The Committee will consider the following current petitions—

**PE863** Petition by Bill Alexander calling for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to either be given the right to apply for legal aid or the right to represent themselves in court.

**PE930** Petition by Lucy Johnson McDowall calling for the Scottish Parliament to urge the Scottish Executive to amend the Scottish Public Service Ombudsman’s Act to bring all aspects of Local Authority Administration, under the remit of the Public Service Ombudsman, without exception or exemption, and for the ethics and professionalism of local authority officials to be included in the remits of the Ombudsman or Standards Commission.

**PE932** Petition by Stella Macdonald, on behalf of CRAG (Citizen’s Rights Action group), calling on the Scottish Parliament to urge the Scottish Executive to review the Supporting People Funding arrangements to ensure that vulnerable adults are in receipt of the responsive services required to keep them healthy.

**PE934** Petition by Dr J W Hinton, on behalf of the Meteredparking Organisation, calling for the Scottish Parliament to urge the Scottish Executive to review the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999 to ensure that the local authority consultation in relation to traffic orders is full, meaningful and democratic.

**PE825** Petition by Alana Watson on behalf of Rosshall Academy Students’ Council and Higher Modern Studies Section calling for the Scottish Parliament to urge the Scottish Executive to ensure that every Scottish secondary school provides lockers for pupils’ use to stop pupils having to carry heavy bags throughout the school day, potentially causing back problems.
PE936 Petition by Simon Brogan calling on the Scottish Parliament to urge the Scottish Executive to review the public health implications of siting oil depots in residential areas in light of the Buncefield oil depot explosion in December last year.

PE938 Petition by Dr Patrick McNally calling on the Scottish Parliament to urge the Scottish Executive to ensure that clear, transparent and meaningful public consultation takes place when changes are proposed to public health services.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Bill Alexander

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament……..

Petition by Bill Alexander calling for the Scottish Parliament to urge the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to either be given the right to apply for legal aid or the right to represent themselves in court.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

I have met with officials from the Scottish Executive Justice Department and raised this issue but to date no action has been taken.

Request to speak:

Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee's consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes / No*

*Delete as appropriate

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature ..............................................................................................................

Date .........................................................................................................................

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk
14 March 2006

Public Petitions Committee
TG.01
Parliamentary Headquarters
Edinburgh
EH99 1SP

By fax and by post

For the attention of Eileen Martin

Dear Ms Martin

Thank you for your letter dated 10 February 2006.

I am grateful for the opportunity to comment on the responses received from the various bodies that the Committee wrote to regarding my petition.

With regard to the comments made by the Chambers of Commerce, the FSB and the Law Society there is very little additional benefit that would be obtained from further consideration of their correspondence except to state that the FSB do seem to support my views that there is a problem, which my petition seeks to rectify.

The letter from the Justice Department of the Scottish Executive should be addressed in order that some of the misleading comments made can be countered.

The relevance to the Solicitors Scotland Act 1980 when considering the ability of businesses to represent themselves in court proceedings is that the Scottish legal system relies on a written procedure i.e. legal proceedings are instigated by a writ, written defences have to be lodged to answer the initial writ and thereafter the pleadings are adjusted in a timescale agreed with the court until such time as a “closed record” is achieved. The Solicitors Scotland Act 1980 makes it a criminal offence for an unqualified person to draft or prepare a writ and to be paid for doing so. This has been interpreted by the courts to include the situation where a director of a company lodging a writ or defences to a writ is effectively committing an offence. Sheriff Clerks use this fact to prevent limited companies getting passed the stage in the proceedings where a writ is to be warranted or defences lodged.

It is worth noting that unqualified civil servants are allowed to draft and prepare writs and be paid for doing so under the Solicitors Scotland Act 1980.
If the Act is not to be modified and a limited company cannot afford a solicitor then in the interests of natural justice, consideration has to be given to extending legal aid to limited companies.

