



Defence Committee

Oral evidence: [Pre-appointment hearing for the Service Complaints Commissioner](#), HC 832

Wednesday 26 November 2014

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Members present: Rory Stewart (Chair); Richard Benyon; Mr Dai Havard; Dr Julian Lewis; Mrs Madeleine Moon and Sir Bob Russell.

Questions 1-54

Witness: **Nicola Williams**, the Government's preferred candidate for the post of Service Complaints Commissioner, gave evidence.

Q1 Chair: Welcome to the Select Committee on Defence's pre-appointment hearing for the Service Complaints Commissioner, and a particular welcome to Nicola Williams.

Nicola Williams: Good afternoon, Chair.

Chair: Thank you for coming. You are aware of the process, which is that we are conducting a pre-appointment hearing. I wonder whether you could begin by giving us a brief introduction to who you are and what your professional background is.

Nicola Williams: Thank you, Chair, for the opportunity to do just that.

I became a barrister, or rather I was called to the Bar, in 1985, so I qualified 29 years ago. I was in private practice for 16 years. Then I left private practice and took up the first of what have been to date three ombudsman roles. The first one was as a board member of the Police Complaints Authority, which was from 2001 to 2004, and then I was a commissioner at the Independent Police Complaints Commission from 2004 to 2009. Then from 2009 to date I have been the sole ombudsman for the Cayman Islands.

I should add that I also sit as a Crown Court recorder. I was appointed to the Bench, or the royal warrant was signed, in late 2009, the day before my birthday as it happens. I actually did my first trial in 2010.

Q2 Chair: Will you tell us a bit about why you were attracted to this particular post?

Nicola Williams: Yes, I am happy to. Simply put, I love the challenge. It is a wonderful thing to be involved in an organisation at a time of organisational change. To give an example, my first two ombudsman roles were both to do with police complaints. During the time that I was at the PCA, there was a feeling that it was time for that organisation to

be abolished and a complete root-and-branch restructuring to be done, hence the IPCC. I was one of only four people who transferred from the PCA to the IPCC and we then had to start dealing with police complaints in a completely different way, in particular with much more public engagement, because public trust and confidence was very low.

Chair: Apologies, but would it be possible to speak up a little bit, because it is quite noisy in the room?

Nicola Williams: Yes. Thank you—if you cannot hear what I say, it is a little pointless.

To go back to the beginning of my question, I said that I love a challenge and I love to be at the point of organisational change. I have two examples of that. When I moved from the PCA to become an IPCC commissioner, police complaints had to be dealt with in a completely different way. There was an almost root-and-branch transformation. It was wonderful to be on the cusp of that change, having known what it was like before and seeing what it subsequently became.

When I went to the Cayman Islands and took up my post there, I was only the second ombudsman, because the concept of an ombudsman is still a relatively new one in Cayman. The first ombudsman had laid fantastic groundwork, but there was certainly more that needed to be done. There were elements of, in that case, much more cultural change that had to be taken on board. During my five years there, I have succeeded in doing that.

Q3 Chair: Specifically on Cayman, there are of course many reports about challenges and issues connected to corruption and things. Can you give us a sense of what you achieved, what the biggest challenges you faced in Cayman were and how you approached that task?

Nicola Williams: I can speak both as the Complaints Commissioner and as a member of the Anti-Corruption Commission. With regard to the commission, I was not the chair; I was just a member and so my part would be as for the commission as a whole. During that time there was an investigation and prosecution of the leader of the Opposition on corruption charges, which was not successful. That does not mean that the prosecution was not well founded; as everyone knows, juries can make all sorts of decisions—I knew that myself as a judge, in any event.

With regard to the Office of the Complaints Commissioner and the challenges that I face, the biggest one is the way that the culture is organised. Some of you may already know about the Cayman Islands, so forgive me if I am telling you things you already know. The Cayman Islands is a very small place, both in population—it has a population of only 55,000—and in terms of its world view. It is a combination of a place that, in many ways—and I do not mean this in any pejorative way at all—up to about 40 years ago was a typically Caribbean community that was very family oriented, which is a great thing, but small and possibly slightly insular. Over the past 40 years there has been this great input of persons from other countries, particularly working in the financial services industry. That has led to a schism between those who are considered expats and those who are Caymanian—it is roughly about 50-50. That goes through the whole of Caymanian society in terms of how I deal with my work. Consequently, when I first arrived there was quite a bit of push back, because I was seen by some as the expatriate commissioner who was

coming “to tell us what to do”. But I was also very culturally sensitive to particular concerns they had with that.

The other thing is that it is no exaggeration to say that the vast majority of people who are what are as described “B and B Caymanians”—born and bred Caymanians—are related either by blood or by marriage. That means that it is very hard to keep matters confidential in such a small space. In our office—the way in which I have taken the office—I have brought my UK experience to bear, but I have also been culturally sensitive. I am not coming to impose something on people who have a culture of their own. It also has to be an office that serves everybody.

Q4 Chair: Did you actually achieve anything? Is there evidence of some tough decision that you made, some complaints that you upheld or some controversial thing that you managed to push through?

Nicola Williams: Oh, yes. Thank you for directing me to that. We dealt with and still deal with individual complaints from persons, but the things that people tend to talk about from our office are our own motion investigation reports, which would be the equivalent of the thematic reviews proposed in the Bill. During my time, I have done three, on three of the most thorny issues to do with the Cayman Islands.

The first was on pensions mismanagement. That issue had been talked about an awful lot. Everyone had said, “Someone ought to do something about it”, but no one actually had done. As I had only been there a year, I thought that if I was going to do anything tough, the best time was then. That was my first one, and it proved to be extremely controversial, but it was very much welcomed by all except the Minister and the junior Minister-equivalent who had to deal with it.

The second one I did was on health and safety in the construction industry, where the scope was not as wide. Pensions affected absolutely everyone in the Cayman Islands. Health and safety for those in construction affected a smaller amount of people, but my argument was that the issue did not just affect construction workers—although the bottom line was that they did not have any health insurance, because some employers felt that it was cheaper to let someone fall off a crane and die and ship their body back to their country of origin than to pay for health insurance—but it also affected the way that buildings were constructed, and there was a question as to whether they were properly constructed.

