Third Statutory Review of Electoral Arrangements

Aberdeen City Council Area

Report to the Secretary of State for Scotland

Local Government Boundary Commission for Scotland

Report Number E98007
September 1998

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Introduction

1. The Local Government etc. (Scotland) Act 1994 determined that on and after 1 April 1996, Scotland should be divided into local government areas as named and described in Schedule 1 to the Act and that, for each area, there should be a council consisting of a convener and councillors. It further determined that each council should have all the functions exercised immediately before 1 April in relation to their area by any existing regional, islands or district council.

2. On 1 April 1996 all local government areas existing immediately before that date which were regions and districts and all regional and district councils ceased to exist.

3. Schedule 2 of the Local Government etc. (Scotland) Act 1994 also established that every local government area (other than areas of the old islands councils) should be divided into such electoral wards as may be specified in a direction made by the Secretary of State after carrying out such consultations as he considered appropriate. Those wards were to apply for the purpose of any election of councillors held before 'the relevant year of election' (defined as meaning the first year of ordinary election of councillors for the area in question occurring after the making of an order constituting the new electoral wards of that local government area in consequence of the review currently being undertaken by the Commission). In accordance with procedures that applied prior to the reorganisation in 1975, the views of councils were invited. Thereafter, the Secretary of State determined that, for the purpose of any election of councillors before the relevant year of election, 50 electoral wards were appropriate for Aberdeen City local government area. Additionally, the proposed wards should be as described in the report of the Local Government Boundary Commission for Scotland to the Secretary of State for Scotland on its second statutory review of electoral arrangements for the City of Aberdeen District dated 2 March 1994.

Origin and Commencement of the Review

4. The Commission has a statutory duty under section 14 of the Local Government (Scotland) Act 1973 to undertake periodic reviews of local authority electoral arrangements. The Local Government etc. (Scotland) Act 1994 amended section 20 and schedule 5 of the 1973 Act, directing that:

as soon as practicable after 1 April 1996, the Boundary Commission shall-

review the electoral arrangements for all local government areas for the purpose of considering the future electoral arrangements for those areas; and

formulate proposals for those arrangements.

5. This, therefore, is one of the statutory reviews required in terms of section 16(2) and Schedule 5 of the Local Government (Scotland) Act 1973, as amended.

6. On 22 March 1996, the Scottish Office Development Department gave local authorities advance notice of the intention of the Commission to carry out a third statutory review of electoral arrangements. On 29 March 1996, we wrote to all councils to announce the commencement of the third statutory review of electoral arrangements and to explain the procedures to be followed. We also gave notice of the commencement of the review to all Community Councils, Electoral Registration Officers, Members of Parliament with a constituency interest and the Scottish headquarters of the political parties. In addition, public notice of the commencement of the review, which included an invitation to interested parties to apply to us for a copy of our consultation letter to councils, was given in newspapers.

Background

7. During the passage through Parliament of the 1994 Act, there was cross-Party understanding that we would review the number of councillors and boundaries of electoral wards for each council in time for changes to be implemented for the 1999 local elections. This was seen to be important because at the time of reorganisation, as mentioned above, the Secretary of State defined the electoral wards for the new councils and to a great extent based these on existing district wards. It was, however, recognised that using the existing district wards led to some councils being significantly over-represented in relation to other areas. Further, it also led to councillors within the same local authority areas representing wards with significantly different numbers of electors. Accordingly, our review was seen as important to ensure equity in representation across and within all local authorities. Further, the new authorities were now responsible for the provision of the full range of all services and, accordingly, consideration had to be given to determining an appropriate number of councillors for service provision to be effectively managed.

8. This review is, therefore, the first conducted by us which sets out to determine the appropriate number of councillors required for councils to operate efficiently and to establish the boundaries of electoral wards. To achieve both objectives our review was conducted in 2 main stages:

identification of a suitable methodology for determining numbers of councillors which, applied across all local authority areas, would be seen to be equitable and consistent; and

the division of each local authority area into the appropriate number of electoral wards in accordance with the statutory rules.

9. A copy of the statutory rules to be employed by us and the Secretary of State in considering proposals for electoral arrangements is provided at Appendix A.

Number of Councillors

10. In formulating proposals for the number of councillors we have been guided by two main principles:

effective management of councils; and

equity amongst electors.

11. We recognised that the number of councillors is crucial because there is, undoubtedly, some number below which it would be impossible for a council to discharge its duty to deliver services to its population and, conversely, there is also some number above which a council becomes unwieldy and cumbersome. We were influenced in this respect by the prior considerations of two other bodies.

12. The Royal Commission on Local Government In Scotland 1966-69, under the Chairmanship of the Rt. Hon. Lord Wheatley, provided a basis by which the number of regional councillors and the size of constituency to be represented might be determined by taking into account the fact that population density varies widely in Scotland as a whole and within regions. The then accepted view was that council size should not generally exceed 75 members. In England and Wales the Redcliffe-Maude Commission, which reported to Parliament in 1969, also drew attention to the management problems of large councils and endorsed the recommendation of The Committee on the Management of Local Government that a maximum number of 75 councillors should be set.

13. After careful consideration we concluded that, in the Scottish context and to provide additional flexibility, an upper limit of 80 councillors should be set. We also concluded that a minimum number of councillors should be set, recognising that even the smallest local government areas are now responsible for a wide range of functions. Accordingly, we decided that the minimum number of councillors should be 18. Further, these limits should apply to all councils.

14. Regarding equity as between voters, we considered that ideally each elector's vote should possess the same weight and significance in local government elections throughout the country; furthermore, ideally, there should be similar mutual accessibility between electors and councillors. However, since Scotland is a country of great diversity, both geographically and demographically, a fact reflected in the areas for which councils created by the Act of 1994 are responsible, and since we are satisfied that, in the interests of good local government, the number of councillors in any council must fall within certain limits, we concluded that these ideals are unattainable in practice. In this situation, recognising that a fair degree of homogeneity exists within certain groups of councils, which exhibit broadly similar geographic and demographic characteristics, we resolved to strive for equity in the senses mentioned within these groups, so far as that is possible within the constraints of the legislation under which we operate.

15. We, therefore, proposed a methodology which initially categorised council areas by density and distribution of population using data available from the 1991 Census of Population. Having classified council areas according to these criteria and adjusted the ratio of electors to each councillor to take account of similar characteristics, we have been able to achieve a broad equity of electorate across and within all council areas.

16. In our letter of 29 March 1996, all councils were informed of the proposed methodology and future pattern of representation for their council area. Councils were requested to make any representations they wished on numbers of councillors by 29 April 1996 so that a meeting could be arranged with the Deputy Chairman and Secretary to discuss the pattern of representation and any matters regarding our review that the Council wished to raise. Following visits to all councils by the Deputy Chairman and Secretary to discuss the proposed methodology and to consider alternatives which could be applied across Scotland, no alternative methodologies were offered but a number of councils suggested that the underlying classification should be amended to include an additional category.

17. On 13 May 1996, Aberdeen City Council copied to us a report which had been prepared following our letter of 29 March, which we refer to above, and discussions attended by our Deputy Chairman and Secretary in Aberdeen on 23 April 1996. On 14 June 1996, the Council informed us that it was concerned about the additional workload which would be placed on Councillors in City areas like Aberdeen arising from our proposals to reduce the number of Councillors by 7, particularly so soon after the change-over to a single tier structure which had required the Council to undertake a wider range of functions. The Council considered that the 43 Councillors proposed would be too few to discharge adequately its statutory duties and responsibilities of elected representatives in the Council area. It considered that our review should await a more opportune time to allow a better assessment to be made of the discharge of current council functions, and to assess population increases. The Council invited us to continue with the proposed review on the basis that Aberdeen City Council should retain 50 Councillors and the existing 50 electoral wards.

