



International Ombudsman Institute
Institut International de l'Ombudsman
Instituto Internacional del Ombudsman

SECURING EFFECTIVE CHANGE

HOW TO MAKE RECOMMENDATIONS THAT BRING ABOUT
SUSTAINABLE IMPROVEMENT TO PUBLIC ADMINISTRATION

Introduction

As the only global Ombudsman organisation, the IOI is uniquely placed to promote best practice by drawing on the experience of its members. This is achieved in many ways, through training, through conferences and workshops, comparative research and by putting Offices in touch with others who have achieved excellence in a particular field.

One important way in which learning is shared is through the development of a series of Best Practice Papers. This paper concentrates on the issue of effectiveness. It draws on the experience of IOI members to highlight ways of working which are most likely to bring about successful outcomes.

This series of papers is published on the IOI website. This allows for them to be updated over time as new approaches and new examples come to light. Readers are encouraged to suggest improvements which will ensure that it remains useful and relevant.

Special thanks is given to Emer Doyle in the Irish Ombudsman's Office for her work in researching this paper. For the sake of clarity, the term "public service provider" is used throughout this paper to describe a body or organisation within the remit of the Ombudsman.

Securing service improvement

Every Public Service Ombudsman Office has two core functions – resolving injustices suffered by individuals and improving public services through learning from the investigations it undertakes. In order to ensure that this happens, it is essential that each Office reassures itself that the changes it has recommended to public service providers have been implemented, and once they have been implemented, that they have secured the desired outcome – that the injustice suffered by the person who brought the complaint to the Ombudsman is not being suffered by subsequent users of the service.

This paper has been informed by some initial research undertaken by the Office of the Ombudsman in Ireland. Seven Offices responded including those of the Ombudsman for Ontario, the Ombudsman for South Australia, the Ombudsman for New South Wales, the Ombudsman of Malta, the Austrian Ombudsman, the National Ombudsman of the Netherlands and the Federal Tax Ombudsman of Pakistan. The experiences of the Irish Ombudsman's Office were also incorporated and contributions were received from the Office of the Scottish Public Services Ombudsman and the Northern Ireland Public Services Ombudsman. Following the publication of the first draft of the paper, responses were also received from the Public Services Ombudsman for Wales, the Greek Ombudsman and the Seimas (Parliamentary) Ombudsmen's Office (Lithuania) while observations were received from the Association for the Prevention of Torture (APT) and an academic in Public Law, Dr. Chris Gill. All of these contributions give a very interesting cross-section sample of practices in Ombudsman Offices from four out of the six IOI Regions.

Several written sources were also drawn upon, including a paper published in 2015 by the Office of the Ombudsman Toronto titled "[The Impact of Ombudsman Investigations](#)", a report from the [Ombudsman of Western Australia](#) which highlighted steps taken on the implementation and follow-up of recommendations, a briefing paper from the Association for the Prevention of Torture entitled "[Making Effective Recommendations](#)" and extracts of a publication from 2011 by the Federal Ombudsman of Belgium on the consolidation of the Ombudsman in the 21st century.

The findings are considered under the following headings - relationship building, the investigation, framing recommendations, sharing the recommendations, launching the report and follow-up and enforcement.

Relationship building

***“The process of getting recommendations accepted begins before they are even presented.”
(Ombudsman Ontario, Canada)***

Ontario emphasised the importance of starting from a position of trust. The relationships established in the day-to-day interactions between the Ombudsman’s Office and the public service providers will have an impact on the effectiveness of systemic investigations and making recommendations for change in policy or procedures. Many Ombudsman complaints are resolved without the need for formal investigations or recommendations. The Thai Ombudsman and Seimas (Parliamentary) Ombudsmen’s Office use alternative dispute resolution measures such as mediation and peaceful settlement of public grievances.

This work relies on having good working relationships with the public service providers. These relationships cannot be too close, as this might imply bias, but can nonetheless be very helpful in securing a constructive engagement when formal investigations are required.