Perhaps the most controversial one was the last one I did, which was in March. It dealt with how whistleblowers were treated within the Cayman Islands Government, which was, in a word, badly. There was absolutely no whistleblowing protection within Government. I can say that as a direct result of that report, there is whistleblowing legislation, which will be brought into effect before the end of the year. That was the first of 10 recommendations that we made, and is the one that has been acted on the most quickly.

Q5 Mrs Moon: Can I ask you what aspects of your past experience you think would be particularly relevant to the post of service complaints ombudsman?

Nicola Williams: I think, Mrs Moon, I bring my ombudsman experience, my judicial experience and my legal experience as a barrister to bear. I think all those things, layer

upon layer, would lead to my being very effective in this post. I am certainly not afraid to make a controversial decision, nor a robust decision. All those who have dealt with me, I suppose particularly within the last five years, will tell you that; anyone in the Cayman Islands will tell you that.

I have always said that I think one strength I have is that while I like to try to do things on a consensus basis as far as possible, I am also not afraid to be professionally unpopular, because sometimes, if you are trying to instil confidence in a system and if you are acting from a point of integrity, then that comes with the territory.

Q6 Mrs Moon: As part of your role, when you were with the Independent Police Complaints Commission, you were responsible for the Ministry of Defence police force.

Nicola Williams: Yes, I was.

Q7 Mrs Moon: Can you tell us a little bit about what involved?

Nicola Williams: Yes. I have to say that I did not get a lot of complaints against them, but it involved the same as all the other forces that I was responsible for. I would interact with the persons dealing particularly with complaints, and also more senior police officers in the MoD police. I would go to visit them: towards the end it was twice a year; at the beginning, it was once every quarter. And we would talk about issues, both individual complaints—as I say, there were very few—and to be aware of the kind of issues that concerned them, and any thematic issues that came up. It is right to say that from the MoD police there was very, very little.

Q8 Mrs Moon: Can I ask about your own motion investigations? Did you introduce that concept, or was it a concept that was already present within the role?

Nicola Williams: No. It was a concept that was actually provided for with the first draft of the Complaints Commission law; that was in 2004. The law was subsequently revised in 2006, and I would say that there has been some tinkering around with it to bring it up to date, but not a substantive revision. But it was always provided for within the law.

I can speak with authority about the investigations that I have done. My investigations were very robust and detailed. Particularly if you were dealing with something controversial, I felt it was right that I should set out a very detailed methodology about what made me do it, how I did it and the research bases of what I did, as well as the findings and the recommendations.

I believe that there are two ways in which you can tackle issues to deal with complaints. Particularly with the pensions one, it is interesting that that started off from an individual complaint by a husband and wife couple who had worked for a business for a very long time. The employer, as employers are supposed to on the Cayman Islands, had deducted moneys for both health and pensions from their salaries. You are supposed to pay them both into respective funds. As far as the pensioners were concerned, they thought the money was paid into a pension fund, only to find out—some 17 years later—that nothing had been paid in.

I subsequently found out that there were many, many similar cases. Some people had tried to follow it up, but lawyers are expensive in the Cayman Islands. Those who were

expatriates had left without a pension. I realised that instead of dealing with individual complaints, I could look at it in a holistic way; that was the way in which I chose to look at it.

Out of that, there were 23 recommendations that were made. Of the 23, about half of them—11—have been complied with, and the other 12 will be substantially complied with once the new pensions legislation has come into force. However, as far as I am concerned, until the legislation is in force they remain as not complied with.

Q9 Mrs Moon: Would you have felt that your role would have been less effective if you hadn't had that capacity to carry out own motion investigations?

Nicola Williams: Yes, I think it would have been. I think there are two ways in which you can deal with investigations, and I am speaking about my Cayman experience now. I believe that we were also very effective in terms of how we deal with individual investigations. In fact, there are three ways, might I say, that we deal with investigations.

First of all, if an individual comes to our office and makes a complaint, or comes through our website, we deal with the investigation that way. The second way is by own motion investigations, as we have just discussed. The third way is by encouraging the individual Government entity. Our office is responsible, depending on how you do the count, for between 86 and 93 different Government entities—on, I might say, the smallest budget in Government and with an extremely small staff.

Another way that we do it is by monitoring how the internal complaints officers within each Government entity are performing. For example, if someone came to us with a complaint from immigration—when I first went, immigration was a failing organisation. In the time that I have been there, working with the head of immigration, we have turned it around. It is now the most successful organisation, so it is what we call the “immigration success story”. If someone has a complaint about them, they come to our office and the first thing we ask them is, “Have you made this complaint to the internal complaints officer at immigration?” If they have not, we send them back to immigration to make that complaint, on the clear understanding that if the complainant is still unhappy, they can come to us. The complainant and the entity—immigration, or any other Government entity—know that. It gives the internal complaints officer a chance to try to put things right. I see it as very much a win-win. If they put things right, the complainant is happy and they have learnt something. If they do not put things right at that level, the complainant can still come back to our office and we can then investigate it, and we do. In any event, whether it is investigated and resolved internally or by us, the number of resolutions is high.

Q10 Mrs Moon: Can you say a bit about the timeliness of resolution? Was that an issue? Did you improve on the timeliness of Government Departments in dealing with complaints?

Nicola Williams: Yes, we did. I know that my predecessor did his level best, but certainly at the time when I came into post, there was an awful lot of—to be very blunt—foot-dragging on the part of some Government entities. Not all were, but some of them really were.

We did improve that, mainly because I was very robust in my letters. I would give them a time limit and say, “If you don’t do it by such and such a date, these are the next steps.” I would usually let the deputy governor, who is the head of the civil service, know that—I beg your pardon, let me go back one stage. I would let the chief officer, who is the equivalent of a junior Minister, know what the failure was. If it was not resolved by then, I would let the head of the civil service—the deputy governor—know what it was. If we still had no resolution, I would publish a special report. That was something which people really did not want to happen, because that is a public document; it is a matter of record. The governor then sees it, and it is profoundly embarrassing because I set out chapter and verse exactly all the failings that had been made.