18. At our meeting of 17 June 1996, we re-examined the criteria to be used to categorise mainland councils with similar characteristics in light of the representations made by a number

of councils. We concluded that there should be 6 rather than 5 categories. The final categorisation of similar mainland councils was then agreed as follows:

- Category 1 Large Cities Glasgow and Edinburgh.

- Category 2 Cities Aberdeen and Dundee.

- Category 3 Authorities with less than 60% of the population living outwith settlements of 10,000 or more persons **AND** an overall population density of one person or more per hectare.

- Category 4 Authorities with **EITHER** 60% or more of the population living outwith settlements of 10,000 or more persons **OR** an overall population density of less than one person per hectare.

- Category 5 Authorities with 60% or more of the population living outwith settlements of 10,000 or more persons **AND** an overall population density of less than one person per hectare.

- Category 6 Authorities with 60% or more of the population living outwith settlements of 10,000 or more persons **AND** an overall population density of less than 0.2 persons per hectare.

19. In addition to the 6 categories we then determined the ratio of councillors to electorate for mainland councils that would allow for efficient management and appropriate representation, as set out in paragraphs 11 - 14 above, and considered that the following would be appropriate:

- Category 1 1:6,000
- Category 2 1:4,000
- Category 3 1:3,500
- Category 4 1:3,000
- Category 5 1:2,500
- Category 6 1:2,000

20. On 20 June 1996 we wrote to all mainland councils informing them of the revised criteria for determining councillor numbers and inviting them to prepare a draft scheme of electoral arrangements for their Council area. Following upon that, Aberdeen City Council brought a petition for Judicial Review of the decision taken by us at our meeting of 17 June, 1996 in the Court of Session. In it they sought a decree of declarator that that decision in relation to them was unlawful, ultra vires and null and void; they also sought a decree of reduction of the decision in relation to them and certain ancillary remedies. We resisted this petition, which was dismissed by the Court on 20 December 1996 after a hearing.

21. We considered the ratio of councillors to electors for the 3 islands councils at our meeting of 26 August 1996 and concluded that the appropriate ratio would be 1:750. On 28 August 1996 we wrote to these councils informing them of our decision.

Aberdeen City Council's Proposals

22. We received no response to our letter of 20 June to the Council. However, as we mention above, Solicitors acting for the Council served us with a copy of a Petition which had been lodged in the Court of Session seeking Judicial Review. The Petition was heard on 10 December. A copy of the judgement is attached at Appendix B.

23. On 21 January 1997, we wrote to the Council and asked if it would let us know when a draft scheme of electoral arrangements would be submitted for our consideration. On 3 March, following a telephone conversation between our Secretary and Council officials, we were informed that discussions would take place with the Electoral Registration Officer and, after these discussions had been completed, the Council would be able to indicate whether it would be in a position to submit a draft scheme for our consideration.

24. We wrote to the Council on 7 April 1997 with regard to the preparation of a draft scheme of representation. On 9 April 1997 the Council informed us that a report would be submitted to the Council's Policy and Resources Committee on 18 April with a view to obtaining instructions as to the preparation of a draft scheme of electoral arrangements. The Council stated that Councillors of all political parties remained unconvinced by our arguments for a Council of 43 wards at a time when the area remained unchanged and its population and functions had increased. It had not gone un-noticed that a major factor in the Council's failure in the Judicial Review action was that there would be a further opportunity to make representation against our view as to the appropriate number of seats and it was expected that, following the meeting on 18 April, further representations would be made. The Council asked also if we would be prepared to countenance a scheme which divided the City into more than 43 wards.

25. On 17 April 1997, we wrote to the Council to say that we had listened to the legal debate, had studied the judgement with care and had found nothing in the Judge's findings which suggested that we were being unreasonable in seeking to prepare, in the first instance, a draft scheme of electoral arrangements based on 43 elected members. We expressed the hope that the Council would participate in the exercise but asked that, if the Council felt unable to do so, it would be helpful if we could be so informed in order that we could proceed to a draft scheme without any input from the Council. We mentioned that the procedure following publication of our provisional proposals for consultation purposes allowed for the Council to participate in the process by submitting such alternative suggestions as it deemed appropriate. We made it clear that by assisting in the preparation of a draft scheme for 43 wards the Council would not compromise its right to make whatever representations it wished during the period of consultation.

26. On 27 May, the Council wrote to say that it appreciated our desire to progress work on the review and noted our assurance that, by assisting in the preparation of a draft scheme based on 43 members, it would not compromise the right to make whatever representations it deemed appropriate during the public consultation process. The Council resolved, with reluctance, and without prejudice to any future objections, to prepare in association with the Electoral Registration Officer, a draft scheme based on 43 wards. However, the Council wished to make representation to the effect that the four main groups formulated by us in order to measure the size of a constituency should be reduced to three by the omission of the 'mainly rural' category because it considered that too much emphasis had been placed on land mass and the resultant ratio of electors to members was over - generous in the areas in question.

27. We responded to the Council's letter of 27 May 1997 on 5 June 1997. We noted that to complete the review of electoral arrangements in time for the May 1999 elections revised boundaries would need to be agreed by mid-1998. Because of the statutory consultation process we asked that the Council submit its draft scheme by 1 September 1997. We noted the Councils' representation regarding the criteria used to determine council areas of similar type. We mentioned that revised criteria had been set out in our letter to all Councils dated 20 June 1996 and that 30 Councils had now prepared draft schemes on that basis. We considered, therefore, that it was not practicable to revisit the issue of classifying Councils at this advanced stage of the review process.

28. On 2 July 1997, the Council confirmed that it would hope to be in a position to submit a draft scheme by the beginning of September. However, the timetable was considered to be tight and we were asked by the Council if it could submit its scheme on a constituency basis so that if, for any reason, it was not possible to complete the entire scheme by 31 August 1997, two-thirds should have been finalised by this time. On 14 July we notified the Council that we would accept the draft scheme in the manner proposed. We asked that the Council provide details of the forecast of electorate for the City at 2001 and details of any areas which would be affected by demolition or new house building so that our officers could complete analytical work before the complete scheme was presented and clarify any points as they arose. We pointed out that the boundaries of Parliamentary Constituencies should not be seen as a constraint when determining local government electoral arrangements.

29. On 11 July the Electoral Registration Officer notified us that he had written to the Council to say that his forecast of electorate for the Council area at 2001 was 173,000 although previous Council estimates had been in the order of 180,000. On 20 August 1997 the Council wrote to say that the Electoral Registration Officer had been asked to provide the information we required concerning forecast electorate, demolition and new house building. We received the relevant data on 22 August 1997.

30. The Electoral Registration Officer provided us with details of a draft scheme approved by the Policy and Resources Committee at its meeting of 15 September 1997 and officers of the Commission prepared an analysis of the scheme for our consideration. Revised electorate data were provided for the Council's scheme on 21 October because the initial data provided had been estimated. We agreed to publish provisional proposals based on the draft scheme prepared by the Council subject to a small number of amendments made in the interest of attaining better electoral parity.

Publication of Commission's Provisional Proposals

31. Public notice was given of the publication of our provisional proposals on 30 January 1998. Aberdeen City Council was asked to make available for inspection at its offices copies of the electoral ward boundary descriptions, electoral statistics and illustrative maps. Additionally, copies of our proposals were sent to all who had received our consultation letter or had expressed an interest. We asked that any comments should be made to us by 27 February 1998.

Consideration of Representations

32. Seven representations were received:

The Council wrote to emphasise its belief that the optimum number of electoral wards within Aberdeen City Council area was 50 with the boundaries existing as at present. The Council was of the opinion that, whilst we had complied with the statutory requirements in respect of public consultation, notification of the modified proposals based on 43 electoral wards, particularly in the local press, had been at a level below that which the Council considered desirable. The Council stated that, in the event, and only in the event that its proposal that the number of electoral wards in the Council area be retained as at present was unacceptable to the Commission, we ask the Secretary of State for Scotland to appoint an Assistant Commissioner to hold a local meeting to hear representations about our proposals.