Turning now to the views of the Deputy Minister for Justice, does he have any research to justify his suggestion that legal insurance would be the more appropriate route for limited companies to take? Does this mean that a small limited company should carry the burden of insurance but a sole trader need not? What will happen if the limited company is owed money and cannot afford to pay the premiums and the insurance company will not act to recover monies until the premiums are paid? Will there be an excess on the policy and how much will it be, will new start up businesses be penalised, will there be restrictions on who limited companies can trade with and what will happen if the insurance company decides not to provide cover for the legal costs once the policy has been commenced. Perhaps the Deputy Minister could provide details of any evidence that he has to justify his comments and which parties he has discussed this with.

It would be most helpful if the Justice Department could explain why sole traders who are not officers of the court can be accommodated within the court system but a director of a limited company cannot. The question that has been avoided is what happens to the limited company that cannot afford to pay a solicitor, is it simply supposed to cease trading and go into liquidation and yet a sole trader can appear in court and could be eligible for legal aid. There is a degree of unfairness here which has to be, at the very least, considered from the perspective of the owners of the limited company. Very often the owners of limited companies have to give personal guarantees for any loans or overdrafts that they have so in practical terms the restriction on court representation could have very real consequences on the individuals within the company.

There does appear to be a degree, yet again, of the traditional scaremongering approach of the Justice Department where a doomsday scenario is alluded to without any real evidence to substantiate the allegations. The courts are not going to grind to a halt because of thousands of limited companies deciding to represent themselves on a regular basis, there may be the odd occasions where a directors of limited companies find themselves in unfamiliar surroundings but the vast majority of Sheriffs would, I am sure, treat them the same way that they treat party litigants, the number of whom will always vastly outweigh the number of limited companies that seek to represent themselves. If the Justice Department actually has any evidence to substantiate this claim can they please provide it for the Committee or is this just another instance where any form of change that is not instigated by the Justice Department is to be avoided no matter how beneficial it might be.

The only reason that the issues surrounding representation and rights of audience are under consideration is because this Committee supported my petition 608 against the wishes of the Justice Department and it does seem to be somewhat ironic for the Justice Department to refer to the working group in this regard. As of today’s date the report from the working group is over a year late, and the last three targets for publication set by
the working group have not been met. The latest date for publication seems to be April but no-one can give an accurate timescale.

As I understand it Mr Cackette is a Solicitor, perhaps he has difficulty in considering the matter from a non lawyer perspective.

In Karl Construction vs. Palisade Properties the Scottish Courts held that a limited company **has the right to a fair hearing** in accordance with Article 6 of the Human Rights Act. If a limited company cannot afford a solicitor and is not allowed to represent itself in court then it does seem to be denied its rights under Article 6 but unfortunately this cannot be challenged because the limited company cannot appear to appeal the decision.

The Justice Department have simply ignored the problem and seems to be willing to let limited companies go into liquidation rather that allow a degree of commonsense to prevail.

Yours sincerely

W Alexander
Dear Richard,

PETITION PE 863 - BILL ALEXANDER

Thank you for your e-mail of 8 July inviting the Scottish Executive to comment on the issues which arise in Petition PE 863, lodged by Mr Bill Alexander.

It appears that Mr Alexander is seeking changes in legislation in relation to rights of non-natural persons to obtain legal aid and in relation to rights of non-natural persons to represent themselves in court proceedings.

The Petition refers to the Solicitors (Scotland) Act 1980. That Act does not appear to be directly relevant to the two areas of concern arising in Mr Alexander’s Petition.

The scope of legal aid is governed by the Legal Aid (Scotland) Act 1986 which provides that legal aid is open to defined persons. Individuals, including sole traders and self-employed persons, are eligible to apply for legal aid for pre-litigation advice and legal representation in court.

Limited companies are not currently eligible to apply for legal aid. In the Parliamentary debate of the Justice 1 Committee in 2002 in relation to “Report on Legal Aid Inquiry” the then Deputy Minister for Justice commented that the Executive considered that the more appropriate route for limited companies to ensure legal representation would be through the use of legal insurance. As the Committee may be aware, consultation on the reform of legal aid is currently being undertaken as part of the consultation on the Strategic Review of legal aid, advice and assistance. In the Parliamentary debate on 23 June 2005 the Deputy Minister for Justice indicated his desire to receive the widest possible response to issues of concern, which would include any representations on this question.