People usually get their act together long before it comes to me threatening a special report, which are my powers under section 18 of the current Act. I did have to do it once. That resulted in much more timeliness across the piece. I also had to threaten to subpoena a junior Minister once—just threaten; I did not have to do it, but I was quite prepared to. That was within six months of my being there. If there was something that would definitely undermine my popularity, it was that. But I was absolutely prepared to do it. There was no question in my mind. I think that that person realised that too, because at the eleventh hour—it was about an interview—they agreed to it.

Q11 Chair: Could you please keep your volume up?

Nicola Williams: Yes. I would be grateful, Chair, if either you or your colleagues could indicate by a show of hands if you cannot hear me. I know that my voice tends to drop, so I am grateful that you have reminded me.

Q12 Sir Bob Russell: Ms Williams, it says in your very impressive CV that when you were a commissioner of the Independent Police Complaints Commission, among the forces that you looked at and had particular responsibility for were the Ministry of Defence police forces, which we referred to. Other than that very special part of the Ministry of Defence, do you have any prior professional or personal experience of the rest—the greater part of Her Majesty’s armed forces?

Nicola Williams: No, I do not. I knew that this question would be asked; I am not surprised by it at all. It is a perfectly reasonable question. I should say that I have some connection with the forces, but not the UK forces. I have an American half-sibling who served in the armed forces there, but is retired now, and I have a cousin in Guyana—my parents are Guyanese—who is a lieutenant colonel in the Guyana defence force. Apart from that, I have no personal connection.

Believe me, I am certainly not saying this just because I am in front of you: I have a great deal of respect for our service personnel—men and women who put their lives on the line. I know that sounds trite, but you have to take my word for it when I say I have a great deal of respect for that. Because of that, I believe that they deserve an efficient and effective service complaints system, in which they will know that if their complaints are to be handled in any way by what will be the Service Complaints Ombudsman, that will be done fairly, professionally and quickly. Dr Atkins has laid a fantastic foundation for that; if I were to get past your good selves, I would certainly intend to carry on with it.

Q13 Sir Bob Russell: It could be argued that it is an advantage, although others would argue that it was a disadvantage. Either way, you are where you are. How will you familiarise yourself with the many aspects of service life, the differences between each of the services and the different challenges that they face?

Nicola Williams: Particularly in the first few months of my appointment, I would make that my No.1 priority. I am very honest about this; I could have said that I knew a great deal more than I do, but I certainly do not intend to mislead any of you on that. I hope that what I can bring to this role will stand on its own merits, but I know what I do not know; I was going to quote that famous American politician, but I won't.

Assuming that I am appointed, a number of appointments are already arranged for me to meet key service personnel. I have already had the pleasure of meeting two who were on my panel and of speaking in great detail to Brigadier Donnelly about service complaints. I know that not only the services themselves but service family associations are very important. I consider them to be a key stakeholder. There are a number of stakeholders, of course, but if I were to rank them, those associations would be right up there.

Q14 Sir Bob Russell: Chair, may I, through you, suggest to whoever is organising the familiarisation programme that they should consider including a day in the garrison in my constituency of Colchester? There are the courts martial centre and the military corrective training centre.

Nicola Williams: Could you say that last one again?

Sir Bob Russell: There are the courts martial centre and the military corrective training centre, where servicemen and women under sentence spend their time before they either return to their units or are discharged from Her Majesty's armed forces. That happens to be physically based in my constituency. I make that as a serious suggestion to whoever is drawing up the familiarisation programme.

Nicola Williams: Can I say, Sir Bob, that I will certainly make sure that that happens? I am very interested in that—not only from an ombudsman's point of view, but from a judicial and legal point of view.

Q15 Dr Lewis: I would like to ask you questions split into two parts; I shall come back to the second part later. Would you agree that in a sense an ombudsman is walking a tightrope? You must be neither too close nor too antagonistic to the organisation you are dealing with. The word you have used several times is "robust". Obviously, the office of the Service Complaints Commissioner and now the new office of Service Complaints Ombudsman is an independent one sponsored by the Ministry of Defence. How would you maintain the independence of the role and not be captured by the system as you familiarise yourself with it?

Nicola Williams: My personal experience most allied to that is that of dealing with police complaints. Both of my first two ombudsman jobs involved dealing with that—eight years or so, in two different roles, dealing with ombudsman work for the police. That tightrope was one that we had to walk. You mentioned my use of the word "robust". I would like to clarify that robust does not necessarily mean aggressive. It does mean, as you can imagine, Dr Lewis, that you sometimes have to make a decision that is an unpopular one. You then

have to be quite clear with your course. But it is more about letting people have confidence in the ombudsman as an individual, the Service Complaints Commissioner as a body and the integrity of the post.

I would be very aware that—certainly in the way the current Bill is framed—the recommendations that the ombudsman would make are not legally binding. That is the case in most ombudsman roles anyway, but ombudsmen can usually find a way to get their recommendations taken on board. That is usually because the recommendations are made in a very reasoned way, and they are usually a win-win for all sides—an improvement in the system as a whole. I hope that that answers your question.

Q16 Dr Lewis: Yes, it does. All organisations have a power structure—what you might call the chain of command. The military explicitly has a chain of command in the most precise sense of the term. Are there any particular problems that you will face in trying to operate a parallel power structure to that chain of command or would you expect it to be analogous to the ombudsman role that you have carried out in other organisations?

Nicola Williams: If I were to take your two suggestions, I would probably go for the second one. I believe that the ombudsman, both in its current structure and particularly in the way that it will operate in future, is a change that is welcomed by all. Everyone in the services and externally realised that that change was necessary. I suppose that the only difference of opinion is as to how far that change goes and what form it takes.

I will always respect the integrity of the chain of command. I certainly see that I would not be interfering or dabbling—I cannot think of a more elegant word at the moment—in the operational duties of the chain of command: absolutely not. But while I respect the integrity of the chain of command, I would hope and expect that those in the chain of command—I am sure that they will—would also respect the role of the ombudsman and see the work that we have to do as something very necessary.