Fundamentally, to ensure that the public service provider is open to the recommendations when these are ultimately prepared, the Ombudsman must be fair in the investigative process. This should involve providing advance notice of the investigation. A meeting may be a useful option to consider in this regard. The purpose of any meeting is not so much to try and mediate a settlement but instead to explain the reasons for the investigation, to commit to a fair and impartial investigative process and to invite input from the public service provider at any time.

The scope of the investigation should be clearly set out and the methodology to be used should be available, preferably on the Ombudsman’s website. Ireland stresses the importance of setting out this information clearly in a letter which formally initiates the investigation.

The investigation

“The ability to secure results depends exclusively upon the quality of the arguments, the respect the institution enjoys and the moral authority it exercises.” (Parliamentary Ombudsman of Malta)

According to Ontario, the credibility of the investigation affects the recommendations and, in particular, the likelihood that they will be accepted. This involves compiling compelling evidence and employing a procedurally fair and thorough investigative process.

New South Wales focuses on ensuring that its draft investigative reports clearly demonstrate that there is a problem and why it needs to be addressed. Likewise the report from the Ombudsman Toronto advised that the Ombudsman should rarely conduct an investigation if the problem was already being addressed provided that the proposed action represents an appropriate fix. Resources should not be used to address problems that the public service provider is already solving.

In the context of securing meaningful change, the investigation must clearly establish that the injustice arises from a systemic failure rather than a one off occurrence.¹

Framing recommendations

“A critical element of the accountability and learning process inherent in recommendations implementation is the framing of clear, concise and practical recommendations arising from investigation and audit reports to agencies.” (Ombudsman South Australia)

Making recommendations for improvement are a fundamental part of any Ombudsman investigation. As the Association for the Prevention of Torture (APT) points out, recommendations are likely to be the part of the investigation report that is read most closely. South Australia uses the SMART goal setting method as a well-established project management tool to identify criteria relevant to the setting of objectives. In other words the recommendations must be:

¹ The IOI will shortly be publishing a paper on best practice in systemic and own initiative investigations which will provide detailed guidance on the conduct of investigations.

S pecific	What will the recommendation accomplish?
M easurable	How will we measure whether the recommendation has been implemented?
A chievable	Is the recommendation possible?
R esults-focused	What is the result of the recommendation?
T ime-bound	What is the completion date for the recommendation?

According to South Australia, the principal advantage of this is that recommendations are easier to understand, to implement and then be confirmed as having been implemented.

The APT goes further and uses what it refers to as “double smart criteria”. This means that recommendations should not only be Specific, Measurable, Achievable, Results-focused and Time-bound, they should also be:

S olution-suggestive	Recommendations should be concrete, concise and contain credible solutions.
M indful of prioritisation, sequencing, risk	Consider holding back or removing less pressing recommendations may be useful in enabling the implementing body to focus on more urgent ones.
A rgued	Recommendations should be based on high quality objective evidence
R oot-cause responsive	Recommendations should be directed at the causes of the problem and not the symptoms
T argeted	The bodies that can legally and practically implement each recommendation must be correctly identified.

For Ontario, the recommendations must be doable, feasible and grounded in the realities of any given situation. To ensure this, it is important to listen to the views of those who will have to implement the recommendations and to make all affected parties feel part of the process.

In Scotland, the focus is on outcomes-based recommendations rather than process-based ones and linking specific findings to recommendations. Recommendations are made which are about putting things right in the future – these are referred to as “learning and improvement” recommendations. The focus of these recommendations is on the outcome that is considered necessary to address the investigation findings and set out what needs to change to make sure that the same failing does not recur. In most cases, the type of evidence required to demonstrate that the outcome has been achieved is specified. According to Scotland, feedback from public service providers suggests that the approach results in a clearer picture of what is expected of them.

Other Offices suggest that the decision as to whether to use outcome or process based recommendations will depend on the facts of the particular case. Finally, when circulating a draft report to the public service provider, New South Wales asks for its suggestions as to how the identified problems could best be addressed. If these suggestions are accepted, the service providers appear to have a greater sense of ownership of the recommendations in the final report.