Such representations will be carefully considered. In general terms, however, we are unaware of any significant call for legislative change in this area. Equally, in the light of overall pressures on the Legal Aid Fund, the specific arguments in favour of change would require to be considered carefully. There is no evidence of which we are aware to suggest

PE863
that the current rules have led to specific areas of unfairness and in the absence of
reasoned case justifying change, the case for amendment does not appear to be made.
A final view can be taken following the end of the consultation period.

As far as representation in court is concerned, the position at present is that, with some
limited exceptions, representatives of a party involved in litigation who is a non-natural
person require to be suitably qualified solicitors, advocates or solicitor/advocates. In the
view of the Executive, this best serves the interests of both the court and litigants.

There are a number of reasons for this. Legally qualified representatives owe duties to the
court by being officers of the court and the fact that they have been trained in court
procedure avoids the risk of court business being slowed down because the judge or sheriff
requires to provide basic procedural or legal advice. This ensures that court time is used
efficiently and effectively to allow identification of relevant issues of law and fact. The
litigant who is represented by a qualified lawyer is protected against unacceptably poor
standards of representation by a number of safeguards; qualified lawyers are subject to
professional rules and discipline, are covered by compulsory professional indemnity
insurance, and can be the subject of a complaint under statutory arrangements involving
the legal professional bodies and where necessary the Scottish Legal Services
Ombudsman.

Again, on the basis of the information before the Executive, there does not appear to be a
general case made for change in the rules in order to facilitate a non-natural person such
as a limited company "representing" itself in court proceedings and accordingly the
Executive does not agree that legislative change in this regard is justified.

I should stress that issues around representation and rights of audience are and have been
under consideration recently. For example, although there are differences between rights of
representation and rights of audience, the question of extension of rights of audience in
certain circumstances is under consideration by the Working Group for Research into the
Legal Services Markets in Scotland, which is expected to report to Ministers shortly.

I hope that the foregoing is of assistance to the Committee in its consideration of this
Petition.

PAUL CACKETT

PE 863

(PE863)
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available

Ms Lucy Johnson McDowall

Address:

Tel/Fax:

Email:

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests an amendment to the Scottish Public Service Ombudsman’s Act to bring all aspects of Local Authority Administration, under the remit of the Public Service Ombudsman, without exception or exemption; and for the ethics and professionalism of local authority officials to be included in the remits of the Ombudsman or Standards Commission.

Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.

Please see Additional information at the end of the document.

Petitioner: L. Johnson McDowall.
Petition to the Scottish Parliament.

Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Organisations:
The Scottish Public Service Ombudsman, Audit Scotland and the Standards Commission, by telephone.

Elected Representatives:
John Scott, MSP Ayr Constituency (by fax and telephone). Response received by telephone.
Hywel Davies, Local Councillor, South Ayrshire (by fax and telephone). Response Received by telephone.
All seven list MSPs for West of Scotland. By fax. No response received.

Government Departments:
The Scottish Executive, by telephone for information.
The Scottish Executive, Ministers for Public Service Reform, Communities and Health, by email. Response received.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee’s consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

I do NOT wish to make a brief statement before the Committee

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature ....

Date ............ 15/January/2006

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh,
EH99 1SP
Tel: 0131 348 5166
Fax: 0131 348 5088
E-mail: petitions@scottish.parliament.uk

Petitioner: L. Johnson McDowall.
Petition to the Scottish Parliament.

Additional Information in Support of Petition:

The petitioner requests an amendment to the Scottish Public Service Ombudsman’s Act to bring all aspects of Local Authority Administration, under the remit of the Public Service Ombudsman, without exception or exemption; and for the ethics and professionalism of local authority officials to be included in the remits of the Ombudsman or Standards Commission.