Q17 Sir Bob Russell: Where will the office from which you operate be located?

Nicola Williams: In London. I have been told that I cannot say the address, for operational reasons.

Q18 Sir Bob Russell: Okay, but it is not at the Ministry of Defence.

Nicola Williams: No.

Q19 Sir Bob Russell: That is really what I am after—whether it is physically away from the MoD.

Nicola Williams: There is no way that I would be the ombudsman in an office at the Ministry of Defence. Exactly that point was raised with regards to my office in Cayman. They have to restructure and downsize. The office has always been located outside of the central Government building, but there was a suggestion that we move into that building. Someone actually suggested that independence is a state of mind and that it does not matter where you are based. I asked them whether that was really a serious suggestion, and they backed down.

Sir Bob Russell: I am reassured; thank you.

Q20 Mr Havard: I thought Sir Bob was making an oblique offer there; he will get his drains fixed in Colchester one way or another. I saw you as some sort of ally in that for a minute.

In a sense, you are applying for two jobs here. You will have the initial job and it will then morph and change. We have not even fully established the legislation that will make the new job yet. I have form on this, and so does the Committee. In 2005, we came out with a duty of care report that recommended that some of these processes should be set in train at that time. It then went on its journey and is still on its journey.

We made observations at that time about comparative systems in other countries. We also made very clear reference to what was then the ombudsman of the Police Service of Northern Ireland, the IPCC and other organisations. The job will fairly soon be different from what it currently is. What thoughts do you have about that transition process and the new position as opposed to the current one you are picking up?

Nicola Williams: I wish, in answering this question, that the Bill were already law, because I would then know the full extent of my powers. Assuming that the Bill remains as it is, additional staff will be employed within what is currently the Service Complaints Commission. Certainly, there will be a whole investigation of policy section that will be employed. My understanding is that there will be somewhere around nine or 10 additional people who will be employed. They will not all be investigators, but a substantial number will.

In terms of thematic reviews, to the extent that the legislation currently allows the ombudsman to do it, I certainly will be doing that. With regard to maladministration, I know there is a view from the Committee that the merits of a complaint should be looked into as well as maladministration. Assuming that the Bill remains as it is and that it is not changed, you can still do an awful lot if you just look into maladministration. I know from my experience in Cayman that when we did the pensions—I know I keep referring to it all the time, but it was the first big thematic investigation, as you referred to it, that we did—we started by looking at maladministration, which lead us on to examining how pensions were misused or not appropriately monitored in terms of abuse of that system.

Q21 Mr Havard: It is interesting that you use the word “maladministration”. That is your way into a number of things as far as you are concerned. I am old enough to remember good old Lord Denning and the development of the law. You are talking about the development of the role.

Nicola Williams: When I was called to the Bar, Lord Denning was still there so I can remember him, too.

Q22 Mr Havard: I am trying to get at this business about how it will develop. We have recently done reports on the legal framework, which speaks to the stuff about combat and all the stuff that is in the Supreme Court and elsewhere, and the Government’s replies to that. What is emerging out of that is that your job is clearly going to be relational to a lot of other agencies.

Initially, when it was duty of care, it was things such as coroners. There will be relationships with the law and other agencies. Do you have any ideas about how you see that working in terms of where you will sit? One thing that comes out is that while they are often not legally

liable, military personnel can often be dragged into legal process and they can suffer serious reputational damage and other things. As for individuals and this question of merit, looking into maladministration might well be on your agenda from them and they will make claim to you.

Nicola Williams: In terms of how I would deal with that, you mentioned the different relationships that would have to be had with different bodies. I often think that an ombudsman's role in whatever field it finds itself in, particularly because recommendations usually do not have the force of law, is to try to persuade people to do what you want them to do, to make them see it as a win-win for everybody, which it invariably is. If you make a recommendation as an ombudsman, you are doing so for the wider, greater good and the improvement of the system as a whole. What would help is good and strong relationships across the piece with the particular stakeholders involved.

The example you gave of service personnel sometimes finding themselves in situations where their reputation can be damaged is, I am afraid, rather specific. I am not trying to get away from answering the question, but it is a rather specific example that I think I would only be able to answer if I actually faced that.

Q23 Mr Havard: I am not trying to trip you up in any sense. This stuff is emerging out of the current circumstances and it didn't happen before, but questions of combat immunity have been challenged and there is a consequence from all of that. What I was trying to ferret out is your view of how that process and your role might develop and how you sit in relation to these other bodies.

Nicola Williams: Again, I am not trying to avoid your question, but I think that as the legislation itself and the regulations and policies that underpin it develop, then—and only then—will we be able to see how that works. Certainly, particularly from my previous experience at the IPCC, but also my other ombudsman role in Cayman, I know it is very important to build up good relationships with people. We all want the proper and effective working of the service complaints system and that would be my approach. I am sure that everybody who would be involved in that system, whether fully or tangentially, will want the same thing too.

Q24 Mr Havard: What I am really driving at is that you will have to make comment on other agencies here.

Nicola Williams: Yes.

Q25 Mr Havard: This concept of lawfare, where people try to use the law—all these things start to play. It is a political set of consequences rather than you interfering in the chain of command. You may well make recommendations and statements that are intrinsically useful for what they are doing, but they could have repercussions for the actions and behaviour of other agencies as well as your own.

Nicola Williams: Well, that is a risk that every ombudsman runs. You can make a recommendation about a particular issue and somebody else can use that in a positive and a negative way. As an ombudsman, you have to be concerned about the recommendation that you make, particularly about the issue at hand.

Q26 Dr Lewis: I would like to follow on directly from that. Were you actually familiar with the term “lawfare” that Mr Havard just used?

Nicola Williams: No, I was not.

Q27 Dr Lewis: It is frequently referred to in the American system. It can be defined as the use of litigious methods to paralyse an organisation—usually a military organisation. There are examples of it and it is generally practised by radical lawyers.

