

the future of ombudsman schemes: drivers for change and strategic responses



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executive summary

The purpose of this research is to identify drivers for change affecting ombudsman schemes and describe how schemes are responding to these. The overall aim of the research is to describe what a successful ombudsman scheme will look like in future. This executive summary describes the key findings of each section of the report. Annex 1 details the methodology used.

the context for UK ombudsman schemes

The context in which ombudsman schemes have developed and currently exist is characterised by fragmentation and incoherence. Aspects of the redress landscape and its development have been described as 'logic defying', 'a muddle' and 'blinkered and haphazard'. The current landscape, therefore, is problematic and appears set to continue that way.

drivers for change in ombudsman schemes

Overall, this research has identified that changes in ombudsman schemes are being driven by developments in consumer behaviour, in the service provision offered by the organisations investigated by ombudsman schemes and in the policy environment.

consumer behaviour is changing:

- ***consumer demand is changing***, with increasing (though variable) levels of complaint, increasing (though still low) levels of awareness and difficulty in predicting future demand;
- ***the consumer base for ombudsman schemes is changing***, with some move away from the traditional older, white, middle class and male demographic and with the impact of legal aid cuts and the growth of Claims Management Companies; *and*
- ***consumer expectations are changing***, with some consumers increasingly demanding and resourceful and with greater expectations of speed, simplicity and online provision, although with some consumers remaining passive and vulnerable.

service provision is changing:

- ***operational practice is changing***, leading to unpredictable demand and the creation of higher expectations regarding customer service in the minds of consumers;
- ***boundaries between service sectors are changing***, with the bundling together of services, Alternative Business Structures and the need to ensure joined up handling of complaints about increasingly integrated service sectors; *and*
- ***boundaries between the public and private sectors are changing***, with public sector ombudsmen investigating private companies, the public and private ombudsman models converging and the logic behind separation, perhaps, becoming undermined.

the policy environment is changing:

- *the ADR directive* will bring about small procedural changes for most schemes, but – depending on the government’s implementation strategy – could have a significant impact on the redress landscape and preferred models of redress;
- *other policy matters* such as continuing fiscal restraint, cuts in legal aid, changes to consumer advice and regulatory policy will bring about changes to the operational context for ombudsman schemes; *and*
- *lack of direction from government* will continue to expose ombudsman schemes to risks arising from a fragmented and incoherent landscape, while a lack of understanding in government may result in misdirected policy initiatives in future.

strategic responses

The research found that the drivers described above require a response from individual ombudsman schemes and from the ombudsman community.

the response of individual ombudsman schemes may include:

- *increasing consumer awareness and accessibility*, with schemes promoting themselves more, conducting research into low awareness and working with service providers to ensure consumers reach ombudsman schemes;
- *improved customer service*, with schemes using more flexible, informal and speedy procedures (where appropriate), enabled through judicious use of technology while also developing interpersonal customer service;
- *greater sharing of learning*, with ombudsman schemes becoming more proactive in using casework intelligence to help service providers to improve and taking – along with regulators – a more strategic approach to dealing with disputes; *and*
- *continued operational efficiency*, with ombudsman schemes needing to maintain complaint handling efficiency, maintain reputation and trust and avoid backlogs.

the response of the ombudsman community may include:

- *increasing strategic influence*, creating a stronger Ombudsman Association that is able to influence policy, help drive change and play a part in filling the vacuum that exists in government around ombudsman policy; *and*
- *increasing sharing, integration and merging*, with ombudsman schemes sharing duplicated functions where appropriate, and working towards reducing consumer confusion either by pushing for mergers or developing a single doorway for ombudsman schemes.

the ombudsman of the future

The report concludes by providing a tentative description of what a successful ombudsman scheme will look like in future. The research has identified eight ways in which ombudsman schemes may need to shift their practices in order to respond to the many challenges, and

capitalise on the many opportunities, they face. In summary, these involve ombudsman schemes becoming more:

- informal in terms of process;
- timely in the resolution of complaints;
- focused on oral/interactive communication with consumers;
- available to consumers online;
- visible and accessible to consumers;
- proactive and influential in the policy environment;
- strategic in influencing service provision; and
- integrated rather than sectoral.

In addition to this executive summary, readers short on time may wish to consult the figures interspersed throughout the report, which provide a brief visual snapshot of the key findings in the report. The list of figures and tables at annex 4 provides page numbers for each figure.

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1. introduction

1.1 This report summarises the findings of a research project commissioned by the Legal Ombudsman to identify how ombudsman schemes are likely to develop in future. This is a broad and challenging research agenda, developing in the context of rapid social, political and technological change. Rather than making any claims to clairvoyance, this report has more limited ambitions and aims to provide a range of relevant perspectives, opinions and insights that can help to inform future strategic developments. The research has identified a number of challenges and opportunities facing ombudsman schemes and there is a clear need for individual schemes and the ombudsman community as a whole to develop their strategic thinking in response. It is hoped that this report can provide a helpful reference point in that context.

1.2 The specific aims of the research were developed in collaboration with the Legal Ombudsman. The overall research aim was *to identify the features that a good ombudsman scheme will need to possess in 5 to 10 years time in order to respond to various drivers for change*. Subsidiary research aims were to:

- identify drivers for change affecting ombudsman schemes;
- identify how ombudsman schemes are responding to these drivers; *and*
- suggest business models that might respond to these drivers.

These research aims were fulfilled through a mixture of methods, including literature review and analysis, documentary analysis and qualitative interview research. Interviews were conducted with ombudsman schemes, policymakers and consumer advice organisations. Further details about the methodology employed and the organisations who took part in the research can be found at annex 1.

1.3 As this report makes clear (see section 2), the ombudsman landscape is both diverse and incoherent. Consequently, identifying issues that will be equally relevant to all ombudsman schemes is a difficult task. Most ombudsman schemes are heavily influenced by narrow sectoral pressures that are likely to feature significantly in the way they operate and develop. Nonetheless, many macro-level issues are of importance to most, if not all, ombudsman schemes and it is these issues which this research focuses on. While these issues may effect different schemes in different ways and to different extents, we expect them to have broad relevance across schemes, particularly since the interview sample sought to bring together a mix of views from across the ombudsman world.

1.4 A key recurrent issue when speaking with research participants was the extent to which public and private sector ombudsman schemes were similar or different. Paragraphs 3.29 to 3.33 deal with this issue in more detail, with some mixed views reported by organisations that were interviewed, although there was strong support for the notion that there was increasing convergence between public and private ombudsman schemes. While acknowledging that distinctions remain between public and private ombudsman schemes

(Centre for Public Scrutiny 2006), this report generally focuses on points of commonality and shared experience. As one participant noted:

I think those key elements of independence, fairness, accountability, effectiveness and so on... are what make an ombudsman an ombudsman... Yes, we all have slightly different powers and ways of addressing them, but ultimately it all comes down to, a member of the public has been failed by somebody they expected to provide them with some sort of service, and they need to be put back in the position that they otherwise would have been in. (Ombudsman 8)

Nonetheless, while stressing shared experiences the report does draw distinctions between public and private sector schemes where relevant and, overall, our focus is more clearly on private sector ombudsman schemes and issues that are more likely to be of interest to the Legal Ombudsman.

