



Office of the Ombudsman

February 2011

Developing and Optimising the role of the Ombudsman

There is a strong public expectation that, following the General Election, there will be a radical re-shaping of the political and administrative landscape. There is a public demand that government must be fair, effective and accountable and it is clear that the institutions of government must be re-drawn to ensure this is achieved. Two key elements in meeting this demand are consistency and fairness in the application of the law and in the provision of public services that focus on individuals' needs.

Like the Courts, the Ombudsman's Office helps to uphold the rule of law. But it also plays a role in ensuring better government. There is broad consensus that the Office, through its independence and impartiality, has proven itself to be a significant player in public governance; since its establishment in 1984, it has won widespread public support and is respected by the public service because of its achievements. Its establishment was widely seen at the time as one of the most significant events in the history of Irish public administration.

At another critical time for Irish society, the Ombudsman believes that much more could be done – with Governmental and Parliamentary support - to enable her Office to play a greater role in complementing whatever measures are put in place to meet the current public demand for better government.

The purpose of this document is to explain how the Ombudsman can play a fuller role in supporting the checks and balances required for good government and to outline what needs to be done to ensure this happens.

Ombudsman Role – General

The Ombudsman investigates complaints against public bodies and, where appropriate, recommends redress. The Ombudsman is given substantial powers by parliament to conduct investigations. While Ombudsman recommendations are not usually binding, they are nevertheless normally implemented by public bodies. Where a public body refuses to implement a recommendation, the Ombudsman reports this to parliament which will usually consider the matter in the relevant committee. Except it is shown that the Ombudsman's investigation was flawed, the parliamentary committee will find a means to ensure the Ombudsman's recommendation is implemented.

The work of the Ombudsman is complementary to that of the courts. Unlike the courts, the Ombudsman draws on the experience of dealing with individual complaints to identify and report on systemic problems within public administration.

Ombudsman – Ireland

Since 1984 the Ombudsman has received roughly 80,000 valid complaints including 3,894 complaints received in 2010. Over the years the Office has identified and investigated many issues of systemic significance including the treatment of late social welfare pension claims, serious maladministration in nursing home subventions, failure to provide nursing home care for the elderly as well as issues to do with planning and with the operation of waiver schemes in waste collection.

The work of the Ombudsman has impacted significantly on the mindset of public servants. As a result, there is now a widespread appreciation of the right to fair procedure, the value of learning from complaints and the need for clear communication and explanations for decisions. The Ombudsman has been to the fore also in identifying fundamental weaknesses in our governmental arrangements. As early as January 2001, in a report dealing with nursing home subventions, the Ombudsman identified dysfunctions in government as the root cause of the very bad practices described in that report. The Ombudsman in 2001 pointed to imbalances in the relationships (1) between the Executive and the Oireachtas, (2) within the Executive between Ministers and their senior civil servants and (3) between Departments and other public bodies (such as the then health boards). These same issues have surfaced in recent debate on reform of government.

There have also been missed opportunities when the Ombudsman highlighted serious issues which, if dealt with at that time, would have saved the State from significant compensation having to be paid at a later stage. The illegal charging of medical card holders for nursing home care is a case in point. This issue could have been resolved when the Ombudsman began to draw attention to it in 1991/1992; instead, it remained unresolved until 2006 when the Oireachtas legislated to refund those charged illegally. Roughly €500 million has since been paid out in refunds to those charged illegally.

Recently, the Ombudsman's relationship with the Government has come under some strain arising from two particular investigations - the ***Lost at Sea*** case (involving a scheme for awarding replacement tonnage for fishing vessels lost at sea) and the ***Who Cares?*** report (dealing with the obligation on the HSE to provide nursing home care for older people). It will be very important to restore the Ombudsman's relationship with Government at the earliest opportunity.

Optimising the Ombudsman Role

There are some specific changes which, in the Ombudsman's view, should be made in order to optimise the impact of her Office. Most of these changes will require new legislation – the Ombudsman Act 1980 has never been amended in any significant way – but should not involve much new spending. In fact, the changes proposed are likely to result in savings in other areas. These changes include:

- **Constitutional status for the Ombudsman.** This was recommended in 1996 by the Constitution Review Group in order that the Ombudsman would be seen to be independent and to be “*able to operate without being influenced by Government action*”. This would place the Ombudsman in the same position as, for example, the Comptroller and Auditor General thus ensuring that administrative accountability will be taken as seriously as financial accountability. The enhanced independence of the Ombudsman, derived from Constitutional recognition, will undoubtedly increase public confidence in the Office as well as requiring the public service to ensure its engagement with the Office is genuinely co-operative.
- **Improve the reporting relationship with the Oireachtas.** As in many other countries, the work of the Ombudsman will be enhanced where there is a direct reporting relationship with a specific Oireachtas Committee which both monitors and supports the work of the Ombudsman. The Ombudsman envisages that such a Committee would have regular constructive and critical interaction with her. In the event of a recommendation being rejected, it is to this Committee that the Ombudsman would report. The Ombudsman would expect to have her investigations and recommendations reviewed critically by this Committee which would make its own assessment of her work. Provided the Committee acted independently, and not on a party whip basis, the Ombudsman could have no complaint should the Committee take the view that her recommendation should not be supported. There is also scope for considering whether the Oireachtas, through this Committee, might ask the Ombudsman to conduct specific enquiries on its behalf.¹
- **Extend remit to include the prisons and all issues relating to immigration, refugees, asylum seekers and naturalisation.** There has never been any good reason why these areas have remained outside the Ombudsman’s jurisdiction. For other national Ombudsman Offices these areas have always been a central element of the overall jurisdiction. In the absence of access to the Ombudsman, asylum seekers in particular are left with no alternative other than the High Court when they are unhappy with how they have been treated. More than half of all judicial review applications (749 applications in 2009) are asylum related. There is little evidence that the improvements in public administration generally, mentioned above, have been a feature of the administration of these areas which have remained outside the Ombudsman’s remit.²

¹ As suggested by Donncha O’Connell of NUIG in his submission of 12 January 2011 to the Oireachtas Joint Committee on the Constitution - <http://debates.oireachtas.ie/CNJ/2011/01/12/00004.asp>

² The Ombudsman (Amendment) Bill 2008, which had been passed by the Dáil (but not by the Seanad) prior to its recent dissolution, proposed to retain the exclusion of these areas from the Ombudsman’s jurisdiction. The Ombudsman proposes that any new Ombudsman (Amendment) Bill should extend her jurisdiction to these areas.

- **More transparent procedures for appointing Ombudsman.** Under the Ombudsman Act 1980, the Ombudsman is appointed by the President following a resolution passed by the Dáil and Seanad. In effect, the appointment is in the gift of the Government of the day. In the interests of transparency, there is a strong case for having a prospective Ombudsman attend some kind of confirmation hearing before the Oireachtas Committee charged with monitoring and supporting the work of the Ombudsman.

Conclusion

It is important that the impetus for governmental reform, so evident at the moment, is acted upon at an early stage following the formation of the next Government. The Ombudsman will be happy to discuss these ideas with any of the political parties whether in advance of the General Election or afterwards.

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Our purpose is to help raise public service standards. Individuals, businesses or organisations who feel they have been unfairly treated can make complaints to the Ombudsman. Our service is free. We aim to ensure that people are treated with dignity, respect and sensitivity when dealing with the public service. We will make every effort to deal with your complaint properly, fairly and impartially.