1.0 Democratic Accountability:

1.1 Scotland’s Democracy, in the absence of a written constitution, rests on a series of conventions, traditions and principles. We consider that one of these can be summed up in the following statement:

*All public bodies, servants and officials, who draw their salaries from the public purse or make decisions which involve public expenditure, must be accountable in some way to the people of Scotland.*

1.2 Accountability is essential to avoid the mismanagement of public funds and to avoid corruption, or the creation of political cultures which favour corrupt, illegal, or unethical practices.

1.3 Furthermore, we believe that the Scottish Parliament has a duty to monitor, and evaluate the systems which they have put in place to implement public audit and accounting. Failure to enforce the principles of democratic accountability at any level results in a failure to uphold and protect our Democracy, which could be argued is one of the foremost responsibilities of any democratically elected government.

1.4 Local Authorities have a great deal of direct power over the population and have no real accounting structure to the Scottish Parliament. Their officials are appointed, draw a salary from the public purse, and make decisions on a daily basis that affect directly thousands of citizens and which involve substantial amounts of public money. It is therefore vital that these officials are asked to account properly for their actions.

1.5 The two main public bodies which deal with public accountability in Scotland are the Standards Commission, which investigates the ethical conduct of elected representatives, and an the Public Service Ombudsman, under whose remit the maladministration of Local Authorities and other public bodies.

1.6 Notably, the Standards Commission cannot investigate the ethical or professional conduct of local authority officials, but only local Councillors, whose decision making powers are, apparently, limited.

1.7 There currently appears to be no independent accounting body under whose remit the ethical standards and professionalism of Council Officials lie. Furthermore, the ethics and professionalism of Council officials, and especially Chief Executive and Monitoring Officers, does not appear to fall under the remit of any elected body, or organisation that answers directly to an elected body.

1.8 In the course of our enquiries with our local council and the Scottish Executive, we have discovered that neither elected councillors nor members of the Scottish Parliament or Executive appear to have the power

Petitioner: L. Johnson McDowall.
Petition to the Scottish Parliament.

to investigate, discipline or remove a Chief Executive or Local Authority for breach of ethics, lack of professionalism, failure to adhere to the law, or uphold a council’s own policies.

1.9 Alternatively, if such powers exist with elected representatives, these representatives are not aware that they have them.

1.10 The Scottish Public Service Ombudsman Act has four exceptions which prevent the Ombudsman from investigating complaints of maladministration. The most significant exemption, and the one which is causing considerable concern, is the one which removes “personnel matters” from the Ombudsman’s scrutiny. Since there is no other accounting body that deals with the scrutiny of local authority personnel management practice and procedure, we feel that this exemption renders local authorities, and possibly other public bodies partially unaccountable.

2.0 Implications and Exposition:

2.1 In effect, there is no method of holding the Chief Executives, directors, or members of the corporate management of public bodies to full account on the implementation of policy and their decision making.

2.2 Furthermore, there is no way of upholding, implementing, monitoring and evaluating their management strategy of Chief Executive, especially with regard to “personnel matters”. It also mean that there are no mechanisms, or very few, for removing or disciplining an incompetent Corporate Manager, as there are for public sector employees lower down the employment structure.

2.3 In effect, this has lead to a working culture where there is an inverse relationship between a manager’s position in the reporting hierarchy of local authorities and the degree to which they are accountable. We feel that this unfairly discriminates against low-status public sector workers, who are more likely to be disciplined for their failures than their managers, thus creating a direct positive correlation between job status and job security. We feel that in a fair system, there should be a greater degree of accountability with public sector jobs which have large decision-making responsibilities.

2.4 In particular, we feel that the administration and management of public bodies with regard to personnel matters should never be exempt from accountability. The cost of maladministration of personnel matters, and poor professional or ethical standards of public officials, in relation to personnel matters, can run into millions of pounds.

2.5 By way of example, we cite the failure by many local authorities to implement anti-bullying personnel policies, which exist in many places only on paper. Direct costs may include those of litigation, administration, absence attrition and Occupational Health referrals due to psychiatric injury. The National Bully Helpline also estimates the cost of workplace bullying in the UK to be around £3.7 billion a year, and cites public sector workers as especially vulnerable to psychiatric injury as a result of workplace bullying.