1.5 Following this introduction (section 1), the report is in four main sections: section 2 introduces the context in which ombudsman schemes have developed in the United Kingdom; section 3 identifies key drivers for change in ombudsman schemes; section 4 reports ombudsman schemes' strategic responses to these drivers; section 5 draws conclusions and identifies the features that are likely to characterise ombudsman schemes in future. A summary of the key areas covered in the report can be seen in figure 1.

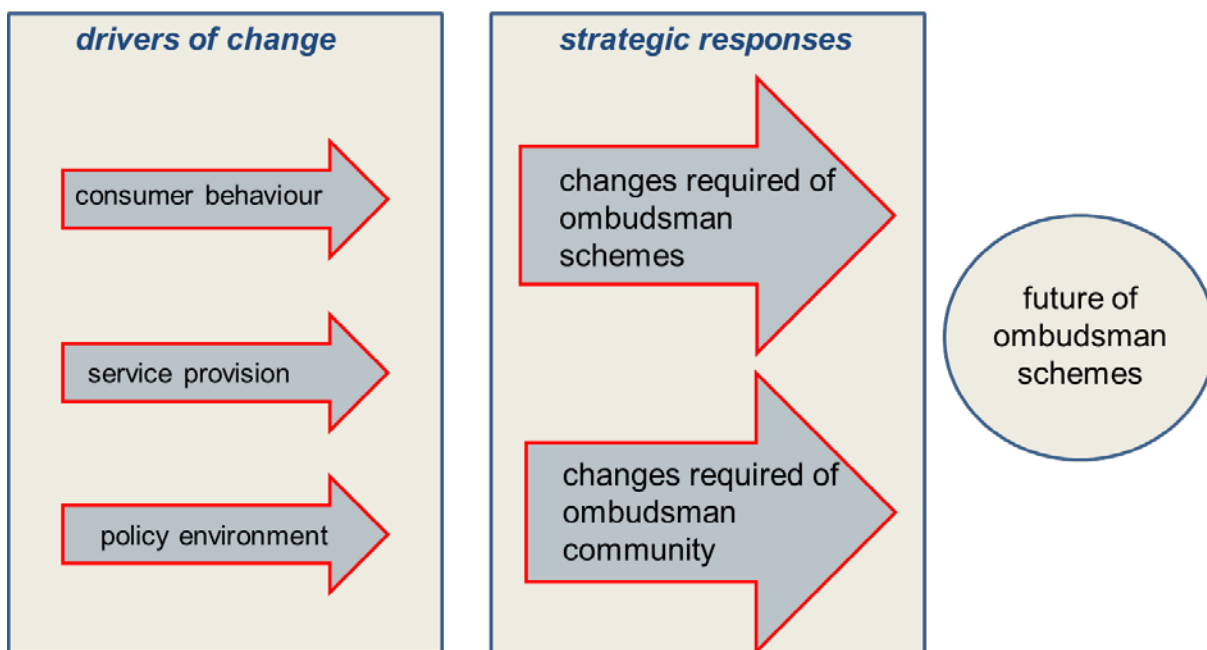


figure 1: key areas covered in the report

1.6 Each of the areas in figure 1 are discussed in detail in the body of the report. Briefly, the key drivers that have been identified relate to:

- changes in consumer behaviour (such as changes in consumer base, demand and expectations);
- changes in service provision provided by organisations subject to the jurisdiction of ombudsman schemes (such as changes in operating practice and blurred boundaries between service sectors and the public and private sectors); *and*
- changes in the policy environment (such as the European Union's Directive on Alternative Dispute Resolution in Consumer Disputes, changes in legal aid and changes in consumer advice).

The key strategic responses reported by participants fall into the following two areas:

- changes required of individual ombudsman schemes (such as increased awareness and accessibility, improved customer service, greater focus on sharing learning and improving services and maintaining operational efficiency); *and*
- changes required of the ombudsman community (such as increased cooperation between schemes to achieve influence in government and increased sharing, integrating and merging of resources to simplify the redress landscape).

1.7 The next section describes the context in which these drivers and responses exist for ombudsman schemes.

2. the context for UK ombudsman schemes

2.1 This section provides an overview of the development of ombudsman schemes in the UK, with the aim of charting where we are now and how we got there. It provides a brief historical overview and describes the place of ombudsman schemes within the broader dispute resolution landscape. This provides important context for the main sections of the report which cover drivers for change and strategic responses.

historical overview

2.2 Emerging from Scandinavia in the 1960s, the ombudsman concept has since spread explosively around the world in a phenomenon that has been described as ‘ombudsmania’. Beginning in the public sector and subsequently spreading to the private sector, ombudsman schemes are now an important feature of the justice and consumer protection landscape in many countries, including the UK (AJTC 2009; OFT 2010). There is significant agreement amongst observers that this development has been a broad success, improving access to justice and providing redress for consumers that would not otherwise have been available (Brooker 2008; Buck et al 2011).

2.3 UK ombudsmen have previously been described as having developed in ‘three generations’ (Morris and James 2002), but it may now be more helpful to group the development of ombudsman schemes into five broad phases. Annexe 2 provides timelines charting the development of UK private and public sector ombudsman schemes, while the paragraphs below describe the five phases:

- *phase 1*: Ombudsman schemes were first established in the public sector in the 1960s and 1970s. By 1974, there were ombudsman schemes with jurisdiction over all key public services (central government, local government and health). These ombudsman schemes were established in response to the growth of the welfare state and the perceived inadequacy of traditional forms of accountability. The key features of the public service ombudsman schemes are: a focus on maladministration (extended to cover clinical judgment in the health area and, for some schemes, service failure); strong powers of investigation; non-binding decisions and recommendations; procedural flexibility and accessibility; and a concern with ensuring accountability in government. Changes in the way public services are delivered mean that public service ombudsman schemes are increasingly considering the actions of private organisations (Tyndall 2012). Phase 1 ombudsman schemes include the Parliamentary and Health Service Ombudsman, the Local Government Ombudsman and the Northern Ireland Assembly Ombudsman.
- *phase 2*: The next phase occurred during the 1980s and early 1990s, with the emergence of private sector ombudsman schemes in the financial services sector (Morris 2008). These schemes were initially established on a voluntary basis,

although they were subsequently put on a statutory footing and amalgamated into the Financial Ombudsman Service (Merricks 2009). They (and their successor) represent a major evolution in the phase 1 ombudsman model. Key features in phase 2 are: a focus on what is fair and reasonable rather than maladministration; funding by industries or service sectors; decisions that are binding on businesses if accepted by consumers; closer integration with regulatory mechanisms; and, generally, a focus on individual dispute resolution rather than accountability. Phase 2 ombudsman schemes included the Insurance Ombudsman Bureau, the Office of the Banking Ombudsman, the Building Societies Ombudsman, the Investment Ombudsman and the Personal Investment Ombudsman Bureau.¹