In some instances, it may be the case that the recommendations are not achievable because of a lack of resource availability on the part of the public service provider concerned. Ireland has stressed that where there is an entitlement to a service that has not been honoured, such recommendations may still be made to highlight the injustice.

Sharing recommendations

“By discussing the recommendations with the parties addressed, they can comment on their feasibility and how to achieve them. The result of this method is that recommendations are more realistic and at the same time a dialogue is created on the progress of implementation.”
(National Ombudsman, The Netherlands)

New South Wales has always provided draft recommendations to public service providers for comment prior to finalising reports and will take any reasonable suggestions for changes into account in the final report. Ontario provides its proposed recommendations along with the preliminary draft report to the service provider concerned as, more recently, do Ireland, the

Netherlands and Northern Ireland – Northern Ireland refers to it as “owning the learning”. Ireland asks the public service provider to put forward alternatives to the draft recommendations if they believe that the desired outcome, or a better one, can be achieved in a different way than that proposed.

Ontario advises that explaining to the public service provider that it will have the opportunity to review and comment on draft recommendations prior to them being finalised and made public promotes buy-in. The report from Toronto also highlights the significance of discussing the recommendations to ensure that they are achievable.

The Thai Ombudsman is obliged to consult with the public service provider under investigation to ensure that the recommendations can be implemented efficiently and fall within the capacity of the public service provider. Likewise, public service providers are obliged to consult with the Ombudsman in case of objection to the recommendations or other reasons which may result in the recommendations not being implemented. If both parties fail to arrive at a resolution in this regard, the Ombudsman will refer the matter to the Cabinet for further consideration.

Launching reports

“Including public service providers in the launch of the report will increase their commitment to implement recommendations.” (Ombudsman of Ireland)

Ireland has, on a number of occasions, invited the public service provider to participate in the launch of the report and in any associated press conferences. This means that the service providers publicly accept the findings and commit to implementing the recommendations.

This can soften the criticism in the media because they are seen to be co-operative but it also means that there is public scrutiny of their implementation of the recommendations. This makes it harder for them to subsequently reduce their commitment to change.

Follow-up

“In some cases [implementation] requires liaison with agencies to encourage and support actions to address recommendations made by the Ombudsman.” (Ombudsman South Australia)

The Seimas (Parliamentary) Ombudsmen’s Office believes that follow-up is both essential and inevitable. Therefore public service providers under remit must give an account of progress in relation to the implementation of the recommendations. They are also obliged by legislation to publish the Ombudsman’s recommendations.

Ontario incorporates a robust post-investigative monitoring process. Key elements of this strategy include a recommendation in every report that the public service provider report back to the Ombudsman – in writing and at specific intervals – on its progress in implementing the recommendations, analysing these reports and reporting publicly on the service provider’s progress as well as monitoring relevant information from other sources, for example from other complaints. Scotland also referred to the importance of internal casework knowledge management in this regard and intends to use intelligence from casework to work with public service providers to learn more effectively from complaints.

Launching another investigation is considered to be a last resort to be used only when key problems identified in the initial investigation have been ignored or not dealt with effectively. However, the Netherlands has completed a number of retrospective studies which can make visible the practical problems of implementing recommendations. New South Wales always includes a requirement in its final reports that the public service providers provide detailed advice as to the actions taken on recommendations.

In Austria public service providers are obliged (under the Austrian Ombudsman Act) to comply with recommendations within a period of eight weeks and to give reasons in writing why the recommendation has not been complied with within that timeframe. In Thailand, the public service providers must take appropriate measures and actions to implement the Ombudsman’s recommendations within 120 days (with a possibility of a 60 day extension to this timeline upon request of the public service provider). Likewise in Lithuania, the public service providers must notify the Ombudsman within a set timeframe on progress made on implementation of the recommendations. If they do not do so, the Ombudsman can inform the body responsible for supervising the actions of the public service provider.

In Northern Ireland, compliance is also time-bound and actions plans are developed. It is the responsibility of the investigator who conducted the investigation to follow up on compliance in the first instance with possible escalation to the Director and then the Deputy Ombudsman / Ombudsman.