The Council also asked that, without prejudice to the views stated, a small area be transferred from Ward 42 to Ward 43 and that the naming of wards be a matter for resolution of the Council. It asked that a revised description for part of the boundary of Ward I be adopted and noted that we may wish to reconsider our proposals for Wards 21 and 24 because the Electoral Registration Officer believed that his original estimate of electors in Ward 24 was too low.

We considered, but rejected, the Council's suggestion that 50 wards were appropriate for the Council area and. that the boundaries should remain as presently constituted. We reaffirmed our view that 43 wards was an appropriate level of representation for Aberdeen City Council area. We considered and accepted the minor boundary proposals sought by the Council in respect of Wards 1, 2, 21, 24, 42 and 43. We agreed to the Council's request that it should determine ward names and asked that proposals be submitted by 8 May 1998. The Council provided a list of preferred names for wards on 7 May 1998.

On 7 May 1998, the Council wrote also to say that it understood that we would be considering its request for the appointment of an Assistant Commissioner. We replied to the Council saying that we would only consider the appointment of an Assistant Commissioner in circumstances where there was insufficient information to allow us to make recommendations to the Secretary of State for Scotland in respect of revised electoral arrangements. In considering revised electoral arrangements for Aberdeen City Council area we concluded that there was sufficient information to make recommendations for revised electoral arrangements to the Secretary of State and, in such circumstances, the appointment of an Assistant Commissioner was not appropriate.

Braeside and Mannofield Community Council was disappointed to discover that the historical ward name of 'Mannofleld' had been discarded in favour of 'Seafield' which was a district of the Mannofield area. Copies of earlier correspondence previously submitted to the Council were also enclosed with a request that these be considered when we drew up our final proposals. With regard to the ward name, the Council indicated that the name should be
'Mannofleld'.

A letter was received which expressed unhappiness at an area of the existing Mannofield Ward being attached to mainly Council owned properties at Garthdee. It was also considered that the City of Aberdeen would lose part of its heritage by the abolition of the ancient 1 8w" Century Fields of Robert Balmanno as a ward in its own right. We noted the representation.

The Electoral Registration Officer copied to us 13 letters of representation regarding the split of the Mannofleld Ward which he had received prior to publication of our provisional proposals and asked that they be considered when we met to discuss representations received in response to our provisional proposals. Most representations were concerned that the name 'Mannofield' would be lost. However, it was also suggested that the area of Braeside in Ward 32 should be contained in Ward 33. With regard to the Ward name, the Council indicated that the name should be 'Mannofield'. We considered the implications of moving the Braeside area from Ward 32 to Ward 33 but the count of electors provided by the Electoral Registration Officer indicated that, whilst the divergence from electoral parity in our proposals was -3% and 4% respectively, the effect of accepting the proposed change resulted in a divergence from

parity of -23% and 24% respectively. Accordingly we were not prepared to accept the proposal.

Cove and Altens Community Council had difficulty in following the description of the Boundary of Ward 42 and asked that it be amended. It thought also that Loirston Manor should be in Ward 43. The boundary between Wards 42 and 43 was amended along the line suggested in accordance with representations made by Aberdeen City Council.

Councillor B Adam wrote to express strong support for the view expressed by the Council that it should be represented by 50 members. Councillor Adam believed that to reduce the number of wards from 50 to 43 would adversely affect the advice and assistance which Councillors provide to their constituents. Further, making a differential in the size of electoral wards according to our classification was flawed. Aberdeen City Council area was no different from North Lanarkshire which was permitted to have one Councillor for every 3,500 members and it could not be argued that in inner city areas, particularly where there was recognised urban deprivation, electors were any less deserving of the level of representation available to persons living in rural areas. The Councillor was concerned also at the short period of consultation many citizens of Aberdeen had had to consider our proposals and, in view of this and the Council's vehement objections to our scheme, an Assistant Commissioner should be appointed to hold a local meeting. If we were not minded to accept that there should be 50 wards in Aberdeen City Council area Councillor Adam wished that a scheme based on an alternative report submitted to the Council's Working Party be adopted as our provisional proposals as it retained community boundaries.

We noted these views. With regard to the alternative scheme of 43 wards, we concluded that the Council had taken the opportunity to consider proposals initially developed by the Electoral Registration Officer but that these had been rejected in favour of the draft which the Council had submitted to us. We noted that there were differences between both sets of proposals but bad been content to adopt the scheme submitted by the Council, with minor modifications, as our own provisional proposals.

Councillor J Graham wrote to support our proposal that Ward 35 be named 'Broomhill' and noted that this concurred with the Council's views.

The Liberal Democrat Group wrote to support the Council's view that 50 wards were appropriate for the Council but, if it was necessary to reduce to 43 wards, it supported the comments submitted by the Council in respect of our provisional proposals. We noted the Group's views.

Final Recommendation

33. Having conducted the third statutory review of electoral arrangements for Aberdeen City Council area in accordance with the procedures described above, we **recommend** that future electoral arrangements for the said Council should provide for a Council of 43 members.

34. The designation of the electoral wards that we recommend for Aberdeen City Council, together with information which we have received from the Council as to the 1996 electorate and forecast 2001 electorate of the proposed wards are set out at Appendix C to this report.

35. The boundaries of the proposed electoral wards are described in Appendix D and the following illustrative maps accompany this report:

Map	**Area**	**Scale**
1	Aberdeen City Council Area	1:25,000
2	Aberdeen City Council Area	1:10,000
3	Aberdeen City Council Area	1:10,000

Appendix B

OPINION OF LORD PENROSE

in Petition of

ABERDEEN CITY COUNCIL

for

JUDICIAL REVIEW OF A DECISION
OF THE LOCAL GOVERNMENT
BOUNDARY COMMISSION FOR
SCOTLAND MADE ON 17 JUNE 1996
IN RESPECT OF THE LEVEL OF
REPRESENTATION FOR THE
ELECTORATE WITHIN ABERDEEN
CITY COUNCIL AREA

<u>20 December 1996</u>

In this petition, Aberdeen City Council seek judicial review of a decision of the Local Government Boundary Commission made in the course of the Commission's statutory review of electoral arrangements in Scotland.

Section 13 of the Local Government (Scotland) Act, 1973, as amended, empowers the Commission to make proposals to the Secretary of State for changes which appear to the Commission to be desirable in the interests of effective and convenient local government, following review, and in certain specified ways.

Section 16 (2) of the Act requires the Commission to review local government electoral areas at regular intervals with a view to considering and, if appropriate, recommending substantive changes to electoral arrangements. As amended by Schedule 13 to the Local Government etc (Scotland) Act, 1994, Schedule 5 to the 1973 Act required the Commission to carry out a first review, under the current legislation, of the electoral arrangements for all local government areas as soon as practicable after 1 April, 1996 for the purpose of considering future electoral arrangements for those areas, and to formulate proposals for those arrangements.

The Boundary Commission embarked on its first review. Advance notice of the review was given to local authorities on 22 March, 1996. On 29 March the Commission wrote to the Chief Executive of Aberdeen City Council inter alias setting out the procedure it intended to follow and intimating proposals for the Council's area. So far as material for present purposes, the Commission proposed that the number of electoral wards in the City should be reduced to 43. There were at the time 50 electoral wards in the City of Aberdeen. The letter invited representations. It informed the Chief Executive that the Commission would require to have regard to any change in the number and distribution of electors likely to take place in the five years following the review, that is up to the year 2001. It advised that counter proposals should be based on an assessment of changes in those respects which were likely to take place up to 31 March, 2001.