- *phase 3*: This phase began in the early 1990s and continued into the 21st century, with the expansion of the ombudsman concept to areas of the private sector outside of financial services and the subsequent consolidation and formalisation of some ombudsmen schemes. Areas of the private sector that were covered during this phase include: legal services, estate agents and removals (Merricks 2011). In addition to broadening the areas covered by private sector ombudsmen, a significant development was the integration of financial services ombudsman schemes into the Financial Ombudsman Service in 2001 and the increased independence and powers over legal complaints with the creation of the Legal Ombudsman in 2010. The key features of phase 3 ombudsman schemes are similar to those in phase 2. Phase 3 ombudsmen include: the Property Ombudsman, the Financial Ombudsman Service, the Removals Ombudsman, Ombudsman Services: Property, and the Legal Ombudsman.
- *phase 4*: This phase began in the mid 1990s and 2000s and is characterised by the development of ombudsman schemes to cover private organisations that are delivering hybrid public/private service. The quasi-public nature of these privately delivered services makes them distinct and they include services such as higher education and social landlords that have public and private elements and industries subject to public service obligations, such as telecoms and energy. There have been suggestions that the remit of these ombudsman schemes might fit more clearly with that of the public services ombudsmen (Tyndall 2012) and, indeed, there is precedent for this in Australia and continental Europe (Cataluña Ombudsman 2013; McMillan 2007). Phase 4 ombudsman schemes include: the Housing Ombudsman Service, Ombudsman Services: Communications, Ombudsman Services: Energy and Office of the Independent Adjudicator for Higher Education.
- *phase 5*: This phase began in the early 21st century with the devolution process in the United Kingdom. The major development during this phase was the creation of the 'one-stop-shop' model, which provided a single ombudsman covering all

¹ Although the Pensions Ombudsman emerged during this phase, its tribunal-like powers (binding on both parties with a right of appeal to the High Court or the Court of Session) mean that it does not fit clearly within any of the five phases.

devolved public services. The driver for this was the increasingly joined up nature of government services and changes to the way in which citizens use services. The model also allowed for private organisations delivering public services to be included in the 'one-stop-shop'. As a result, for example, social landlords, higher education and the water industry are now included within the Scottish Public Services Ombudsman's (SPSO's) jurisdiction. A further development in phase 5 was the extension of the ombudsman's jurisdiction to cover service failure in addition to maladministration in areas other than health, although it is not clear whether this has made much impact (Morgan 2011). Other areas of significant innovation include the development of a national complaint signposting service in Wales which is delivered by the Public Services Ombudsman for Wales (PSOW) and the development of the SPSO's Complaints Standards Authority as a quasi-regulator of public service complaints handling in Scotland (PSOW 2012; SPSO 2012). Phase 5 ombudsmen include the SPSO and the PSOW.

2.4 The description of the development of ombudsman schemes within these five phases may give the misleading impression that they occurred in a planned and orderly way. Instead, ombudsman schemes have tended to be developed in an incremental and *ad hoc* fashion by individual government departments. This has resulted in an overall landscape that 'defies logic', with the private sector being seen as particularly 'cluttered' (Abraham 2012) and the development process as 'blinkerred and haphazard' (Merricks 2009). There are now a significant number of ombudsman schemes and even more complaint handling organisations, each of which has – although comparable – nonetheless different processes and procedures. This may lead to varying standards (Tyndall 2012). The Cabinet Office, assisted by the Ombudsman Association, has now issued guidance on setting up new schemes (Cabinet Office 2010). While this may help avoid the landscape getting any worse, it does not address current issues within the sector:

While individual schemes generally seem to work well, some flaws are apparent when the ombudsman landscape is viewed as a whole... The consequences of the organic growth of ombudsmen, without a clear overall sense of direction, are becoming increasingly apparent. (Brooker 2008).

The fragmented and incoherent nature of the ombudsman landscape was commented on by a number of research participants. One participant commented:

There's no grand plan for redress, is there... so it feels really that that whole redress landscape has not been drawn, it's just emerged and there are some big gaps, there are some overlaps that must mean that it's not efficient. (Ombudsman 1)

Concerns about varying standards and the potential for consumer confusion represent significant long term risks to the ombudsman 'brand'. In the shorter term, proliferation of ombudsman schemes has meant that schemes have been forced to take on the role of 'traffic director', helping people navigate an unnecessarily complicated landscape and diverting resources from complaint handling (Hyson 2009, cited in Carl 2012).

2.5 There are two key issues currently facing the ombudsman community: gaps in provision and overlaps in provision. Although this may change with the introduction of the European Union's Directive on Alternative Dispute Resolution for Consumer Disputes (discussed in detail later in this report), there are currently significant markets that are not covered by ombudsman schemes. Lack of coverage in these areas does not appear to be a matter of principle:

What is it that brings together the customers of banks, estate agents, universities, phone companies, housing associations, solicitors, and electricity providers, yet excludes those of rail companies, airlines, vets, accountants, supermarkets and used car traders? ... We need to look no further than the attention and interest that particular governments have given ... But it is painfully clear that none of these departments see beyond their own departmental interest... (Merricks 2009).

At the same time as significant gaps in provision have been left unaddressed, significant overlaps have been allowed to develop between ombudsman schemes. In particular, the development of ombudsman schemes has failed to keep up with the way in which public and private services are increasingly being delivered and consumed (Brooker 2008; Dunleavy et al 2010). Another cause of overlaps is the fact that ombudsman schemes have been set up with different approaches to determining jurisdictions: some, such as LeO, have been set up to cover particular providers, while others, such as the Financial Ombudsman Services, have been set up to cover particular activities. Lack of coherence in the ombudsman sector was subject to significant comment by research participants and is returned to below in section three of the report, which considers drivers for change in ombudsman schemes.

2.6 In addition to being part of the 'ombudsman sector', individual ombudsman schemes can also be seen to be part of two broader redress landscapes: administrative justice and consumer redress. The administrative justice landscape is generally more relevant to public service ombudsman schemes, although ombudsman schemes with jurisdictions over privatised public services and some more classically private ombudsman schemes have seen themselves as being part of the administrative justice framework (Merricks 2011). This framework involves a broad conception of administrative justice, which looks holistically at the work of courts, tribunals and ombudsman schemes in relation to the redress of citizens' grievances (AJTC 2009). The administrative justice landscape, similarly to the ombudsman landscape, has been described as 'a muddle for those who work in the system and those who use it' (Abraham 2012). In addition, recent developments, with the proposed abolition of the Administrative Justice and Tribunals Council (AJTC), mean that hopes for a new and transformative approach to administrative justice may now be aborted. The Ministry of Justice's strategic work plan for administrative justice hardly mentions ombudsman schemes (MoJ 2012) and it is unclear what priority it will be able to give administrative justice within its broad remit. As noted recently by a leading authority on administrative justice, it appears that the importance of administrative justice may diminish in coming years: 'The brief shaft of

light that fell on administrative justice is likely to be followed by its renewed eclipse by civil justice' (Adler 2012).