Nicola Williams: I see. At the IPCC, we had some involvement with radical lawyers so I now know exactly the concept that you are talking about.

Q28 Dr Lewis: Please accept the fact that I have to ask these questions because, just as you have robustly shown your independence from the Ministry of Defence and the military, I have to be sure that you are not antagonistic to them either. You have held this succession of posts but before that, as you said, you were in private practice for 16 years from the mid ’80s onwards. What attracted you to the chambers of Lord Gifford QC? Perhaps you will explain why you and I are smiling at that point for the benefit of everybody else.

Nicola Williams: For the benefit of the Committee, Lord Gifford QC had the reputation of being a radical brief. It is correct that those chambers did a lot of that kind of work. It is a while ago now, so forgive me if I cannot remember the exact dates, but I think I was there from about 1988 to 1991. It is on my CV anyway. It was a while ago—over 23 years since I left those chambers.

Q29 Dr Lewis: It was not for the 16 years? It did mention that your name is still on the door and all that sort of thing.

Nicola Williams: Generally speaking at the Bar, you tend to find that people—time was, I suppose as with every job—would start at one place and finish at that place. Now people tend to move around every three to five years. In those 16 years, I was in three different sets of chambers. My name is still on the door of the chambers that are headed up by Lord Gifford; actually, they are headed up by Len Woodley QC. You are correct that my first tenancy was at Lord Gifford’s chambers.

If I might be blunt, if you are trying to find out whether I am going to bend to the will of radical law, the answer is: no, I won’t. When I talk about independence, I mean proper independence, not giving the military a hard time and giving an easier time to another side—no. I have done that in Cayman, sometimes to my personal disadvantage because when you are trying to walk a straight line—not being pro or anti either side, just being pro the integrity of the process—you can have quite a difficult time of it. I am prepared to do that.

Q30 Dr Lewis: Thank you for taking on the issue head-on and saving us a lot of time.

Nicola Williams: That is the way that I like to be.

Q31 Dr Lewis: Indeed, and I am delighted. Do you therefore see that there is the potential, if people were to home in on your office, to try to use your office as part of a campaign with an agenda to cause immense disruption and distraction to the military? Believe it or not, there are people who would like to do that.

Nicola Williams: I would believe you because when I was at the IPCC, certain lawyers tried to do that too. It is right to say that not every lawyer considered a “left-wing lawyer” wants to completely frustrate the process to bring it to paralysis. Some are rather overly dogged—I am not sure whether that is a proper way to describe it. Either way, the way I would see it is that the office is independent and it is independent for a reason. It means that it is independent both from any—we are speaking frankly—pressures that might be brought to bear on it from the service personnel, any pressures that might be brought to bear on it from the Ministry and also any pressures that might be brought to bear on it from the type of lawyers that you describe.

Q32 Dr Lewis: I take it we can presume from that that any attempt to use or abuse your office in a vexatious way will be strongly resisted by you?

Nicola Williams: Yes.

Q33 Dr Lewis: Finally, there is a little sheet in the pack of information that we have which says that over the past five years you have not been engaged in any political activity. But, of course, ever since you first became an ombudsman some considerable time ago you would have been barred from engaging in any political activity. Is there any other earlier political activity that you would like to share with us from the period when you could have been engaged in political activity?

Nicola Williams: No. There is none.

Q34 Chair: Can I give you another opportunity on that? Sorry to keep pushing it but it is very important for us. Can you give us a little bit more of a sense of why you respond so confidently to the statement that you were not engaged in any political activity? Give us a sense of what you were up to in the '80s, what drew you to the Bar and what kind of cases motivated you.

Nicola Williams: What drew me to the Bar? My parents were Caribbean immigrants. They came to this country from Guyana in 1960. My father was a police officer in Guyana and my mother was a teacher. When they came here their work changed but my father wanted to become a lawyer. I didn't become a lawyer because of him but certainly it was discussed a lot in our house. He also wanted to join the police force. Back then in the 1960s, I am afraid, he wasn't welcome in the police force. That was then, this is now. If things had gone differently, and I think if he had his time over, he would have wanted to be a lawyer. I did not do it just to satisfy my father's curiosity; I became a lawyer because I felt then, and I feel now, very strongly about the right thing being done and about tracking an independent course. I suppose that is what attracted me to the Bar rather than being a solicitor.

In terms of campaigning activity, it is right that I was in Lord Gifford's chambers. I am proud of every set of chambers I was in. I know what you mean and I take on board the point you make, but I am certainly not resiling from the fact that I was in those chambers. I am very proud of all the work I have ever done in any chambers that I have been in. But that was a while ago. I left private practice in 2001. I think I left Lord Gifford's chambers in 1991. It is a while ago. I liked debating. I liked advocacy. I was very interested in that kind of work. There was no political activity that would impinge on the kind of work that

the ombudsman has to do. Frankly, if there was, I would not have been appointed at the IPCC or the PCA.

Q35 Mrs Moon: I love the suggestion that only someone who is left-wing would be anti-military or anti the rule of law. But I will let that pass for the insult that it is. There are many interested parties in a complaints system. Clearly the parameters of the role of the ombudsman will be set by Parliament. Ultimately Parliament has oversight of the military and is concerned about the well-being and welfare of service personnel and its reputation with the public. The complaints that arise internally within the armed forces are of concern to everyone, particularly if there would be any damage to the efficient and effective operation of the armed forces or to their reputation. How do you see your role in ensuring confidence that the service complaints system is independent, and ensures that complaints are heard and dealt with in a timely way so that people feel that there is a sense of justice that operates within the system, because it is such a closed system?

Nicola Williams: Some things I will not be able to do until the Bill is passed into law, which probably will not be until the end of next year. The current estimate is September next year, I think. Actually, no, I take that back. There are things that can be done straight away. I am aware of what Dr Atkins has done in terms of being as robust as her legislation allows her to be when dealing with service complaints. It will be dealt with an entirely different way when the new legislation comes into effect. To inspire people to have confidence in the system, the mere fact that I don't have any military background, going back to Sir Bob's comment, is one of the things will potentially inspire confidence.

