of vehicle excise duty incurred by certain individuals. |
| 4th. Report, | 1978/79 | HC 302 | Investigations completed November 1978/January 1979 |
| 1st. Report, | 1979/80 | HC 124 | Investigations completed February/April 1979 |
| 2nd. Report, | 1979/80 | HC 211 | Investigations completed May/July 1979 |
| 3rd. Report, | 1979/80 | HC 249 | Investigation of a complaint about the occupation by gypsies of surplus government land |
| 4th. Report, | 1979/80 | HC 351 | Selected Cases 1980 Volume 1 (August/November 1979) |
| 6th. Report, | 1979/80 | HC 526 | Selected Cases 1980 Volume 2 (December 1979/February 1980) |
| 7th. Report, | 1979/80 | HC 568 | Investigation of a complaint about the spread of a Dutch Elm Disease in Scotland |

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| 8th. Report, | 1979/80 | HC 693 | Selected Cases 1980 Volume 3 (March/May 1980) |
| 9th. Report, | 1979/80 | HC 799 | Selected Cases 1980 Volume 4 (June/August 1980) |
| 1st. Report, | 1980/81 | HC 99 | Selected Cases 1981 Volume 1 (September/November 1980) |
| 3rd. Report, | 1980/81 | HC 250 | Selected Cases 1981 Volume 2 (December 1980/February 1981) |
| 4th. Report, | 1980/81 | HC 322 | The Sale of Wisley Airfield |
| 5th. Report, | 1980/81 | HC 395 | Selected Cases 1981 Volume 3 (March/May 1981) |
| 6th. Report, | 1980/81 | HC 470 | Selected Cases 1981 Volume 4 (June/August 1981) |
| 1st. Report, | 1981/82 | HC 132 | Selected Cases 1982 Volume 1 (September/November 1981) |
| 3rd. Report, | 1981/82 | HC 327 | Selected Cases 1982 Volume 2 (December 1981/February 1982) |
| 4th. Report, | 1981/82 | HC 455 | Management of the New Forest woodlands by the Forestry Commission |
| 5th. Report, | 1981/82 | HC 484 | Selected Cases 1982 Volume 3 (March/May 1982) |
| 1st. Report, | 1982/83 | HC 8 | Selected Cases 1982 Volume 4 (June/August 1982) |
| 2nd. Report, | 1982/83 | HC 150 | Selected Cases 1983 Volume 1 (September/November 1982) |
| 4th. Report, | 1982/83 | HC 312 | Selected Cases 1983 Volume 2 (December 1982/February 1983) |
| 1st. Report, | 1983/84 | HC 44 | Selected Cases 1983 Volume 3 (March/May 1983) |
| 2nd. Report, | 1983/84 | HC 84 | Selected Cases 1983 Volume 4 (June/August 1983) |
| 3rd. Report, | 1983/84 | HC 190 | Selected Cases 1984 Volume 1 (September/November 1983) |
| 4th. Report, | 1983/84 | HC 191 | Investigation of a complaint about delay in reviewing a conviction for murder. |
| 6th. Report, | 1983/84 | HC 388 | Selected Cases 1984 Volume 2 (December 1983/February 1984) |
| 7th. Report, | 1983/84 | HC 548 | Selected Cases 1984 Volume 3 (March/May 1984) |
| 8th. Report, | 1983/84 | HC 617 | Selected Cases 1984 Volume 4 (June/August 1984) |

SIR ANTHONY BARROWCLOUGH

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| 1st. Report, | 1984/85 | HC 150 | Selected Cases 1985 Volume 1 (September/November 1984) |
| 3rd. Report, | 1984/85 | HC 324 | Selected Cases 1985 Volume 2 (December 1984/February 1985) |
| 4th. Report, | 1984/85 | HC 528 | Selected Cases 1985 Volume 3 (March/May 1985) |

5th. Report, 1984/85 HC 590 Selected Cases 1985 Volume 4 (June/August 1985)
1st. Report, 1985/86 HC 184 Selected Cases 1986 Volume 1 (September/November 1985)
3rd. Report, 1985/86 HC 336 Selected Cases 1986 Volume 2 (December 1985/February 1986)
4th. Report, 1985/86 HC 536 Selected Cases 1986 Volume 3 (March/May 1986)
5th. Report, 1985/86 HC 585 Selected Cases 1986 Volume 4 (June/August 1986)
1st. Report, 1986/87 HC 135 Selected Cases 1987 Volume 1 (September/November 1986)
3rd. Report, 1986/87 HC 312 Selected Cases 1987 Volume 2 (December 1986/February 1987)
1st. Report, 1987/88 HC 41 Selected Cases 1987 Volume 3 (March/May 1987)
2nd. Report, 1987/88 HC 103 Selected Cases 1987 Volume 4 (June/August 1987)
3rd. Report, 1987/88 HC 249 Selected Cases 1988 Volume 1 (September/November 1987)
5th. Report, 1987/88 HC 430 Selected Cases 1988 Volume 2 (December 1987/February 1988)
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## APPENDIX II
LIST OF ABREVIATIONS

CND --- Campaign for Nuclear Disarmament
CPO --- Compulsory Purchase Order
CPMB -- Central Pneumoconiosis Medical Board
DES --- Department of Education & Science
DHSS -- Department of Health & Social Security
DTI --- Department of Trade & Industry
DOE --- Department of Environment
DVLC -- Driver & Vehicle Licensing Centre
EO ---- Employment Office
FCO --- Foreign & Commonwealth Office
HO ---- Home Office
IDN --- Industrial Disablement Benefit
IR ---- Inland Revenue
LEA --- Local Education Authority
LCD --- Lord Chancellor's Department
MAFF -- Ministry of Agriculture, Fisheries & Food
MOD --- Ministry of Defence
MOT --- Ministry of Transport
MSC --- Manpower Services Commission
OVB --- Overseas Branch
PAT --- Pensions Appeal Tribunal
PCA --- Parliamentary Commissioner for Administration
PIC --- Planning Inquiry Commission
PSA --- Property Services Agency
UBO --- Unemployment Benefit Office
UDC --- Urban District Council