2.7 The other major landscape which private ombudsman schemes can be seen to be part of is the 'consumer redress' landscape (OFT 2010). Rather than drawing on concepts and traditions from administrative law (as is the case with administrative justice), the consumer ADR landscape has a predominantly consumerist focus influenced by access to justice, consumer protection policy and business regulation. The consumer redress landscape is, if anything, more complex and patchy than either the 'logic defying' ombudsman or 'muddled' administrative justice sectors. Indeed, the Office of Fair Trading (2010) notes that there are 95 discrete ADR schemes operating across 35 different economic sectors and that current ADR provision is unlikely to meet the needs of consumers. Hodges et al (2012) argue that, when viewed within the context of the EU, consumer ADR schemes are highly developed in the UK. However, the problems are that they are sector-based, no single model exists and there are some significant gaps in coverage. It is unclear that 'redress design' (Bondy and Le Sueur 2012) and decisions about which kind of scheme should operate in different sectors have been based on any kind of principle and developments here have been equally *ad hoc*.

2.8 In summary, the development of ombudsman schemes can be seen to have been pragmatic and to have resulted in a landscape which is cluttered and subject to excessive variation which is unguided by principle. The broader landscapes of dispute resolution within which ombudsman schemes sit are equally incoherent, muddled and confusing to consumers. This context presents a significant challenge for the future development of ombudsman schemes and, indeed, the general lack of direction and coordination of redress policy in the UK was identified by research participants as a key driver for change within ombudsman schemes. The following section now turns to these drivers.

3. key drivers for change

3.1 This section of the report highlights drivers for change identified in the course of the research. These can be grouped into three broad categories and are shown in figure 1 below:

- *driver 1*: changes in the number, profile and expectations of consumers using ombudsman schemes;
- *driver 2*: changes in the delivery of services provided by organisations subject to ombudsman schemes; and
- *driver 3*: changes resulting from the policy environment.

Technological change was also identified as a key driver; however, this was an issue which cut across consumer, service provision and policy changes and, therefore, there are references to it within each driver rather than separately.

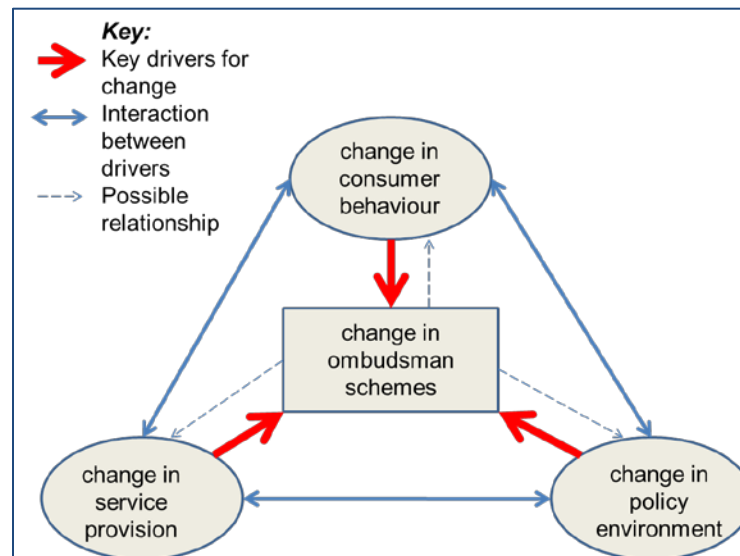


figure 2: drivers for change in ombudsman schemes

3.2 Figure 2 shows that each driver interacts with other drivers so that, for example, changes in consumer behaviour drive changes in service provision (and vice versa). Figure 2 also shows the relationship between each driver and change ombudsman schemes as largely one-directional (with changes in consumer behaviour, service provision and policy having a causal effect on change within ombudsman schemes). Although it is not a central concern of this report, ombudsman schemes may also have some limited influence in shaping change in each of these areas; this is tentatively shown in figure 2 by indicating the possible influence of ombudsman schemes on each driver. As will be seen, one of the ways in which the research suggests that ombudsman schemes change in future is by developing greater influence over stakeholders, moving from being largely reactive to being more proactive.

3.3 The following paragraphs describe drivers one to three in turn, before looking at the way in which ombudsman schemes have responded to these and plan to develop in future.

driver 1: changes in the number, profile and expectations of consumers using ombudsman schemes

3.4 A major driver identified in the research related to changes in the profile and behaviour of consumers using ombudsman schemes, including:

- changes in consumer demand for ombudsman schemes;
- changes in ombudsman schemes' consumer base; *and*
- changes in consumer expectations of ombudsman schemes.

3.5 Figure 3 below breaks down each of these sets of changes and summarises the key issues arising in each area. These are discussed in more detail in the body of the report.

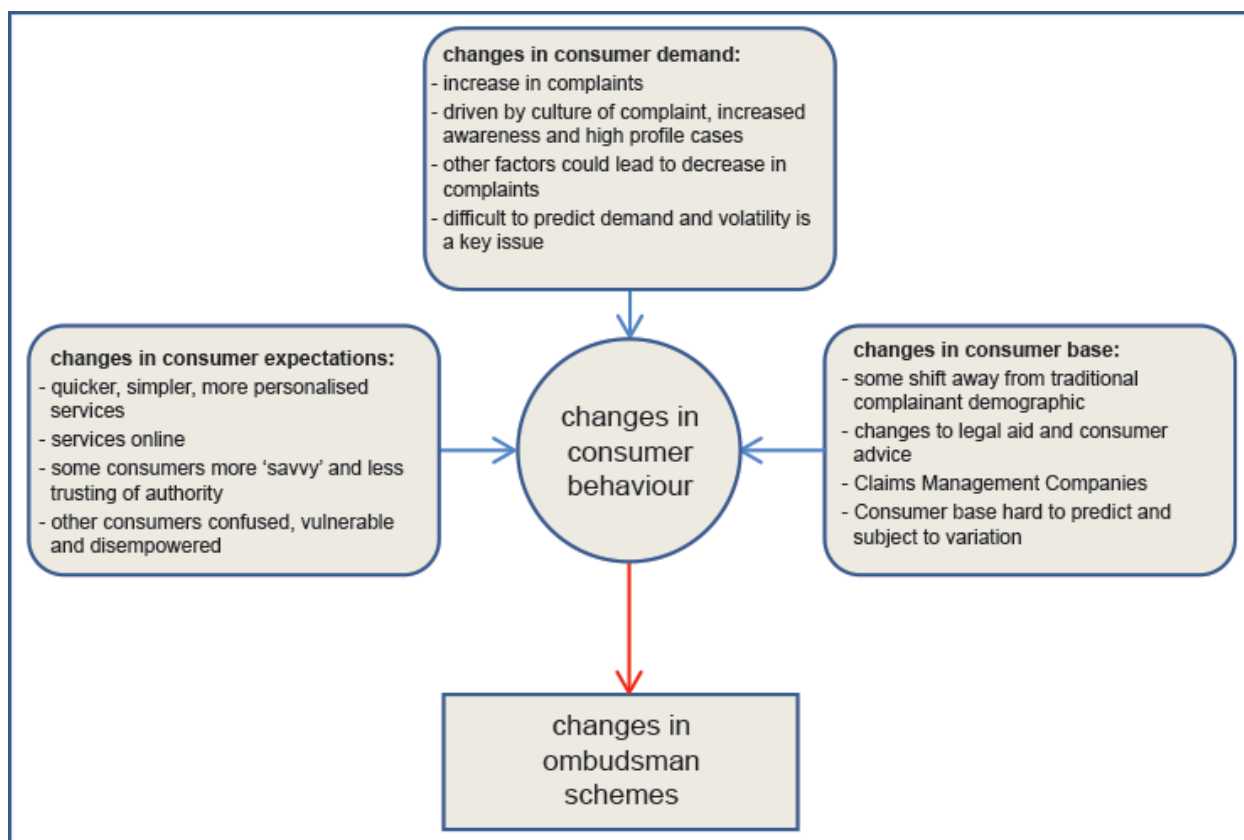


figure 3: changes in consumer behaviour driving changes in ombudsman schemes

changes in consumer demand for ombudsman schemes

3.6 Most of the ombudsman schemes interviewed as part of the research reported receiving increased number of complaints. This was also evident from the documentary analysis (see

annex 3) which found that increasing numbers of complaints was the most frequently cited issue in annual reports produced by ombudsman schemes. A number of participants noted a general trend towards consumers being more willing and more confident to complain:

Consumers have become... much more demanding than they used to be. People used to be much more accepting of a service, but these days... they're much more likely to complain. (Policy Official 1)

Although not all ombudsman schemes fully shared this view, with one participant noting:

I think one of the major drivers we have is unmet need... Yes, there are more complaints but we think there are an enormous... number of people who are not complaining. (Ombudsman 7)

3.7 Recent studies in the UK and the EU have found that nearly two thirds of consumers will complain when they are dissatisfied, with most of those complaints going to the company from which the product was purchased (Consumer Focus 2012, European Commission 2011, Financial Ombudsman 2012, Office of Fair Trading 2008). Only in a small percentage of cases (11%) do consumers complain to someone else (Consumer Focus 2012). Research commissioned by the Legal Services Consumer Panel (LSCP) found that 70% of consumers who were dissatisfied with legal services after complaining took no further action despite remaining dissatisfied with the way the lawyer dealt with their complaint (LSCP 2013a), suggesting that there are particular serious issues in the legal arena. These studies indicate that, while complaint numbers may be increasing, many consumers remain unlikely to involve third parties in their disputes.

3.8 Participants cited a number of reasons for the increase in complaints they were receiving, including social change, the impact of the financial crisis and increased awareness of ombudsman schemes. With regard to the economic crisis some participants said that consumers had more at stake in their complaints, resulting in consumers expecting more for their money:

The current economic situation brings about more complaints because people are... quite rightly less ready to be satisfied with anything less than perfect service. (Ombudsman 2)

Others pointed to an increase in consumer awareness of ombudsman schemes in general, with consumers having a better understanding of the ombudsman institution than in the past:

What an ombudsman is is becoming much more embedded in the minds of people. It's not so often now that a taxi driver says what do you do for a living and you say I'm an ombudsman, and they haven't a clue what you're talking about. (Ombudsman 3)

One participant said that although consumers might not be aware of ombudsman schemes, they were increasingly aware of the existence of third parties other than the courts:

They may not understand ombudsmen although, you know, given the number of ombudsmen that are about and the, sort of, public profile that they have, it's possible that people do look for an ombudsman scheme but, I think, if people are not satisfied with something they know that there will be some higher authority other than the courts to which they can go. (Ombudsman 2)

This suggests that awareness of particular ombudsman schemes may be less important than simply knowing that such mechanisms for resolving disputes exist.

3.9 One of the important factors in driving increased awareness cited by several participants was the high public profile of the Financial Ombudsman Service:

I think the numbers that FOS have been dealing with, it's certainly made the word ombudsman much more prominent. So I think it has had a knock on effect. (Ombudsman 3)

Current increases in complaints and a perception that consumers are increasingly aware of their rights suggest that ombudsman schemes are going to face continued and increased demand for their services in future.

3.10 However, it was unclear whether the perceived increase in consumer awareness was reflected on the ground. Indeed, a number of participants in the interview research reported issues with accessing ombudsman schemes:

One of the big issues is... getting consumers to the ombudsman... Once you're at the ombudsman everything is easy and quite straightforward. It's just getting there. (Consumer Policy Adviser 1)

One participant noted a continued lack of understanding of the ombudsman 'brand' amongst consumers:

I don't think people understand the word ombudsman... I just think the name is a huge turn-off. I don't think citizens understand it and while it might have been great in Scandinavia 150 years ago... not a lot of us know what it means. (Ombudsman 6)

Other participants, while noting a general trend for consumers to complain more, noted that future demand could not be easily predicted. One participant, for instance, noted that in some areas there were incentives for improved complaint handling leading to fewer escalated disputes:

I think again it's very difficult to predict to be honest... there's a real incentive on the legal profession actually to sort themselves out and not have complaints made against them... So that could act as a huge incentive to actually drive down the number of complaints. (Policy Official 1)

Another participant noted that many consumers still had low awareness of their rights and were reluctant to complain:

Whether we see an increase in complaints is a really tricky one to know because there still seems to be a real sense of not wanting to complain. Not knowing how to complain... I think, for the older generation it's especially tricky. (Consumer Policy Adviser 1)

3.11 Other data shows that the public profile of UK ombudsman schemes has generally been low, particularly in the public sector (Buck et al 2011). In a survey carried out in 2003, only 44% of people had heard of the Local Government Ombudsman (LGO), with only 22% knowing about the Health Service Ombudsman and 24% about the Parliamentary Ombudsman (Mori 2003). Despite the significant and continuous presence in the media spotlight of the Financial Ombudsman Service (FOS) research carried out by the Financial Ombudsman Service shows that: only 17% of consumers could name FOS without prompting, 41% said they definitely knew about FOS when prompted, 15% said they may have heard of FOS and 27% did not recognise the name at all (FOS 2012). Therefore, while some participants referred to increased awareness, it remains safe to say that many ombudsman schemes are not well known amongst the general public and that, even where there is awareness, there is limited understanding of the role of ombudsmen (Morgan 2011). Low awareness of ombudsman schemes is likely to be particularly concentrated amongst those consumers who are most vulnerable and excluded from various forms of social and political participation (Hertogh 2013). Data from the Financial Ombudsman Service shows that there is significant variation in levels of awareness amongst consumers: young consumers under 25, Asian consumers and people in Northern Ireland have lower awareness (FOS 2013).