In South Australia, a small Recommendations Implementation Team is responsible for documenting progress and implementation of recommendations. Similarly, in Scotland, a Learning and Improvement Unit monitors the implementation of any recommendations made. Therefore, while the follow-up of individual recommendations is carried out by the investigator who investigated the complaint or a complaints officer (who provides support to investigators), the Learning and Improvement Unit collates the information and reports on emerging themes and trends. The Learning and Improvement Unit also has a role in seeking to resolve issues with public service providers where there is a difficulty in implementing a recommendation and before the matter is escalated to the Ombudsman.

In Pakistan, independent advisors are assigned the task of following-up on the implementation of recommendations. Both Scotland and Pakistan also referred to the use of their IT systems as an effective way of classifying and tracking recommendations.

Where necessary, Ireland undertakes follow up investigations to ensure that promised change has been delivered. These include consideration of written submissions on the outcome of action plans, site visits, random file inspections and interviews with staff including frontline staff, complaint handlers and senior managers.

Enforcement

“While we do not have the power to compel acceptance and implementation of our recommendations, we do have an important and effective tool in the power to publish. Ultimately, our power is in our voice.” (Ombudsman Ontario)

A large proportion of Ombudsman Offices make recommendations and do not have powers of enforcement. There are some exceptions to this rule, as in the case of Pakistan, where in instances of non-implementation, notice of defiance proceedings (and, in some cases, contempt proceedings), can be issued. There is a provision for the Northern Ireland Ombudsman to ask the Attorney General to apply to the High Court for relief but this provision has never been used. New South Wales can

make a default report to Parliament although this mechanism has not been used for at least the past two decades.

Malta can also report on non-implementation by sending a copy of the report to the Prime Minister and thereafter report to Parliament. However, this procedure has had very limited success and does not attract a high level of publicity.

In Ireland, reports on any rejection of recommendations are made to a Parliamentary Committee, and Ministers and senior officials can be called to give evidence. This has proved effective in the very small number of cases in which recommendations were not accepted with only one remaining unresolved in more than 30 years of the Office. In Thailand, where disputes about recommendations cannot be resolved, the Office will refer the matter to the Cabinet for consideration and action.

Ontario uses media engagement and the power to publish in an effort to secure implementation of recommendations. The use of the media can be critical in highlighting failures to accept and implement recommendations, especially where links with the Parliamentary body do not prove successful. Likewise, in Austria, the television programme *BürgerAnwalt* (Advocate for the People) and the media exposure involved creates incentives for the authorities to find solutions.

Apart from its general preventive effect, the Austrian TV show also includes regular follow-up reports on previously shown cases. In addition to this, collaboration with NGOs can have a positive effect on enforcement: if civil society backs the Ombudsman's recommendations, more weight and pressure is put on the government to implement them.

Conclusions

It is acknowledged that Ombudsman Offices work in a variety of contexts and environments across the world. However, despite this there are some fundamental key considerations in order to best achieve and secure effective change. These include the following:

- Maintaining good working relationships with public service providers in jurisdiction
- A clear focus for all investigations
- Thorough and objective consideration of the issues
- Only making systemic recommendations where the investigation has confirmed the existence of a systemic cause
- Recommendations which are specific, clear and time-bound, and which relate explicitly to the findings
- Recommendations which are discussed and, if possible, agreed with the public service provider
- An action plan drafted by the public service provider and setting out the steps to be taken
- An agreed reporting timetable to confirm that the actions have been taken **and** that the desired outcomes have been achieved
- Follow-up, if necessary

In some complaints, the failure is a consequence of problems with organisational culture and not simply procedural issues. In such cases, reassurance that procedural steps have been taken is not sufficient. Evidence that leaders and senior managers are satisfying themselves on the ground that the steps have been taken **and** that they are securing the designed outcome is essential. Quality control mechanisms which do not rely on the people who caused the problem need to be in place to confirm its solution. Written assurances may not be sufficient and it may be necessary to check on the ground that the change has happened.