Secondly, there is my experience as an ombudsman prior to this and my legal and judicial experience. Thirdly, sometimes the proof of the pudding is in the eating. People are going to have to see what I am like and test me in that way. I can tell you what I will do and you can see from my previous record—and you can make any inquiries you can—but there is a certain point that can only be shown rather than told.

Q36 Mrs Moon: You talked about urgent cultural changes that you recognised needed to be introduced when you took the role in the Cayman Islands. I appreciate that you have not entered the role and you are looking in at the moment. You are looking in at what you have seen in reports that have come through from Dr Atkins and at the job description that you see at the moment. Do you have any idea of what urgent cultural changes you feel are needed at the moment?

Nicola Williams: It is on the cusp of a big change. I will be the first service complaints ombudsman once the Bill is passed. The thing that will probably be the most needed is just to let people know what the office can and cannot do. That is all the stakeholders, actually. Once people are clear about that then you can see that this is the change that will happen as a result of the powers that I have. I would not want people to think that I can walk on water when I cannot. I want people to be very clear as to what my legal powers are and what I can and cannot do.

I know that the military is a rather closed environment, sometimes of necessity because of the kind of work it does. You certainly do not want anything that the ombudsman does to have any negative security implications for any of the armed forces. But within that I would personally like to do what in Cayman we call public education and outreach. That is basically telling people about the office. The more that all the relevant stakeholders know

about the office, the more that will help to instil confidence in it. A significant proportion of any confidence people have in any ombudsman will be in seeing how they perform on the job.

Q37 Mrs Moon: The job is rightly under close scrutiny from Parliament, with reports to us on a regular basis. Usually the ombudsman is before this Committee to answer to their report. The media play an important part in looking at complaints and the outcome of complaints. People who are not happy often go to the media. People who are happy rarely go to the media.

Nicola Williams: That is true. We find that in the Cayman Islands, too.

Q38 Mrs Moon: There is also a great deal of public scrutiny and concern about the armed forces and their welfare, and rightly so. How will you balance that and keep the confidence of the chain of command, Parliament, the public and the ordinary members of the armed forces, who are subject to the internal discipline systems?

Nicola Williams: The only way I currently conceive that that can be done is if it is very clear that the ombudsman is independent—I know I have said that many times during this session—and has integrity. If you have an ombudsman who is independent and has integrity, people can have confidence in that person, the system and the Service Complaints Commission. You are not going to please everybody with your decisions, but if at the end of the day people can say, “I don’t like the decision you made, but I respect your thought process behind it, the fact that you took it and the fact that you were prepared to be unpopular.” I don’t know whether there is time to give you an example of that—*[Interruption.]* In that case, I won’t. It is very important that people have that kind of confidence in the ombudsman.

Richard Benyon: I listened very hard to Dr Lewis earlier, and I didn’t hear him use the words “left-wing”. I think he used the word “radical”, but we are all radicals nowadays, aren’t we?

Mr Havard: Free radicals.

Q39 Richard Benyon: Leading on from Madeleine Moon’s questions, the question I would like to put to you is this. An enormous number of people wish you well, including all of us and lots of people in and around the armed forces. The nervousness about the new role will come from one direction. There is the institutionalised view of people who are concerned that you will be some sort of vehicle for vexatious complaints, lawfare and the kind of sclerotic effect that is deemed to have happened in other countries—in particular, the United States. Then there will be concerns from the other end of the pipe from people who feel that the system does not work now, that there is no effective redress and that what is proposed is not adequate.

Your predecessor, the current incumbent, had some harsh words to say about the weaknesses she sees in the role. Obviously, we have emerging legislation and a changing role. You have given partial answers already, but I am keen to push you a bit more to see how you will address the concerns of people at either end of the approach to your role.

Nicola Williams: Of your examples, the one that concerns me most is the people who, frankly, feel, “What’s the point? It’s not going to work. They are just tinkering around

with it. A plague on all their houses”—that kind of attitude. We are most keen to turn those people around. We do not have just a new ombudsman, but a new law and a new way of doing things, and people have to give the process a chance. There is probably not very much you can do with the hard rump who do not want to do that, but I believe that most people will at least give the new legislation and the new way of working a chance to succeed.

On the other side—your lawfare example—all I can say is that we had some experience of that at the IPCC. It is not pleasant, but the ombudsman or the commissioners can still push through what the ombudsman wants to get out of it without people on either side trying to frustrate the process, either because they don’t have any faith in it and therefore badmouth it to other people by saying “Don’t go to them. Don’t trust them, because they are useless”, or because they are trying to use it for their own agenda. The ombudsman must have their own agenda, which should be about ensuring that the process for service complaints is run efficiently, fairly and in a timely manner. I have not properly dealt with delay yet. The longer the delay—this is a concern that Dr Atkins and ombudsmen across the world have—the more difficult it is for people to have confidence in the system. A big part of my role will be to try to push to make sure that things are dealt with in a timely manner.

Q40 Richard Benyon: On timeliness, which is really important—in your experience of other ombudsmen roles, you have had certain sanctions that you can apply against an authority that is not responding to a complaint soon enough. You do not have an ability to fine the MoD for delaying a complaint here. How would you approach it if you felt that there was foot-dragging and people were being encouraged to just give up a complaint because it was taking so long, sucking their energy and all those other things that we hear about?

Nicola Williams: There are two ways in which I would do it—again, speaking as if the current Bill will be law. Having established the kind of necessary close relationship—close without interfering with the independence of the role—with service personnel dealing with complaints in particular, one way is that I would speak to them and say, “You know that this actually makes your service look really bad. It’s in your interest to make sure that this is dealt with in a timely manner.” It is also in the complainant’s interest to make sure that it is dealt with in a timely manner.

As I understand the Bill—I am sure that you will correct me if I am wrong—there is a provision, certainly in the way that one section of the Bill is drafted, that if an issue arises through the handling of the complaint, that could also be dealt with; timeliness could be addressed in that way. In the Cayman Islands, if someone makes a complaint and it is then not dealt with in a timely manner, we consider that an additional matter which is also subject to a complaint. There will be the original substantive complaint and then a lack of timeliness complaint will go on top of that; the two will ride side by side. We also keep stats on that, in terms of timeliness, and then report back on who is doing very well and who is not.