3.12 Variability of demand may be more of an issue for ombudsman schemes in the long term than increases in demand, since such increases provide ammunition for higher budgets. Variable demand may be a more difficult issue to cope with, as highlighted in the Hunt Review (2008) of the Financial Ombudsman Service and the Sohn review of the Energy Ombudsman (2010). One participant noted the particular difficulty of ombudsman schemes being a demand led business:

That's the nature of being an ombudsman, isn't it, that you actually have little...well, in fact, you have no control over the demand...you're just kind of reactive. (Ombudsman 1)

3.13 Another area that may have an impact on complaint numbers is the increasing use of the internet and social networking by consumers. On the one hand, these provide new opportunities for ombudsman schemes to connect with consumers. On the other, some of these developments may lead consumers away from traditional ombudsman schemes, preferring to air grievances on social networking sites or consumer websites geared towards dispute resolution. Websites such as Patient Opinion and I Want Great Care, may represent a significant challenge to the ombudsman model of dispute resolution (Mellor 2013).

changes in ombudsman schemes' consumer base

- 3.14** Some participants reported that the profile of consumers who used their service had stayed broadly the same:

I don't think the profile, the demographics of our consumer base has particularly changed... There's always a risk for someone like an ombudsman that actually what you end up doing is delivering a service to predominantly well-educated middle class people. (Ombudsman 8)

Other ombudsman schemes had begun to notice changes within their consumer bases, with one participant noting that:

For the first time, we've actually done a proper look at who complains to us. And instead of... assuming it was the case that sort of elderly retired civil servants who'd got a computer as a leaving gift, a lot of our complainants are much younger; much younger age group. (Ombudsman 3)

Another participant noted that changes in the jurisdiction of his ombudsman scheme were likely to lead to a shift in the demographics of consumers using the service:

They will be younger, they will be less articulate probably, and they will certainly be less financially aware and we will need to be able to deal with them in ways that they expect to be dealt with. (Ombudsman 5)

The Financial Ombudsman Service ombudsman scheme now has a significantly diverse consumer base, pointing out that it receives as many complaints from readers of *The Mirror* as of *The Daily Telegraph* (FOS 2013).

- 3.15** A trend mentioned by some participants was the increased activity of Claims Management Companies (CMCs). While those who commented on CMCs expressed concerns about the way in which some firms operated, several thought that they would be increasingly influential in areas where significant financial redress was likely to be available.

I think issues such as PPI and the no-win-no-fee stuff that we see is going to lead to increased commercial representation of people who think they'll get a return. (Ombudsman 6)

One of the things that they [CMCs] do do, is they identify people who have suffered detriment that don't know that they have. They might not like the way they do that, you know, with their text messages and whatever, but it's hard to deny that they are reuniting consumers with money that is theirs. (Ombudsman 1)

The possibility of having consumers increasingly represented by CMCs raises a number of issues for ombudsman schemes. These include: whether there will be an increase in complaints; whether complaints will decrease if CMCs filter out weak cases; and whether the ombudsman process will become more adversarial if consumers are no longer being dealt with directly. Graham (2012) has argued that the growth of CMCs particularly in the

financial market demonstrates that there could be clear commercial interest in handling complaints for profit and that there are a range of business models open to them in addition to taking a percentage of a consumer's compensation award.

3.16 Overall, therefore, indications about the way in which the consumer base of ombudsman schemes may change are mixed. There is a clear trend that consumers are more willing to complain, although the numbers complaining to third parties remain relatively low. There are also some signs that ombudsman schemes may increasingly be dealing with a consumer base that is shifting. If consumers outwith the traditional demographic for ombudsman schemes start complaining in greater numbers, they are likely to have different expectations of the service being provided by ombudsman schemes. This issue is dealt with in more detail in the next section.

changes in consumer expectations of ombudsman schemes

3.17 The most frequently cited change in consumer expectations by participants was that consumers expected speed and simplicity when using an ombudsman scheme:

I think expectations are different ... there was.. [a] famous... complaint that had been there [in the office] for half a century, and still went on for months and months and months... people won't accept that any more. (Ombudsman 3)²

There is going to be a change in expected standards as a result of new people coming in because they just won't want the product we're currently offering and they'll be happy with some other product, some much simpler product...Now, these days frankly people don't care whether they use capital letters, let alone apostrophes... I could probably be making, certainly for those new consumers we could be making much more informal decisions. (Ombudsman 5)

3.18 A number of participants noted that consumers' new expectations arose from being increasingly accustomed to being able to conduct instant transactions on the internet and through their mobile phones. One participant noted that there was a need to 'keep up' with the pace of change in consumer behaviour (Ombudsman 4), while another noted that:

One of the challenges for us is making sure that we're able to deal with complaints in the way that people want to make them... consumers and citizens are engaging with services and products in quite different ways... If it takes a long time, if the process is overly formal for what was a very informal transaction, then there's a risk that it feels out of kilter a little bit. (Ombudsman 1)

It was also suggested that systems should be designed to meet the needs of consumers:

...if we base a system on consumer expectations and understanding of what it is that they want in the resolution of their dispute, consumers will be happier in a system that's designed around them...(Consumer Policy Adviser 2).

² In commenting on a draft of this report, Ombudsman 3 made clear that the case referred to had not literally taken half a century to resolve but was several years old.

3.19 Technology was perceived by participants as an important factor in shaping consumers' expectations of speedier, more flexible and more individual services. One participant noted:

I think, there's a bit about it [technology] raises expectations... there are ways that we should be able to do [things] quicker, easier, lighter... are we really getting challenged on that very heavily at the moment, no, but, I think, that will be coming. That will be coming. (Ombudsman 4)

Another participant said that:

People rightly expect to be able to access the help that they want, the place that they want to be able to make their complaint, they want to be able to access it easily, they want to be able to give the detail necessary in order to make the complaint speedily. (Ombudsman 7)

Others pointed out that technology could revolutionise not only what consumers expected from ombudsman schemes, but also transform the act of complaining itself.

In the big macro consumer changes it seems to be the increased digitalisation of everything is... going to be a big issue... The nature of complaints... [is] going to change and the nature of complaining is going to change... Already you see so many complainants are just going on Twitter and mouthing off at the company... it's definitely a changing environment in the way people express themselves. (Consumer Policy Adviser 1)

The Parliamentary and Health Services Ombudsman has also recently suggested that ombudsman schemes were in danger of becoming irrelevant to consumers who were increasingly used to using consumer websites, blogs and twitter to air their grievances (Mellor 2013).

3.20 In addition to having higher expectations, some participants noted that consumers were becoming increasingly challenging in the way they engaged with ombudsman schemes. One ombudsman scheme (see the documentary analysis in annex 3) noted that consumers were changing in a number of ways, becoming more responsible for dealing with their own problems, less trusting of authority and more confident in expressing their views and opinions. This chimed with the view expressed by one participant who said that:

We have quite a... savvy younger generation coming up through who don't suffer fools gladly and are perhaps going to be more inclined to voice their complaints. (Consumer policy adviser 1)

Another participant noted that she³ had noticed that consumers were increasingly better able to express themselves and present their complaints effectively:

The complaints that we were seeing six and a half years ago might be termed as very simple... Now, we have very involved six, seven elements to the complaint... People are becoming more wise about complaining. More capable of complaining in a coherent fashion. (Ombudsman 2)

³ As part of efforts to protect the anonymity of research participants, all participants are referred to as 'she' regardless of their gender.

Increased consumer assertiveness was also seen to manifest itself in a more challenging approach to the authority of ombudsman schemes. A symptom of this was consumers using the internet to voice their dissatisfaction about the way certain schemes are operating. These 'ombudswatchers' were described by one participant as a 'particular threat' to the reputation of ombudsman schemes (Policy Official 3), while another noted that these groups were increasingly trying to influence the approach of parliamentary scrutiny towards ombudsman schemes:

I have to say, every year when I go to... committee at the parliament, they have their mailbags full, probably of the same people, saying the same things... The intriguing thing was a development in the last year or two, is that these groups are now trying to influence these committees on how they handle us. (Ombudsman 6)

The internet was seen by one participant as having facilitated increased scrutiny of ombudsman schemes by consumers and businesses:

[Technology] also has an impact in terms of public perception. So, you can find that where you've got one or two individuals they can create a heck of a lot of noise... That does affect the work... particularly given that a lot of people get their information off the internet. (Ombudsman 4)

The use of social media and online forums to share selective quotations is one of the reasons the Financial Ombudsman Service supported the move towards the publication of ombudsman decisions introduced by the Financial Services Act 2012 (FOS 2011). This may increase transparency and provide a clearer sense to stakeholders of how ombudsman schemes operate and reach their decisions.