By letter dated 13 May, the Council referred to a meeting which had been held on 23 April to discuss the Commission's proposals, enclosed a report on those proposals, and sought further information on the "formula" proposed by the Commission. The report discussed the remedy of judicial review. It set out the following commentary:

> "3.1 Judicial Review is a means of legally challenging the decision of a public body on the basis not that the decision is necessarily wrong, but that the process which lead (sic) to the decision is flawed and that the decision cannot be shown to have been reached objectively and fairly.
>
> 3.2 As indicated in the previous report officers are concerned that the Commission appears to have proceeded from assumptions as to the proper size range of authority - 18 to 80 members and then to have adopted a series of multipliers for different types of authority without any empirical evidence that either the division of authorities into the various categories is valid or if it is that the particular multipliers applied reflect genuine differences in the needs of the areas.

3.3 It is of particular concern that while the Commission were prepared to meet with officers to discuss their methodology, the (sic) have been reluctant to put it formally in writing."

There were observations on the timetable for counter proposals and other procedural aspects of the proposals. Judicial review was recommended at that stage. The earlier report was appended. It included, in particular, the understanding of officials that within the overall range set the Commission had adopted four main groupings of local government areas:

1. Large cities, namely Glasgow and Edinburgh, where a ratio of one member to 6,000 electors was appropriate;

2. Other cities, namely Aberdeen and Dundee, where a ratio of one member to 4,000 electors was appropriate;

3. Mainly urban, where there would be one member for every 3,500 electors; and

4. Mainly rural, where there would be one member for every 2,500 electors.

By fax dated 13 May, the Commission set out these factors in writing. The Council aver that thereafter in meetings and by correspondence they intimated that they opposed the reduction in the number of councillors in Aberdeen from 50 to 43. By letter dated 14 June, the Council's opposition was set out. It was intimated that the Council considered that the proposal was "not fair, rational or reasonable." Too much emphasis had been placed on land mass, resulting in a proposal that was too favourable to rural areas and too stringent with regard to urban areas. It urged that any review should be postponed.

On 20 June, 1996, the Commission wrote to the Council intimating that on 17 June the Commission had concluded that the level of representation for Aberdeen should be 43 members. The letter stated, *inter alia*,:

> "The Commission considered that similar types of council areas should have equal representation and, in order to achieve this, the Commission categorised the new mainland council areas into six main types.."

The categories showed considerable development from those set out in the Chief Executive's report. They were:

"Category 1 Large Cities Glasgow and Edinburgh.

Category 2 Cities Aberdeen and Dundee.

Category 3 Authorities with fewer than 60% of the population living outwith settlements of 10,000 or more persons AND an overall population density of one person or more per hectare.

Category 4 Authorities with EITHER 60% or more of the population living outwith settlements of 10,000 or more persons OR with an overall population density of less than one person per hectare.

Category 5 Authorities with 60% or more of the population living outwith settlements of 10,000 or more persons AND an overall population density of less than one person per hectare.

Category 6 Authorities with 60% or more of the population living outwith settlements of 10,000 or more persons AND an overall population density of less than 0.2 persons per hectare."

Ratios of electorate per councillor were then determined for each category at 1:6,000; 1:4,000; 1:3,500; 1:3,000; 1:2,500; and 1:2,000 respectively for categories 1 to 6. The letter stated that the Commission had been guided by two main objectives, namely the effective management of councils and equity among electors. And it proceeded to explain how those objectives had been applied.

For the petitioners it was argued:

1. The respondents' decision not to have regard to the likely increase in the number of electors in the petitioners' area in the next five years meant that their decision on 17 June, 1996 that the petitioners should have only 43 councillors was vitiated and void because:

1.1 there was a breach of the mandatory statutory requirement in Schedule 6 to the 1973 Act as amended, paragraph 1.(2).(a);and

1.2 in any event it was a decision which was unreasonable, irrational and *ultra vires* because the respondents had failed to take account of relevant material when reaching their decision and because it was a perverse decision which no reasonable body in the position of the respondents acting in a reasonable way could have reached.

2. The respondents' methodology and the formula which they applied to the determination of the ratio of councillors to electors was unreasonable, irrational and unsupported by any factual basis, and, in particular, there was no rational justification nor any factual basis for the respondents' decision:

2.1 that there should be a minimum of 18 and a maximum of 80 councillors in any council in Scotland;

2.2 that there should only be six categories of councillors spanning the most urban to the most rural of areas;

2.3 that Aberdeen and Dundee shared broadly similar characteristics and should together comprise a single category;

2.4 that the petitioners should have a ratio of councillors to electors of 1:4,000 rather than 1:3,500 as recommended by the respondents' working party, whose recommendations bad been departed from without reason;

2.5 that urban areas require fewer councillors than rural areas for given levels of population; and

2.6 that it was desirable, despite all differences of geography and other characteristics of local government areas across Scotland to attempt to achieve equity amongst electors across Scotland as a whole when the respondents were directed by Parliament to have regard to the interests of convenient and effective local government.

The first of these propositions was developed under reference to sections 12, 13, 16, 17, 18, 20 and 28 of the 1973 Act as amended, and to Schedules 5 and 6 of that Act. In essence the first part of the proposition depended on the argument that at the stage the Commission had reached in the performance of its statutory duty on 17 June, 1996 it was a mandatory requirement that it should take into account likely increases in electorate within individual local government areas.

It is necessary to have regard to the phasing of the exercise required by the legislation. Section 13 of the 1973 Act provides that the Commission may make recommendations to the Secretary of State in consequence of a review. The recommendations are the end product of a process regulated by the detailed provisions which follow. Section 18 provides for the conduct of a review. It makes provision for notice to interested persons, and for consultation. Notice was given. The material provisions begin with the process of consultation. The councils of affected local government areas are to be consulted along with others. It is that stage that one is concerned with in this case. But it is important to have regard to what must follow. Interested parties are to be informed of any draft proposals, or any decision not to make proposals, affecting the area in question. Copies of draft proposals are to be deposited for inspection. A period for representations must be fixed. The Commission is obliged to take into consideration any representations made within that period. The Commission may cause a local inquiry to be held in terms of section 19, and appoint one or more of its members to hold such an inquiry and to report. Only when the whole procedure laid down by these provisions has been completed is the Commission required, in terms of section 17, to make a report to the Secretary of State. He, in turn, may give effect to the recommendations in the report. Or he may direct the Commission to conduct a further review and make a further report containing revised recommendations. This procedure is of fundamental importance in considering the present application. There has not as yet been deposit of draft recommendations. The respondents have not contended that the application is premature. I have some reservations about that position, given that the statutory procedure ensures that the petitioners will have the opportunity to make representations, which

the Commission might accept, that a number of wards in excess of 43 would be appropriate in the circumstances of the petitioners' area. If a number of fifty were to be resolved upon when the Commission came finally to decide on the scope of its report the present application would have attacked a mere contingency, and perhaps have achieved nothing in practical terms. However there may be circumstances in which a statutory body can be shown to have gone so far astray at a preliminary stage that it would be inappropriate for further procedure to take place without correction of their general approach, and that the procedure should be repeated. Further the respondents have fairly stated that they have formed a view on the approach to be adopted, and that nothing which the petitioners have drawn to their attention so far would be likely to affect the application of the general approach to them. It appears to me, however, that one would require to be satisfied of a fairly fundamental error of approach to justify interference with the procedure provided by Parliament in such circumstances.

It is not contended by the Commission that future trends in numbers of electors may not be a relevant consideration in recommending a number of councillors for an area. They resist the contention that at the stage they have reached it is a breach of duty to have resolved to postpone giving effect to predicted changes in numbers on the electoral roll in Aberdeen. In my opinion the Commissioners are correct in the position they have adopted in response to paragraph 1.1 of the petitioners' argument.