Q41 Richard Benyon: That was a very good answer. Are you aware of something called the Army General Administrative Instruction 67, known as “AGAI”?

Nicola Williams: No, but I am sure that you will tell me.

Q42 Richard Benyon: I mention this because it is an example. I should, because I served in the armed forces, come from the institutionalised view that change is wrong. I think that change is actually long overdue, and these are steps in the right direction. Most of my former colleagues are in that same zone. We still have this disparity between the disciplinary procedures of different armed forces. Some members of the armed forces have quite serious concerns about what their co-service does and how they deal with these complaints. In your familiarisation, can we be convinced that you will get around and try to understand not only weaknesses that you can take, with your legal experience and ombudsman experience, but also concerns of other organisations? The RAF legal service, for example, has great concerns about AGAI and how it is implemented.

Nicola Williams: I can give you my absolute assurance. In fact, one of my early appointments is going to meet the legal departments of each of the services, including the RAF.

Q43 Sir Bob Russell: Before Mr Benyon leads you in the wrong direction, the armed forces Bills—now Acts—of 2005 and 2010 were designed to remove as many of the contradictions as possible, while still valuing the distinctiveness of the three services. An attempt has been made to reconcile the differences while still recognising why they are the Army, the Navy and the Air Force.

Nicola Williams: If I am right, Sir Bob, there was some mention of trying to have a tripartite internal complaints system. I do not know where that has gone.

Sir Bob Russell: That is the point that Mr Benyon is making. All I am saying is that an attempt has been made to reconcile the differences while retaining the important differences between the three services.

Q44 Richard Benyon: May I conclude by suggesting that, as part of your ongoing role, you talk to the staff college and non-commissioned officers? There is a sergeants' course at Brecon—I do not know whether it is still at Brecon. Regimental sergeant-majors meet once a year in London. These are people who need to buy into your role and understand it. They need to see that in a changing world they have nothing to fear if they are doing things right, that the process is robust, and that they can understand your role.

Nicola Williams: Thank you for those suggestions. I absolutely will do that. It helps me and it is important that I know as much as possible about all aspects of all our services. I have a particular interest in the law because of my legal background. When I was at the IPCC, we went to the police training college at Bramshill. We saw the fast trackers. We certainly got involved at that level, because we saw there was a need. There is a need for buy-in. As an ombudsman, no matter where they are in the world and what they have to deal with, there is a need for buy-in for it to work.

I will certainly keep my independence. I will be robust on both sides, Dr Lewis— not just one side rather than the other. But of course, you need to have people to support the office and the new laws, and that is what I intend to do. I am very grateful for that suggestion.

Q45 Mrs Moon: To reinforce the issue of AGAI 67, it comes in at two different levels. Only the Army operates the senior level of AGAI 67, and I think that that is what Richard was

getting at. There are concerns about the powers given to commanding officers in the Army and some of the decisions that can be made. It would be good to see you look at that.

Nicola Williams: I absolutely will.

Q46 Dr Lewis: One of the things that shines through your CV is your hinterland. Lord Gifford wrote a book called “The Passionate Advocate”—

Nicola Williams: I have seen your book. Are you a supporter of Lord Gifford?

Q47 Dr Lewis: I encountered him a long time ago. We do our research here. I see that you, by contrast, wrote a legal thriller called “Without Prejudice”. Have you been tempted to follow up that by writing about your intermediate experiences? Do you expect that your new ones will be too onerous, or do you think they will supply some new material?

Nicola Williams: If that is an extremely polite way to find out whether I am about to divulge ombudsman secrets in a new book, I can tell you—

Dr Lewis: It never crossed my mind.

Nicola Williams: I absolutely do not intend to do that. In fact, I have written another book, but it is based on my legal experience, not my ombudsman experience, or even my Cayman experience, and someone has suggested that I write about that.

Q48 Dr Lewis: I am sure your sales will spike now as a result of this extra exposure.

Nicola Williams: I am not courting public exposure.

Q49 Dr Lewis: This leads me to the serious point, which is that also in your CV are very interesting aspects to do with your involvement with the media. You chaired the London regional advisory council of the BBC, and you were also a legal expert on BBC World for the famous trial of O J Simpson.

I genuinely do not know the answer to this question. In your new role, you will of course be full time. How do you expect to be able to approach the aspect of your relationship with the media? For example, if you pronounce on a high profile and very controversial complaint, would you anticipate appearing in front of the media yourself, or would you have to retain a sort of judicial detachment, as a High Court judge would have to do?

Nicola Williams: Almost certainly, if it is a matter to do with the role, you have to put your money where your mouth is. If I make a decision, I have to be prepared to stand by it, and I will deal with whatever media comes out of that. I have had to deal with a lot of media, increasingly so, and in Cayman almost constantly. At the IPCC, there was a great deal of it. I was actually media trained, and that has certainly helped. But it is something that comes as part and parcel of it. What I am not going to do, because it is just not in my nature, is actively court the media. I will deal with it as a necessary part of the role without actively courting it.

Q50 Dr Lewis: Finally, if dealing with the media in relation to your new full-time role is part of your function, do you feel that you would not become some sort of pundit or commentator on our screens, or would you expect to have the freedom of action to do other things besides the full-time role to which you would be appointed?

Nicola Williams: I certainly will not be offering myself up as a legal pundit for any other major case. As you all know, I sit as a Recorder, and I intend to carry on sitting as a Recorder. I was asked about that when I was interviewed, and I think that it is an enhancement to the role because it keeps up my judicial skills. It is not something that takes up a huge amount of time, and it can be very evenly balanced with regards to the new role.

On that point, as it has been raised, the judicial year runs from 1 April to 31 March. I have already done my sitting quota for the year until 31 March 2015, and I can decide when I want to sit. I will certainly not sit for the first nine to 12 months, I would imagine—so for this calendar year coming up. That will give me more than enough time to dedicate myself totally, 100%, to the role.