2.6 Furthermore, public sector workers are often stakeholders three times over: they are employed by public bodies, pay taxes which fund public bodies, and use the services provided by public bodies. The public sector is the largest employer in Scotland, which means that maladministration of

Petitioner: L. Johnson McDowall.
Petition to the Scottish Parliament.

any personnel policies could have a devastating impact on the health and wellbeing of Scotland’s workforce and have an adverse impact on service provision.

2.7 Mismanagement and maladministration of personnel matters can result in the proliferation of numerous corporate ills, including cultures of victimisation, discrimination, and harassment, rendering Scottish public workplaces unsafe and unproductive. Failure to have proper strategies for ensuring that public bodies implement their personnel policies could therefore have an adverse impact on public health, as the families of those who sustain psychiatric injuries in their workplace are also affected.

2.8 Currently, there is no way of holding a Local Authority Chief Executive of Corporate Manager to account for all the decisions they take, nor any way of holding them to account for their ethics or behaviour; apart from taking legal action against them at an employment tribunal or court of law.

2.9 We suggest that industrial tribunals and court litigation is not an appropriate or cost-effective forum of holding public officials to account for corporate failures, lack of professionalism and poor ethics on a routine basis. When complaints are upheld, they generally only benefit the complainant, and the underlying causes of complaints, which could stem from the highest tiers of management, are never dealt with properly.

2.10 Prolonged, frequent litigation against public bodies ultimately harms our community and increases the tax burden. It should only be necessary to use it as a last resort. We maintain that there needs to be solid structures and reporting mechanisms to enable the Scottish people to ensure that no public official feels that he or she is accountable, without having to resort to lengthy, stressful, and expensive legal action. We feel that the Scottish Parliament should be doing more to tackle the root structural causes of litigation.

3.0 Concluding Remarks.

3.1 Leadership ultimately determines organisational culture. For this reason, and for the constitutional reason given in paragraph 1.1, the Chief Executives and Corporate Managers of local authorities, and indeed all public bodies, must be answerable to an independent audit of their policies, practices, procedures, and financial decision-making.

3.2 We hold that the accounting bodies are already in place to make reform affordable. We suggest that ethics and professionalism of senior officials such as Chief Executives and Directors be placed under the remit of either the Standards Commission or the Public Service Ombudsman, and the exemptions be removed from the Act governing the Ombudsman’s remit so that they can subject all aspects of the administration of public bodies to scrutiny. We also feel that any independent accounting body should answer directly to Parliament.

3.3 The Scottish Parliament may also wish to consider the cost benefits amalgamating the Standards Commission, Audit Scotland, and the Public Service Ombudsman into a single independent centre for audit, public accountability and ethical standards in government and public service.

3.4 We wish to conclude by stating that it is unacceptable in a democracy for any aspect of public administration or conduct to be left un-scrutinised and

Petitioner: L. Johnson McDowall.
Petition to the Scottish Parliament.

for public servants or officials to be left unaccountable on any aspect of their work.

3.5 We believe that this is a constitutional necessity for all internal policies, practices and procedures, and all financial decision-making of public bodies to be publicly accountable if Scotland’s democracy is to function.

3.6 Failure to ensure that there are appropriate accounting strategies to uphold and enforce ethical and professional standards for all public servants and officials, elected or otherwise, is paramount to a failure to uphold our democracy.

Signed:

Lucy Johnson McDowall BSc
Consultant, Industrial Conflict Resolution and Corporate Governance,
Elector, Ayr Constituency.

L.A Johnson FIC NDAgE
Public Sector Employee, triple stakeholder.
Elector, Ayr Constituency.

Date: 13 January, 2006.

Petitioner: L. Johnson McDowall.
The Scottish Public Services Ombudsman Act 2002

When Ms Johnson McDowall telephoned this office she was correctly told our legislation meant that we could not look at personnel matters. Schedule 4 to the 2002 Acts lists matters which the Ombudsman must not investigate and paragraph 8 of that schedule covers 'action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters'.