Section 16(1) provides for review for the purposes of making proposals for "substantive change" of electoral arrangements. Section 13 (d) defines that expression as: "a change of electoral arrangements for any local government area which.... is a change.... which is independent of any change in local government areas.." proposed in a review under the section. One is therefore concerned, in the case of a section 16 review, with changes affecting an existing local government area previously defined. Section 28 defines "electoral arrangements" as meaning the number of councillors for the area in question, the number and boundaries of the wards into which the area is divided, and the designation of the wards. Schedule 6, paragraph 1 (2), as amended, now provides in relation to the Commission's consideration of electoral arrangements:

> "Having regard to any change in the number or distribution of electors of a local government area likely to take place within the period of five years immediately following the consideration the number of local government electors shall be, as nearly as may be, the same in every electoral ward of that local government area."

In my opinion that provision is concerned with the sub-division of the area, given a specific number of councillors for that area, and it is impossible to read it as imposing on the Commission any specific statutory duty in relation to what is the logically prior step of determining the number of councillors for the area. I therefore reject the first branch of the petitioners' first submission.

The second branch is more substantial. There is an obvious problem in the application of the Act if there is or can be a significant discrepancy between the constituency taken into account in determining the number of councillors for a local government area and the constituency taken into account in the distribution of electoral wards within the area. Unless the numbers are the

same there is likely to be lack of fit which will result in an impossible attempt to allocate a number of councillors determined on one basis among numbers of electors determined on another. If there is a fully planned and funded scheme for the development on a green field site of a new residential area within a local government area, due to mature within a given five year period, and sufficient in scale to support a councillor on the criteria otherwise applicable generally, it would at least be difficult if not impossible to find much common sense in a statutory scheme which enjoined the Commission to have regard to the growth in the electorate for purposes of ward distribution without requiring the same growth to be taken into account in determining the number of councillors for the area. There would, however, similarly be difficulty with a scheme which required the Commission to take into account as a matter of obligation any future growth in electorate in fixing numbers of councillors or in distribution of wards. The development scheme suggested could not be brought into existence instantaneously, and even then could not be populated without delay. The five year period could accommodate a development which would be ready for occupation only in the last week or so of that period. It would be surprising if Parliament had intended that the Commission should allow for the increase, effective from the beginning of the review period, when on no view could it relate to reality until the dying stages of it.

In my opinion these problems have a common origin and that is the erroneous interpretation of paragraph 1(2) as setting out a positive statutory duty to take growth in numbers into account independently of the Commission's general duty in section 13. Paragraph 1(2) in my view takes growth in numbers as an element in the factual hypothesis in respect of which it prescribes the duty of the Commission in the allocation of wards. If the Commission have decided on the total number of councillors taking into account a growth in the electorate, the numbers and their distribution will affect the definition of wards. If they have not, the paragraph will not require the Commission to introduce that factor. There is ample scope in the Act for review in response to real changes in the size and distribution of the local government electorate. Section 16(3) is unqualified in scope, and would provide adequately for review in any real situation which arose from material increases in the electorate or significant variations in distribution. Schedule 6 paragraph 1 (2) in my opinion can only be read sensibly as applying to changes in numbers which the Commission has thought appropriate to take into account in the performance of its duties generally.

Counsel referred to *London Borough of Enfield v Local Government Boundary Commission for England and Another* [1979] 3 All E.R. 747. Mr Menzies argued that it was irrelevant, having dealt with an argument which is different from that raised in the present case. The decision is not determinative of the present issue, and to that extent I agree with Mr Menzies. But I do not consider the views expressed irrelevant. At page 751 Viscount Dilhorne made some general comments which appear to me to be of some importance. In particular he noted in relation to the equivalent provisions of the English Act:

> "While para. 3(2) makes it clear that electoral equality is to take priority in the fixing of boundaries and in relation to local ties, there is no corresponding provision in the Act giving it a priority in the fixing of the number of councillors   Having decided on the appropriate number of councillors required for effective and convenient local

government, it is then the duty of the commission to give effect so far as is reasonably practicable to the requirements of para 3(2) and then as nearly as may be secure electoral equality…"

In my opinion that approach supports the view that the schedule is concerned with the allocation of the pre-determined number of councillors within the local government area, and that the prior exercise is not governed by the schedule.

The second branch of the first submission for the petitioners then comes to depend on the proposition that it was unreasonable and irrational in the relevant sense to leave out of account the petitioners' predictions of change, or that that was a decision so perverse as to vitiate the whole exercise at this stage.

Mr. Menzies developed this branch oldie argument under reference to the terms of the correspondence to which reference has already been made. Paragraph 7 of the Commission's letter dated 29 March, 1996, stated that the Commission would require to have regard to any change in the number and distribution of electors up to 2001. Information was given by the petitioners. It was noted by the Commission as indicated by paragraph 2.13 of the minute of the Commissioners' meeting of 13 May, 1996. Detailed information was set out in document LGBC 1744, which was available for the Commissioners' meeting of 17 June. It showed the known and anticipated completions of houses, and their distribution, and, by applying a ratio derived from census data demonstrated an increase of 8,015 electors over the five year period in question. The minute of the Commissioners' meeting of 17 June, 1996, noted the information at paragraph 3.4.3. At paragraph 3.5.1., it was stated:

> "Before reaching their conclusions on Council Size the Commission considered carefully Paper LGBC 1744 which contained detailed information provided by Aberdeen City and Midlothian Councils on projected population increases in their areas. They decided that they would not use these projections at this stage to make decisions about councillor numbers. Paper LGBC 1745 -headed BANDING - contained alternative formulae for categorising council sizes "

There were observations on the prospects for controversy over Paper LGBC 1745, and it would not be appropriate at this stage to go into this topic in detail. But it is relevant to note that it dealt with mixed areas, of rural and urban elements, and concluded:

> "The Commission will wish to consider these alternative means of dealing with this complex matter of council size when reaching a final decision."

Mr Menzies commented that there had been no explanation given to the petitioners why the information they had provided did not result in an increase in the proposed number of councillors. On 20 June the Commission stated that the question of projected increases in population bad been looked at, but that they had decided, rather than basing council numbers on estimated increases now that if there were significant increases in population established in future years they would be prepared to re-examine matters. The answers to the petition stated

that the Commission had had reservations about the figures. This had never been explained to the petitioners. The Commission had no information other than the petitioners' before them. They did not say they had. There was no contradictory evidence. They never asked the petitioners to explain or justify their figures or expand on their predictions. The Grampian Regional Council's statement of strategic forecasts, 1995 update indicated an increase in population of 850 between 1996 and 2001, but that was not what the Commission had to look at: it was concerned with the electorate, not the population.

Since Mr Haddow's response was conditioned by it, it may be appropriate to set out in some detail the development of the argument from there. The information provided by the petitioners of likely population increases was clearly relevant and material to the question of councillor numbers. The information was such as to persuade any reasonable Commission against a reduction in representation. Until the reorganisation of 1996, Aberdeen had had 78 councillors, comprising 52 district councillors and 28 regional councillors contributing to the supervision and control of local authority functions. The area of the petitioners was the same as that of the former district. The secretary of state had reduced the number of councillors to 50. It was now proposed to reduce the number further to 43 despite the substantial increase in the range of functions to be performed by the new authority as compared with the former district council. The obvious direction of change was towards increasing the number of councillors, not reducing that number, given a projected increase in population size. There were ways in which the Commission might have arrived at 43 by examining Aberdeen' s particular characteristics and been able to justify that result. They had not however so approached the issue. They had applied a national formula. In so doing they bad brought about an irrational reduction from 50 to 43 against a predicted rise in population. Given a projected increase of 4.6% in electorate, it was perverse to reduce representation by 14%. The tests were formulated in *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 K.B. 233 at page 228; *Wordie Property Company v Secretary of State for Scotland* 1984 S.L.T. 334 at pages 3 47-8; and in *Council of Civil Service Unions v Minister for the Civil Service* (1985] A.C. 374, at page 410.