Nevertheless, I would like to be clear that even though I intend to carry on sitting, that does not mean that my dedication to the role will be any less—in fact, I see it very much as an enhancement. I managed to do it when I was in the Cayman Islands by flying back to London three times a year—that’s dedication for you—and it did not adversely affect the job; it actually enhanced it.

Chair: We are coming towards the end of our hearing, but I now turn to my colleague, Dai Havard.

Q51 Mr Havard: I was very interested in the answers you gave about timing. A number of the things in which you will get involved relate to individuals and families who will want justice for something—a grievance or whatever—and there will be processes that will prevent you from doing certain things for certain times. That is the role of ombudsman, isn’t it? Other things must be completed before you can do something.

I was interested in how you would give support and keep some sort of process running while other things—coroners’ courts or legal processes, for example—were running. That leads me to my question: how are you going to measure the effectiveness and efficiency of what you do? How are you going to report on that—not only to us, but to the members of the military, their families, all those with an interest and the general public? What do you think about measuring your effectiveness and reporting on it?

Nicola Williams: I kind of know—I do know where I want to be, perhaps not at the end of my first year in post, but the end of the first year of the legislation being in force. Certainly what I would want to measure and what would be important is the level of public trust and confidence—when I say that, I mean trust and confidence from all the stakeholders. That was an important measure in the Cayman Islands.

One of the things I am proudest to say about my time in the Cayman Islands is that when I took over, for different reasons that are very peculiar to the Cayman Islands, only about 30% of Caymanians had any trust and confidence in the office, because they felt—wrongly, I believe—that it was an office in which they as Caymanians could not get a fair hearing. It was never like that. Anyway, the general public trust and confidence in the office has risen from 30% to 75% in the time that I have been there. That is perhaps the thing of which I am most proud.

I will still have to drill down how we actually physically measure it, but one of the important measures for me will be whether people have trust and confidence in the ombudsman and the role that I perform and, as a result, the wider service complaints system. That would be confidence from all the stakeholders. I say that knowing that some of those stakeholders are going to be diametrically opposed to each other, but even so, you can have someone who is totally against a decision that you have made but will still respect the fact that you made it.

I would like to give an example on that particular point—it is the one I was going to give earlier. One of the most controversial cases that I was involved in at the IPCC was the death of Roger Sylvester. Some of you may know about that case, but just quickly he was a young black man who died as a result of restraint. It was quite a while ago, but it took an awfully long time to resolve itself.

By the time the case was resolved, it had got to such a state of national prominence that not just one commissioner, but three commissioners were involved. We came to give a decision and, for a variety reasons, it was not a decision that the family were happy with, so we had to go and do it at a public meeting. One of the things I had said to the family, because they accused me of wanting to keep things secret, was that whatever the decision was I would say it publicly and we would have a public meeting. All three of us commissioners were supposed to go, but only two of us went, although the other one had a very good reason not to be there.

To say that the atmosphere at Haringey town hall was antagonistic is putting it very mildly: we had the general public, who were vocal and antagonistic; we had people outside protesting, but they didn't come inside; we had police outside to prevent anything happening, including police on the roof of the town hall; and we had somebody who called themselves a guerrilla film maker who tried to make a documentary outside. Then, at the beginning of the meeting, the family came in and sat on the front row all wearing T-shirts with their son's face on, which was very emotive. You couldn't help but feel for the family, but the decision was the decision.

I had to deliver that decision in that kind of atmosphere. At the very end of it I recall one of the family members came up and said, "We really hate that decision that you made, but we 100% respect the fact that you came here. We didn't think you would have the chops to do it, but you came here, gave that decision and you have given a reason for it. Even though we don't like the decision, we respect what you have done." That member of the public, who was very antagonistic to the system, had sufficient confidence in what was going on. I hope that is an example that has illustrated the kind of approach I would hope to have in this role.

Q52 Mr Havard: That experience sounds like being a national official of a trade union on certain occasions, but that is another thing.

You are coming in at a particular time and the process will be changing. One of the recommendations we said in our latest report on the law and the legal framework, which crosses some of this, is the defence and security review. That is a five-year review coming up and there are lots of expectations on how some of the issues are going to go forward over time. There is maybe an opportunity appearing for reflection and some sort of

recommendation and input into how the architecture should perhaps develop and what it should become.

I don't know whether you have given any thought to that. I suspect you don't see it as the new ombudsman coming in and that will be it. Do you have any ideas about how the ombudsman role will develop?

Nicola Williams: I have some. I think the most important one for me is to ensure that I get enough buy-in from everybody concerned to give the process a chance. If people do not want to give it a chance right from the beginning and have already made their minds up before I have made my first decision, then I would be quite worried about that.

Anything else would be things that I know will grow as the Bill becomes law. We will see what kind of law we have and we will see what regulations come out of that. I know the great wish is that the ombudsman will be consulted in regard to the regulations and the policies that come out of the legislation. That is a wonderful thing because it would mean that I would help to shape, in some way, what comes out of it. I hope I have answered your question.

Mr Havard: Yes, thank you very much.

Q53 Chair: Thank you for your time. Just a couple of points, should we decide to confirm you. One is to encourage you, if you do find yourself in a position as an ombudsman where you are in any way frustrated by the Ministry of Defence, to consider this Committee as something you can come to and work with in that way.

Nicola Williams: Thank you. I certainly will.

Q54 Chair: The second thing is, in a more practical sense, if there is anything we can do, should you be appointed, to provide support on familiarisation and the context of the military, we would be delighted to provide support and ideas on that. As colleagues have said, we certainly want to encourage you, if we can, to get as much sense as possible particularly of operations, and to try to get out on the ground.

Nicola Williams: Thank you. I will certainly take every opportunity to avail myself of both the points you have said. Also, a number of interesting suggestions have come out of this, all of which I intend to do, but none of which I took a note of. I hope that the Clerks will be able to provide me with a note or a transcript of what took place today.

Chair: Thank you so much for your time. I will hold colleagues now for a private discussion.