As I understand it, the rationale for that exclusion is that the Ombudsman exists primarily to consider complaints from the users of public services, and it would be anomalous if public sector employees could complain to the Ombudsman about personnel issues when other employees cannot do so. I think this rationale is valid and for that reason I would not support a blanket extension of my jurisdiction such as, on the face of it, Ms Johnson McDowall's Petition advocates.

I also think it is quite possible that many of the issues about which she is concerned - as explained in the note accompanying her Petition and in her oral evidence to the Committee - could be considered by my office under the legislation as it stands. It seems that part of her concern is that the council involved is not following proper procedures and that this possible maladministration is affecting its costs and the quality of the service it delivers. Those are matters about which my office could consider a complaint brought to it by a member of the public who claims to have suffered hardship or injustice as a result.

Also, there is a provision in the 2002 Act that I can investigate 'action taken ... in operating a procedure established to examine complaints or review decisions' even if the complaint examined or decision reviewed is not a matter within my jurisdiction. That might allow the person on whose behalf Ms Johnson McDowall is acting to bring some of his or her concerns to me.

Wider issues

Firstly, it is worth making the point that Audit Scotland and the charity Public Concern at Work have jointly prepared very helpful guidance for whistleblowers in public bodies. One of the hints included in this is 'do remember Audit Scotland. As an independent authority, Audit Scotland can help make sure genuine concerns about fraud and corruption are properly investigated'.

Secondly, Ms Johnson McDowall suggests that the Scottish Parliament may wish to consider the cost benefits of amalgamating the Standards Commission, Audit Scotland and my office into a single independent centre for audit, accountability and ethical standards in government and public service. As you may know, the Finance Committee is currently conducting an inquiry into the accountability and governance of my office and others. One of the issues this inquiry is addressing is whether there are overlaps in remit. I think my office and Audit Scotland have distinct but complementary roles and I am not convinced that bringing us together would be either feasible or advantageous. However, I think there is more scope for looking at whether the current division of functions between my office and the Standards Commission is logical and operating in the public

1 http://www.pcaw.co.uk/pdfs/Audit_Scotland_Employee_Leaflet.pdf
interest. Ultimately, whether offices should be merged is a matter for the Parliament but, as I have said in my evidence to the Finance Committee (copy enclosed), I believe there is a need to design and implement a more effective governance framework to ensure that remits and jurisdictions do not clash, overlap or appear confused in the eyes of the public.

I hope this is helpful. Please let me know if you need further information.

Yours sincerely

Professor Alice Brown
Ombudsman
Dr James Johnston  
Clerk to the Public Petitions Committee  
Scottish Parliament  
TG.01  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

18 April 2006

Dear Dr Johnston

Consideration of Petition PE930

Thank you for your letter of 7 March. The Committee might find some comments on the context of local authority accountability helpful when considering the petition.

The Accounts Commission is an independent body appointed by Scottish Ministers that, through Audit Scotland, holds local authorities to account for annual expenditure of £14.6 billion by appointing auditors to carry out an annual audit. This work is guided by three principles:

- Our auditors are independent of the organisations they audit
- They report in public
- They look at more than financial statements; they can also carry out checks to make sure organisations:
  - operate within the regulations that govern their work
  - deliver value for money
  - act honestly, with propriety and integrity
  - carry out their duties to the highest standards.

In addition, each council undergoes a Best Value audit on a triennial cycle which covers a broad range of issues including corporate governance and performance.

We expect all local authorities to have in place appropriate arrangements to cover aspects of the performance and conduct of its employees, including measures such as codes of conduct for staff, registers of interests, performance appraisal systems, and disciplinary and grievance procedures. The adequacy of these arrangements is subject to the audit processes mentioned above.