Mr Haddow argued that on an examination of the documents and the answers it appeared that the Commission had informed itself of relevant facts, and had taken an informed view of the issues before it. It had not proceeded in an arbitrary manner.

There was no relevant factual basis for a case of irrationality or unreasonableness. The Commission had not made a decision to reduce the number of councillors. The result of their decision would be a reduction but that was not a proper reflection of what they had done. The approach had been set out in the letter of 20 June. The number of councillors had been determined on an objective basis. The Commission accepted that they were obliged to look at future trends. They did so. But they were not obliged to accept the petitioners' forecasts. The Grampian Regional Council's statement of strategic forecasts for the relevant period indicated an anticipated increase in population of only 850 persons despite a growth in households of some 3,400. That cast doubt on the propriety of applying an arithmetical factor based on historical data relating households to electors. On a superficial view the increase in the number of households could not be assumed to lead to an increase in the number of electors. The respondents were justified in treating the forecast as speculative. The respondents' reservations about the forecast

were set out in the answers. The petitioners could not found on any alleged failure to consult or discuss matters. There was consultation with the Registrar General's statisticians. But whether or not one took that into account, there was no basis for attacking the approach adopted or the view taken as irrational, or unreasonable, or absurd.

The argument on this branch of the case tended to include matters which were not solely related to the increase in the local government electorate. Elements which might be more appropriately dealt with in the second chapter of the petitioners' submissions intruded, and perhaps that was inevitable. But it is important to consider the attack based on the established authorities criteria with some decree of care. I was not impressed by the argument that because the Commission itself had drawn attention to the importance of likely changes in the electorate, that somehow pointed towards the irrationality of failing to give weight to the factor on 17 June. The letter of 29 March fairly paraphrased Schedule 6. It drew attention to change in numbers: "As regards the boundaries of the electoral wards...". In maintaining the position they did in respect of the first branch of this chapter of argument the Commission were consistent, and that letter cannot be prayed in aid of the petitioners' argument. Further it is important that the Commission were not in fact or in the expression of their approach representing to the petitioners that the exercise they were engaged in was one of modification of a base which was already defined for a purpose relevant to the performance of their duty. Mr Haddow was correct in distinguishing the result of the exercise from the objective or purpose of the exercise, which the petitioners tended to confuse. When one strips away the peripheral points which were made, this argument is reduced to a contention that it was irrational or unreasonable or perverse of the Commission to fail to give effect to the petitioners' predictions of growth in the electorate in determining the number of councillors for the area.

I find it impossible so to characterise what the Commission did. The factor of 1.73 which was derived arithmetically from applying the number of households to the total electorate at the reference date selected may properly be used to express a contemporary fact. But it is not appropriate to apply it to varied data unless one can state as a matter of fact, and on an objective basis, that the relationship remains constant in what are necessarily altered circumstances. One cannot tell from the respective numbers of households and electors what generated the arithmetical result. One cannot know how much multiple-occupancy there was at the material time which might be relieved by the house building programme. One cannot tell the age range of those members of the population who were within and those outwith the class of electors. For example, if it should prove on further inquiry that a substantial proportion of the new town centre houses were destined to provide first homes for young adult couples who shared a parent's accommodation at the reference date, there would be no increase in the electorate on their taking up occupancy, and the only result would be a reduction in the arithmetical factor generated by the exercise reflected in the documents. In these proceedings it is for the petitioners to show irrationality. It would be wrong to substitute a view of the probable position for that suggested by the petitioners. But it cannot be correct to invite the court to draw an inference or to accept an inference from what may be spurious arithmetic without setting out factual material which supports the proposition that the arithmetic is likely to reflect the realities, especially where the purpose is to support an allegation that a statutory body has acted irrationally or unreasonably or perversely in approaching its task.

Accordingly I reject both branches of the first chapter of the petitioners' argument.

In the second chapter, the final proposition is the most general. The others are perhaps best seen as particulars which may or may not support it. But, again in fairness to the argument, I should set out the submissions as they were made. Mr Menzies started with the Commission's determination of the range of council size, of 18 to 80. That range appeared to have been influenced by the reports of two Royal Commissions in 1969. Neither of those recommended a maximum of 80: 75 was the recommended figure. Further the Commission's working party had recommended a minimum of 18, not 20. LGBC/M229 of 22 January, 1996, and LGBD/ 1734 both expressed the working party's view on the matter, favouring a range of 20-80. Despite that the Commission resolved on a range of 18-80. It was perverse to resolve on such a range, and then to seek to develop ratios for use in the application of the assumption implicit in it across the board. That was wrong in principle. The difference between 18 and 20, or 75 and 80, might be of little significance. The whole approach was wrong. The statutory duty of the Commission was to look at each area and resolve on a level of representation for it in the light of local conditions. Further there were particular criticisms. Paragraph 2.2 focused on the next stage in the exercise. It was paradoxical that having decided on six categories, and applied the ratios developed the highest and lowest ratios resulted in councils at or about the maximum size, and that at intermediate ratios there were smaller councils. But the principal question was why there should be six categories into which all local government areas bad to be squeezed for the sake of the formula. Secondly why should each of the categories have a different ratio from all of the others? It appeared that the Commission bad proceeded essentially on population densities. It was at least possible and might be probable that different categories should have the same ratios to meet different needs. The working party had recommended the same ratio for different categories. The Commission had departed from that but bad given no reason for so doing. Had the recommendations of the working party been followed, a ratio of 1:3,500 would have applied to the petitioners and a council of 50 would have resulted. That had been the number for the previous district council of Aberdeen fixed by the Commission. The Secretary of State bad not simply plucked the figure out of the air. The selection of a ratio of 1:4,000 for the petitioners and for Dundee was purely arbitrary. Thirdly, as set out in paragraph 2.3, there was tie factual basis for placing Aberdeen and Dundee in the same class, and distinguishing them from Edinburgh and Glasgow. There were just as many differences between the members of the two classes identified as there were similarities. Maps of the local authority areas showed that the differences between Aberdeen and Dundee were material. Aberdeen had a much more extensive rural hinterland. The boundary of Dundee was close to the built up area at all points. Aberdeen covered a much larger area than Dundee after the most recent changes in boundaries. 60% of Aberdeen was rural. Dundee was now almost totally urban. Dundee had 21.146 electors per hectare. Aberdeen had 9.172 electors per hectare.

While it might be true that the four major cities had similar histories in terms of local government organisation, there were many differences, and there was no logical reason for putting Aberdeen and Dundee into one category. The only possible explanation for the decision was that the Commission had devised a progressive formula which only allowed for six categories, and the two cities had to be forced into a single category despite their differences.

Further in resolving on a ratio of 1:4,000 the Commission had departed from the recommendations of the working party. They did so without giving any reason. A rational body should be in a position to justify a departure from the working party's recommendations. There was no justification anywhere. On the face of it this was irrational. The underlying theory that urban areas required fewer councillors than rural areas was without factual basis. It flew in the face of the petitioners' experience. Available data showed that urban councillors bad far more surgeries for constituents than rural councillors. This could not have been overlooked bad the Commission not tried to force everyone into a predetermined formula. Finally, all of these particulars derived from the underlying problem caused by the Commission looking at the whole of Scotland and trying to apply general criteria uncritically instead of looking at the requirements of each area individually. Where they had gone wrong was that they had chosen a point of departure based on electoral equity, and in order to achieve that had developed sophisticated arithmetical formulae which had blinded them to the basic nature of the duty imposed by the Act. The methodology as a whole failed to provide a good fit with the requirements of the Act. It was not suggested that the Commission could not formulate guidelines, nor that there should be no element of comparative treatment, nor even that the Commission should not look beyond Aberdeen. But they were not entitled to substitute a general formulaic solution for individual consideration of the issues relevant to each local authority area. The perception that there was a need for equity among electors was misconceived.