There are statutory procedures for reporting the outcomes of audits in public, and the Commission has powers to make recommendations to Ministers as a result. There are particular statutory arrangements for dealing with individual cases of illegality or loss due to negligence or misconduct; the Controller of Audit can make a special report to the Accounts Commission, which may lead to a hearing and the imposition of sanctions. These sanctions mainly relate to elected councillors, but the Commission does have the power to censure officials in such cases. These provisions replace the earlier powers of surcharge, and they are similar to the processes of the Standards Commission.

Audit Scotland provides services to the Auditor General for Scotland and the Accounts Commission.
Dr James Johnston

18 April 2006

The Commission publishes an annual overview report of the outcome of all its work, including the audits of individual councils. The main statutory provisions governing its role are in the Local Government (Scotland) Act 1973, the Ethical Standards in Public Life etc (Scotland) Act 2000, the Public Finance and Accountability (Scotland) Act 2000, and the Local Government in Scotland Act 2003.
I hope this is helpful; please let me know if you would like further information.

Yours sincerely

Robert W Black
Auditor General for Scotland
Petition PE 930

The UNISON Scotland Response to the Public Petitions Committee regarding Petition PE 930

The UNISON Scotland Response April 2006
Introduction

UNISON Scotland welcomes the opportunity to submit a response to the Public Petitions Committee. We are Scotland’s largest public sector trade union representing over 150,000 members over 90,000 of whom work in local government or related services.

The petition urges the Parliament to urge the Scottish Executive to amend the Scottish Public Service Ombudsman’s Act to bring all aspects of Local Authority Administration, under the remit of the Public Service Ombudsman, without exception or exemption, and for the ethics and professionalism of local authority officials to be included in the remits of the Ombudsman or Standards Commission.

UNISON believes this proposal contrary to its claims will lead to less openness and accountability for local government. It proposes moving powers away from elected representative to central bodies decreasing rather than increasing the power of local electors.

Accountability

The petitioner claims that there are no means by which local authority officials are held accountable. This is not the case. The ethics and professionalism of local authority officials are the responsibility of local authorities. Councillors are themselves directly accountable to their communities. They are easily accessible can be contacted directly for example at regular surgeries and face the electorate at regular and fixed intervals.

All local government employees including chief officers and chief executives are accountable to their employers: Local councils. Local councillors are accountable for all the decisions of the council including those delegated to officials both in terms of the law and the communities they serve via elections. As indicated by Mr Gordon, at the committee meeting, councils have a Scheme of Delegation which indicates who has the power to make decisions and at what level. Delegation does not though absolve elected officials from accountability. Councillors make policy decisions and officials implement those policies. Council committees then oversee the implementation.

For example in dealing with personnel issues councils have formal disciplinary procedures by which individuals are held accountable for their decisions and actions. As stated by Helen Eadie, at the committee meeting, the appeals procedure ends up not with the Head of Service but with elected councillors. Senior officials are not exempt from these procedures. The role of the Ombudsman is not to second guess decisions but to ensure that procedures are carried out. This would not change no
matter the scope of their investigation. Individuals also have recourse to industrial tribunals should they feel that their employer has acted unfairly.

The Public Interest Disclosures Act 1998 gives statutory protection to those workers who speak out against corruption and malpractice at work. It also lays down appropriate procedures for employees to follow. Each council also has its own local policy for disclosures of this kind. There are therefore procedures already in place for employees to follow should they feel they have been asked to behave in an unethical or illegal manner. It also deals with attempts to cover illegal or unethical behaviour.

**Democracy**

Contrary to the petitioner’s claims councillors are directly accountable to local people via elections. There is no more direct and effective way to ensure accountability. If local people do not like council decisions or feel that their representative is not effective they can not only vote against them but stand against them. Councillors then directly ensure that employees of the council act appropriately. This proposal would move accountability further away from local people and so be less rather than more democratic. Decisions would be made by unelected officials in a central body more remote from people. Unelected officials would take power from elected representatives making the system less not more open and democratic.

UNISON believes that decisions should as far as possible be devolved to local level. More not less elected bodies are the answer to democratic accountability. It is the scrutiny of elected members and their direct accountability to electors that will ensure that public officials behave in an ethical and legal manner.

**Conclusion**

UNISON Scotland believes that this petition contrary to its aims would decrease democratic accountability in local government by taking powers away from elected officials. It would give more power to central unelected bodies decreasing rather than increasing the power of local electors.

**For further information please contact:**

**Matt Smith, Scottish Secretary**  
UNISON Scotland  
UNISON House  
14, West Campbell Street,  
Glasgow G2 6RX
Dear Dr Johnston

CONSIDERATION OF PETITION PE930

Thank you for your letter to Sarah Morrell of 7 March about the above Petition. I am replying as policy responsibility within the Executive for the Scottish Public Services Ombudsman Act 2002 rests with the Constitutional Policy Unit. I apologise for missing your deadline for reply.

Petition PE930 (Lucy Johnson McDowall) calls for the Scottish Parliament to urge the Scottish Executive to amend the Scottish Public Services Ombudsman Act 2002 to bring all aspects of local authority administration under the remit of the Scottish Public Services Ombudsman (SPSO), without exception or exemption, and for the ethics and professionalism of local authority officials to be included in the remits of the SPSO or the Standards Commission. The Committee considered the petition at its meeting on 22 February and subsequently asked the Executive, and others with an interest, to offer comment.

I note from the Official Report of the 22 February meeting that members alluded to the existing mechanisms that exist for addressing complaints about the performance of local authority officials. The remit of the SPSO, and how that function relates to such matters, was also discussed. The Executive position is set out below.

Accountability/disciplining of local authority chief executives, chief officers etc

Local authorities are independent corporate bodies whose powers and duties are set out in statute. Under the provisions of section 64 of the Local Government (Scotland) Act 1973 local authorities are empowered to appoint such officers as they consider necessary for the proper discharge of their functions and on such terms and conditions as they think fit. Officers are therefore accountable to their local authority and if they breach the terms and conditions of their contract it is, as is the case elsewhere, for their employer to determine what, if any, disciplinary action would be appropriate. Neither Ministers, nor the Executive, have any general powers to intervene in individual staffing matters or disputes, nor would it be appropriate for them to do so.
Local authorities are also required to have in place a number of codes against which their actions can be judged. These include a code on local government employees which sets out the minimum standards of conduct expected of local government employees. Any alleged breach of the code can be raised with the local authority’s personnel department and, if necessary, can be taken up with the local authority’s Monitoring Officer. The Monitoring Officer is required to submit a report for consideration by the full council if he/she considers that the council, or any of its committees or officers, has contravened any enactment or code of practice which is in place.

**Scottish Public Services Ombudsman**

In the event that the issue cannot be resolved with the council directly, whether via the trade unions, local councillors or the Monitoring Officer, it may be possible to pursue the matter with the SPSO. While the SPSO cannot investigate decisions taken in respect of personnel matters, she can investigate specific allegations where she considers there appears to have been maladministration by the local authority, e.g. not following an agreed procedure, and where no other form of redress is available to the complainant. It is wholly for the Ombudsman to determine whether or not to investigate a complaint made to her office.

The restrictions and exclusions on the SPSO’s investigatory remit, as set out in the 2002 Act, are necessary in order to ensure that the SPSO function does not trespass on the role of the Courts, or into areas which are clearly not appropriate for Ombudsman scrutiny (e.g. matters which can be pursued by statutory appeals mechanisms). Members will be aware that the SPSO service exists to scrutinise the effectiveness of public service delivery by bodies falling within the SPSO jurisdiction. Accordingly matters that relate to the internal operation of local authorities are not subject to investigation by the Ombudsman.

If the various forms of grievance procedures outlined above have been exhausted, or for whatever reason are considered inappropriate, it would be open to anyone to consider taking legal action against the council or, if appropriate, to pursue the matter through an industrial tribunal. In terms of employment law it is worth noting that this is reserved to the Westminster Parliament.

Yours sincerely

---

Y.Y.

GERALD BYRNE
Head Of Constitution Unit