Mr Haddow responded that the Commission did perceive there to be differences between the requirements of rural and urban communities. Ease of access to councillors was a factor to be measured against the high incidence of problems in urban areas. It was a matter for judgement how one balanced such factors. This was a matter for the Commission. It could not be determined by the recommendations of the working party. There were members of the Commission on the working party, as well as officers of the Commission, and the members took part in the crucial decisions to depart from the recommendations in certain respects. That did not point to irrationality. Rather it demonstrated a process of mature judgment after inquiry. One had to bear in mind the rigorous nature of the test to be applied on the authorities. The disposal of this application did not depend on a balancing of considerations advanced by the two parties. One would be entitled to interfere with the decision of the Commission only in extreme circumstances justifying the description of the work of the Commission as absurd, or so far outwith the scope for reasonable difference as to be outrageous, or to amount to a decision which no rational body behaving properly could have done: *Venter v Scottish Legal Aid Board* 1993 S.L.T. 147, at page 156. Far from supporting such a view, the information available was conclusively against it. The fundamental argument was that it was unreasonable or irrational or perverse of the Commission to have sought to achieve equity among electors in general in pursuance of its review under section 13. One inferred from the approach adopted by the petitioners that there was a presumption that the existing number of councillors provided a proper starting point. That explained the emphasis on the alleged reduction of the number from 50 to 43. That assumed that the Commission did not have a clean canvass for the first review, but required to start from a position previously determined. That was a fundamental flaw or fallacy. There was no validity or sanctity in the numbers prior to the review. Schedule 2 to the 1994 Act, paragraph I provided that the Secretary of State should fix the initial numbers. In general he followed existing district representation in doing so. But that demonstrated why Parliament

would wish the Commission to develop its own criteria for application to the first review. In the context of the first review the Commission was enjoined to look at the whole of Scotland, not simply at a particular local problem. Their examination threw up a number of anomalies in the previous situation. Aberdeen and Edinburgh could be compared. The ratios suggested that Aberdeen was over-represented or Edinburgh under-represented. Section 13 gave a wide jurisdiction to make recommendations. It was apparent that it did not prescribe the approach to be adopted, or exclude any particular approach. "Effective local government" contained a reference to the decision making function of local authorities: size was a factor which was not solely related to representation. It had to take account of the numbers required for the proper performance of the duties of the authority at one end of the scale, and the limits on efficient performance restricting size at the other. Over-large bodies could not operate efficiently. The Commission were entitled to have regard to the practical requirements of councils, and to reach views on the range of sizes which might be appropriate. Further in the context of representation, population density and distances were material considerations. Any scheme would produce anomalies. That did not make the whole approach irrational. On the Commission's proposals, given its urban character, Glasgow might be thought to be under-represented. But to apply a ratio properly applicable to Aberdeen to the population of Glasgow would result in a council which would be unwieldy. The position could not be avoided. What one could do was to look at the position overall and to try to find a rational approach to the solution of individual problems. The selection of minimum and maximum sizes was not a novel idea. The Royal Commissions had adopted similar approaches. It was impossible to characterise the approach as irrational. There could be no irrationality in an attempt to provide a solution across Scotland. At very worst for the respondents all that required to be said was that it was within reason that electoral equity had a part to play in their deliberations, not just in relation to divisions within local authority areas, but more widely. Given that there was a clean canvass, and that the whole of Scotland had to be looked at the same time, there was nothing irrational in adopting a methodical approach and defining electoral equity as a starting point for the exercise. The petitioners sought to distinguish themselves from Dundee. But when one had regard to the statistical data available, there were close similarities in population distribution. There may be perceived differences, but statistically they were close comparables. The realities could be summarised in a series of propositions. First, the Commission had a statutory duty which included recommending the number of councillors in all local government areas, and carrying that out without the encumbrance of any prior scheme. Secondly, there was a duty to make all local authorities aware of what was being done. That was carried out. Thirdly, in its preliminary work, which was subject to a statutory programme, the Commission bad the responsibility to investigate the position and to initiate comment. It could have done so by flying a kite, but it gave consideration to the problem and, informed by its investigations, consultations and the Royal Commission reports identified a starting point with a presumption of a range of sizes. Fourthly, the Commission had to apply statutory criteria where laid down: schedule 6 would come into play at the appropriate stage. That stage had not been reached. Fifthly, in applying that scale of sizes the Commission had to deal with a range of different areas, with different characteristics. It progressed towards the current range of ratios, making adjustments especially at the extremes to achieve a satisfactory framework. It was appropriate to apply different ratios as between heavily and sparsely populated areas. In all of this there was no procedural impropriety, there was no unlawful act, and it was impossible properly to characterise the Commission's conduct as irrational, unreasonable or perverse. In

making its decisions thus far, the Commission dealt particularly with each local authority area. Local peculiarities were taken into account. That was plain from the minutes of the Commission. But there remained the opportunity for argument and for representations if any party considered that the Commission bad made an error of judgment or overlooked some factor of importance.

Much of the argument on this branch of the case appeared to encroach on the merits of the issue of judgment between the parties. It would be unprofitable to explore many of the issues in detail as separate and substantive attacks on the decision. The grounds on which the Council has sought to attack the Commission have not all been mutually compatible. For example, in the Council's letter of 14 June, the complaint was that the Commission's proposals were too favourable to rural areas. In the comparisons drawn with Dundee the complaint is that Aberdeen should have more members because it is more rural. Again, there is considerable emphasis on the perceived distinctions between Dundee and Aberdeen, ostensibly to support the notion that whether or not Dundee's allocation is correct, Aberdeen should have the higher allocation of fifty councillors. But the essential basis of the contention remains the subjective assertion of perceived need. The petitioners might be right on the merits. But there is nothing obviously wrong in a well informed body such as the Commission forming a contrary view. It is not for the court to form any view on such issues and to use that view as a basis for reviewing the decision of the Commission. The assertion that a ratio of 1:3,500 should have been used is supported on the basis that it supports 50 councillors. But there is no objective validity in a figure of fifty and it cannot be provided simply by pointing to the fact that it expresses the result of the application of a proposed ratio which the Commission rejected. Similarly I find it difficult to give weight to the suggested paradox that the highest and lowest ratios arrive at broadly the same number of councillors. That merely reflects the application of the two extremes of urban problems at one end of the spectrum and rural problems at the other in an arithmetical scheme which must *ex hypothesi* assume such results and seek to interpolate intermediate values on a rational basis. Further, given that the first review was comprehensive and that one measure of a proper exercise of such a power might be thought to be a measure of consistency of approach, I find difficulty with the contention that it was incompatible with a proper exercise of the Commission's powers to seek equity among electors by some means.

It is necessary to distinguish between the setting of general criteria for the purposes of an Initial sift of material with a view to forming tentative views for exploration with interested parties, and the use of criteria of a general kind as the measure of ultimate decision. The Commission were charged with a first review extending over the whole of Scotland. In my view it could have been said to have been irresponsible of the Commission to have proceeded without some preliminary views of the tests or criteria which it might be appropriate to apply objectively to arrive at a view on the appropriate size of council. The alternative would have been a wholly subjective or arbitrary decision council by council, in response to perceived local need. The danger would have been that the Commission would have failed in its duty to originate the proposals it put out to consultation. Parliament has clearly proceeded quite deliberately to place initial decisions in the hands of the Commission. There is little difficulty in understanding why that should have been done. It avoids the risks of pressure from local interest groups to create councils which might reflect local conceit more than local need. The attack on the initial stages of fixing minimum and maximum sizes fails in my view. There are clearly factors which a reasonable

Commission could reasonably consider would point to a minimum number of councillors, given the range of services over which the council would require to exercise control. Opinions might legitimately differ as to what that minimum might be. But unless the Commission proceeded so far from the rational as to expose itself to criticism of the kind indicated by Lord Diplock in Council of Civil Service Unions, and quoted by Lord President Hope in Venter the number was a matter for the Commission. Again there are le2itimate reasons for imposing a maximum number on council size, to avoid the risks of an unwieldy body which because of its size mi2ht prove incapable of performing its duties efficiently. There would be scope for difference on the figure. But the Commission must be free to decide within broad limits what figure to adopt for its initial exercise. The relevant differences, between IS and 20, and between 75 and 80, are obviously within such a narrow band that it would be impossible to criticise the selection made. Again, given that one is at the earliest stages of the exercise, the selection of ratios of councillors to electorate within the overall range for the purpose of an initial ordering of authorities must lend itself to variation of opinion. There is no substance in the argument that a departure from the working party's recommendations indicates an irrationality of approach. The Commission bad no power to delegate decision. The use of a working party may well have been a useful expedient for making initial inquiries. But the notion that there could be any sanctity about the party's recommendations is absurd. The working party's maximum, which is the end of the scale particularly relevant to the petitioners' position, was adopted by the Commission.

In my opinion the only substantial issue is that raised in paragraph 2.6. of Mr Menzies' contentions. If there were a legitimate attack on the Commission's decision it would be that the Commission had applied the initial general criteria to the exclusion of the application of its mind to the sole question it was required and entitled to ask: what was the number of councillors required for the convenient and effective administration of local government in the local authority areas under review. In this context again, the observation s of Viscount Dilhorn in the Enfield case are instructive. One must have regard to section 13. In my opinion the Act required that issue to be addressed for each and every local authority area in Scotland on the first review. It would not be due performance of the Commission's duty if it were merely to decide on a range of criteria derived from a general study and to proceed to apply those criteria uncritically in the face of emerging factors which effectively distinguished particular local authority areas from the norms defined. Parliament has not prescribed any particular test of general application. It appears to me that the Commission has no jurisdiction to prescribe any test of general application to the exclusion of performance of its duty of individual study and recommendation in respect of individual areas. It seems to me to be relatively easy to demonstrate why that must be so. The results identified in the categories selected might be generated by widely differing sets of circumstances, even given the considerable sophistication of categories 4, 5 and 6.

The 40% of the population living in settlements of 10,000 or more in a total population of 100,000 might live in any number of settlements between one and four, and the distribution of those settlements relative to each other and to the 60% balance might vary considerably. A coastal town of 40,000 at the edge of a large sparsely populated rural hinterland might be thou lit to present a different picture from a largely rural area with four towns of 10,000 distributed evenly in the four quadrants of the area and equidistant between the centre and the periphery of it. An initial allocation based on purely arithmetical criteria might require to be adjusted for

factors relating to the geography and topography found on examination of the area and on receiving representations from interested parties. It might be irrational indeed for the Commission to insist on its initial assessment despite a finding in fact after inquiry that the actual population distribution bad characteristics which distinguished it from the model used to define the arithmetical tests. On the other band the balancing of the competing factors which would inevitably emerge from an examination of the requirements of the individual areas would be a matter for judgment and different adjudicators might arrive at different conclusions. There would remain a wide area for judgment.

The issue for me is whether the decision of 17 June is vitiated by such an emphasis on the general criteria developed that the Commission has been shown to have failed in its statutory duty. In my opinion it would be a breach of duty for the Commission to proceed to deposit for public consideration a scheme which applied a figure of 43 to Aberdeen solely on the basis of its arithmetical criteria. It has not yet done so. It has indicated an intention to fix the figure at 43, but that does not, per Se, demonstrate a breach of duty, since the Commission's records show that there was consideration of relevant data on a council by council basis, even though some of it was rejected. I am not concerned with a document prepared for deposit and representations and, it may be, inquiry. Those stages are yet to come. I am concerned with an earlier stage. I cannot anticipate a failure by the Commission to respond to local interest representations, or worse to persist with a given figure derived arithmetically from controversial data in the face of compelling evidence that an adjustment is required to ensure convenient and efficient local government. If one focuses solely on the significance of the decision already made, and the attack on it, then, given the stages yet to come and the clear opportunity for representations and the Commission's obligations to consider any representations made to it, there is, in my view, nothing about the decision which is open to review. The application might be considered premature, though that was not argued, on the basis that the procedures envisaged by the Act have not been completed, and the Commission has not taken a decision on the representations which have yet to be made. If I must consider the question on the position to date, it appears to me that the correct context is that defined by the stage reached. A preliminary step has been taken, an opening shot fired in a procedure with many stages to run. There is a potential dispute. But there was nothing objectionable, in my view, in the Commission forming the opinion it did on 17 June with a view to progressing to the next stage in the consultative process. If that is done and the petitioners make representations, the Commission may be persuaded and alter its intended recommendation. It may do so with or without a local inquiry. Quite apart from those stages in the procedure which are in the hands of the Secretary of State, the Commission itself will require to consider Aberdeen's position again if there are representations against its deposited proposals. That process has not been vitiated by the decision of 17 June, in my view. In these circumstances I shall sustain the first plea-in-law for the respondents and dismiss the petition.

OPINION OF LORD PENROSE

in Petition of

ABERDEEN CITY COUNCIL

for

JUDICIAL REVIEW OF A DECISION
OF THE LOCAL GOVERNMENT
BOUNDARY COMMISSION FOR
SCOTLAND MADE ON 17 JUNE 1996
IN RESPECT OF THE LEVEL OF
REPRESENTATION FOR THE
ELECTORATE WITHIN ABERDEEN
CITY COUNCIL AREA

Act: Menzies, Q.C., Ross Bennett & Robertson

Act: Haddow, Q.C., McCreadie
R Brodie, Solicitor to the
Secretary of State for Scotland
for the Local Government Boundary
Commission for Scotland

20 December 1996

Appendix C

Aberdeen City Council Area
Proposed Electoral Wards

Electorate

Number	Name	1996 (Actual)	2001 (Estimated)
a	b	c	d
1	Dyce	4,150	4,105
2	Bankhead/Stoneywood	4,286	4,185
3	Danestone	4,123	4,010
4	Jesmond	4,235	4,180
5	Oldmachar	3,458	4,200

6	Bridge of Don	4,129	4,080
7	Donmouth	3,676	4,040
8	Newhills	3,276	4,050
9	Auchmill	4,172	4,060
10	Cummings Park	4,086	3,956
11	Springhill	4,002	3,869
12	Mastrick	4,022	3,895
13	Sheddocksley	4,142	4,000
14	Summerhill	3,709	3,775
15	Hilton	3,989	3,860
16	Woodside/Tillydrone	4,296	4,145
17	St. Machar	4,132	3,990
18	Seaton	3,879	3,900
19	Kittybrewster	3,695	3,935
20	Stockethill	4,147	4,000
21	Berryden	4,134	4,204
22	Sunnybank	4,017	3,885
23	Pittodrie	4,006	4,100
24	Midstocket	4,295	4,166
25	Queens Cross	3,971	3,860
26	Gilcomston	3,974	4,070
27	Langstane	4,249	4,130
28	Castlehill	3,807	4,020
29	Hazlehead	4,176	4,040
30	Peterculter	4,062	3,975
31	Murtle	4,227	4,080
32	Cults	3,972	3,885
33	Mannofield	4,251	4,185
34	Ashley	4,072	3,935
35	Broomhill	4,247	4,140
36	Garthdee	4,107	4,010
37	Holburn	3,611	3,855
38	Duthie	3,985	4,180
39	Torry	4,190	4,065
40	Tullos	4,343	4,230
41	Kincorth West	4,174	4,030
42	Kincorth East	4,065	3,920
43	Loirston	3,364	3,960
	Total	172,903	173,160