3.21 A number of participants pointed out, however, that while a new breed of savvy consumers could be distinguished, there remained many consumers who lacked awareness of their rights, were vulnerable and found complaining difficult. Some participants noted that there was a danger that these consumers could be neglected:

Some of the consumers that are in vulnerable situations are perhaps also those that are less likely to be able to use technology to make a complaint, and if you put increasing focus on this... potentially you're disenfranchising not just a large proportion of people. (Ombudsman 8)

In the same way that participants had mixed views about the extent to which consumer awareness of ombudsman schemes was improving, participants seemed to indicate both that some consumers were becoming more resourceful while others remained confused, powerless and uncertain.

driver 2: changes in the delivery of services provided by organisations subject to ombudsman schemes

3.22 The research has identified three ways in which changes to service provision are affecting ombudsman schemes:

- changes in service delivery and operating practice, which create raised expectations and variable workloads for ombudsman schemes;
- increasingly blurred boundaries between service sectors, leading to jurisdictional complexity for ombudsman schemes; *and*
- increasingly blurred boundaries between public and private services.

Figure 3 below shows the key ways in which service provision may develop and drive change in ombudsman schemes.

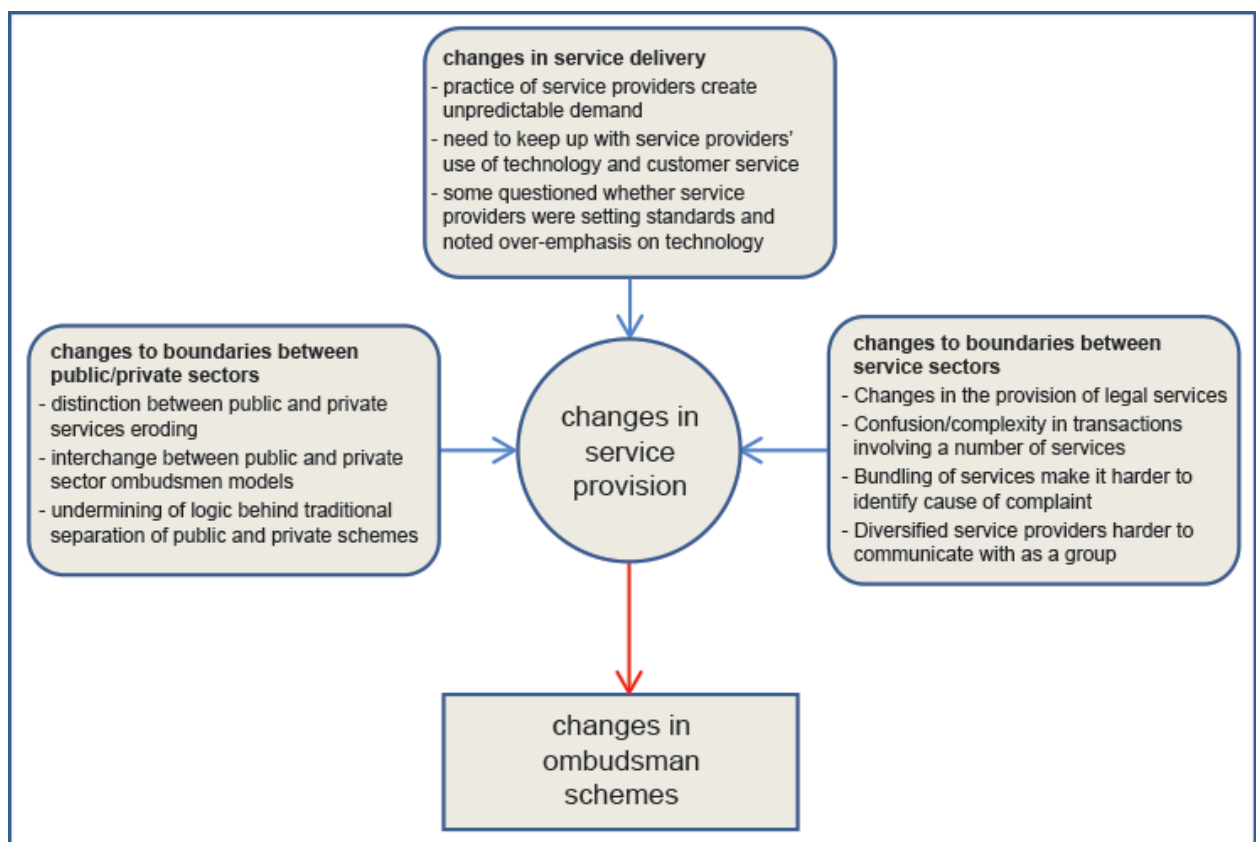


figure 4: changes in service provision driving changes in ombudsman schemes

changes in service delivery

3.23 Participants pointed to several ways in which changes to the way service providers under their jurisdiction were operating could have an impact on them. At the most simple

level, variation in the quality of service being provided was noted as creating sudden spikes in demand for ombudsman services. Ombudsman 1 noted:

We're reactive to the environment and the framework within which we're operating. We're reactive to the way in which businesses deal with complaints... if businesses don't miss-sell then that makes a big difference down the line for us. (Ombudsman 1)

This indicates that the business practices of organisations are likely to have an impact on the volume and types of cases that ombudsman schemes receive. Another participant noted that changes in the way providers operate could have significant knock-on effects:

The way services are being delivered in organisations within our jurisdiction... can change quite rapidly. So you can have a major company that suddenly decided to outsource all its customer service departments to somewhere overseas, and that can actually have a huge impact on the number of complaints we receive. (Ombudsman 3)

3.24 In addition to creating peaks and troughs in demand, the behaviour of service providers was noted by some participants to effect the operation of the ombudsman process. Some participants noted that the financial crisis meant that complaints were often more entrenched, while others pointed out that complaint handling and customer service could be seen as a luxury when times were hard:

Also the recession itself, increasingly we're getting pushback from departments from, you know, we can't afford it sort of thing. Having to fight against the idea of good complaint handling and redress and good administration as being a decoration... [of good economic] times. (International Ombudsman 1)

3.25 Changes in service provision were also seen to have indirect consequences for ombudsman schemes, particularly with regard to creating high expectations in relation to the use of technology and good customer service. One participant noted that:

[The industry is] becoming progressively more modern and less paper based, more electronic and more technologically managed... The more that happens the more that our processes, if they don't change, look out of date, bureaucratic, paper based, crusty.. (Ombudsman 5)

Another participant similarly commented on the way changes were likely to affect all ombudsman schemes:

Particularly things where the original transaction purchase reflects a quite different way of interacting with the... business, so for example, if you're using your mobile phone to pay for something or you're using your debit card as a contactless payment... there's a risk that the complaints arrangements don't reflect the nature of the transaction that's happened. (Ombudsman 1)

3.26 Some participants noted that rather than setting standards for ombudsman schemes to aspire to, service providers' practices meant that it was more difficult to modernise:

The... file that we receive from the... [business] is generally a paper file... You won't necessarily have the opportunity to get an electronic file to make transmission of documents between me and the... firm easier and thereby speeding the process up for the consumer. (Ombudsman 2)

Another participant commented on the poor service being provided in some consumer areas, suggesting that expectations may not be raised across the board:

When one is attempting to engage with private companies as individuals, it is a complete and utter nightmare, certainly thinking telecoms, thinking banks... the sheer frustration of trying to engage with the big corporates... corporates are utterly seduced by IT and the ability to, for all sorts of reasons, downsizing their own staff, efficiencies whatever, to just cut out... the need to have actual human beings engaging with other human beings. (International Ombudsman 1)

blurred boundaries between service sectors

3.27 Participants noted that broader trends in service provision were likely to drive change in ombudsman schemes. In particular, blurred boundaries between service areas were seen as an increasing trend, with the financial, legal and property sectors most frequently cited by participants. Buying a property was used several times as an example of a transaction involving a number of different professional services, leading to potential confusion in relation to which aspect could be complained about to which ombudsman scheme. One participant noted such 'hybrid' complaints would become more common:

As well as gaps we've also got hybrid complaints. They're going to start to crop up where we've got these blurring of boundaries. So, you go into your bank to sort out your mortgage but they're also giving you advice on your will and they're helping with your taxation and whatnot and potentially giving you semi legal advice at times... where you're getting hybrid advice and then where does your complaint fall? (Consumer policy adviser 1)

3.28 Another participant noted that blurred boundaries were becoming more common with the property/legal/financial area, citing the example of financial transactions carried out on mobile phones:

One of the big problems, it's a bit of a techy problem but it is a real problem is as you get this breakdown of the barriers between the different areas you end up with these confusing gaps and overlaps between different ombudsmen... the barriers between financial services and telecoms are breaking down as a result of the ability to have money in your mobile phone and to transfer money from your mobile phone to somebody else's mobile phone. So, if the payment doesn't get through is that a telecoms dispute or is that a financial services issue? (Ombudsman expert)

blurred boundaries between the public and private sectors

3.29 Several participants mentioned increasingly blurred boundaries between public and private service delivery as a driver for change in ombudsman schemes. The key issue mentioned by participants was the increasing privatisation of public services, which meant

that public sector ombudsmen were more likely to have jurisdiction over private service providers. One participant said:

Most of the schemes we know have a reasonably well defined jurisdiction. But there's an increasing fudginess around the edge. I mean you've got public services being either privatised entirely or being contracted out or shared service delivery or so on. (Policy Official 3)

Some participants expressed the view that despite increasingly porous divisions between the public and private sector, distinctions between public and private sector ombudsman schemes remained important. One participant noted that the proliferation of ombudsman schemes could weaken the status of the public sector ombudsman model:

That's why I work very hard to retain that status and by doing all the various things that I do. Either through speeches, parliamentary engagement, you know, how I choose to expend political capital, all of that, that you try and retain [a certain] aura... otherwise why should people listen to you?... It's about the respect and the dignity of the office. (International Ombudsman 1)

3.30 Other participants were less keen to make a distinction between public and private ombudsman schemes, preferring to focus on common ground:

I think we put ourselves firmly in the ombudsman family ... I think there are absolute synergies and we regard ourselves as being the same, but there are obviously slightly different models. (Ombudsman 1)

Indeed, many participants noted that the direction of travel for ombudsman schemes was towards greater convergence, both in terms of the increasingly mixed jurisdictions of public service ombudsman schemes, but also as a result of the model employed by public and private ombudsman schemes coming to resemble each other more.

3.31 One participant noted that the powers of public ombudsman schemes may eventually need to change if they are increasingly dealing with private organisations:

Should we have powers to directly require private companies like that to comply with our recommendations to provide us with documentation?... I do think – particularly among public sector ombudsmen – there can sometimes be this temptation that the offices of ombudsmen need to be preserved in aspic. Just because an ombudsman traditionally hasn't had a particular role doesn't mean it shouldn't in the future. (Ombudsman 8)

Another participant (Ombudsman 3) noted that there was already some convergence between the standards applied by public and private sector ombudsman schemes, as the ability to consider service failure in some public sector schemes meant that their jurisdiction had become more similar to the 'fair and reasonable' approach of private sector ombudsman schemes.

3.32 Some participants talked of the increasing interchange and influence which public and private sector ombudsman schemes might have on each other. One participant commented on the fact schemes could learn from each other:

As greater choice is being brought into public services, increasingly citizens are acting as consumers of public services, and therefore I think some of the skills... of the more consumer ombudsmen need to find their way into the public service ombudsman, and I think... the reverse may well be true as well, as consumer issues become increasingly politicised. (Ombudsman 8)

Another participant talked of distinctions in approaches to redress between the public and private sector becoming, as consumers grew to expect the financial redress in all their interactions:

The public expectation is going more towards financial redress...I think the public sector will increasingly have to come in line with... the private sector... I don't believe the customer ... believes there should be a distinction between private sector and public sector. (Ombudsman 6)

Several participants also mentioned the growing influence of the Financial Ombudsman Service, particularly in shaping public perceptions of what an ombudsman scheme is:

As people get used to dealing with the financial ombudsman or other organisations, I think, they come to it with a different expectation now.. [of] customer service.... And we have to keep pace with that. (Ombudsman 4)

3.33 Taken together, the changes outlined above were seen by participants to indicate a move towards convergence between the public and private sector ombudsman scheme models over time. One participant summarised this as follows:

So, I don't think that our communal interests are actually that likely to depart; they're more likely to come together over time. (Ombudsman 5)

Another participant viewed this as an opportunity, but also as a risk to her scheme if the idea that public schemes could deal with private sector complaints gained prevalence:

As a private sector ombudsman, gives us both opportunities but it's also a major threat for us, frankly. But, I mean, there are sort of things to me that look completely logical. So the report this week on the regulation of cosmetic surgery, it seems to me that it's completely logical that redress for private health medicine should rest with the health ombudsman. There's no point setting up another ombudsman just because it's private sector, it just doesn't make sense. (Ombudsman 3)

A major effect of this increasing 'fudginess' may well be to undermine the logic behind the division between public and private sector ombudsman schemes and to raise questions about the validity of current sectoral arrangements for complaint handling.

driver 3: changes resulting from the policy environment

3.34 The policy environment in which ombudsman schemes are operating is important in driving, and providing the context for, future developments in the ombudsman world. Issues identified in relation to the policy environment fall into three categories:

- the absence of direction and co-ordination on ombudsman policy in government;
- Alternative Dispute Resolution and Online Dispute Resolution policy; *and*
- other policy matters, including austerity, changes in legal aid, changes to consumer codes and regulatory policy.

Figure 5 shows some of the key ways in which the policy environment may effect ombudsman schemes.

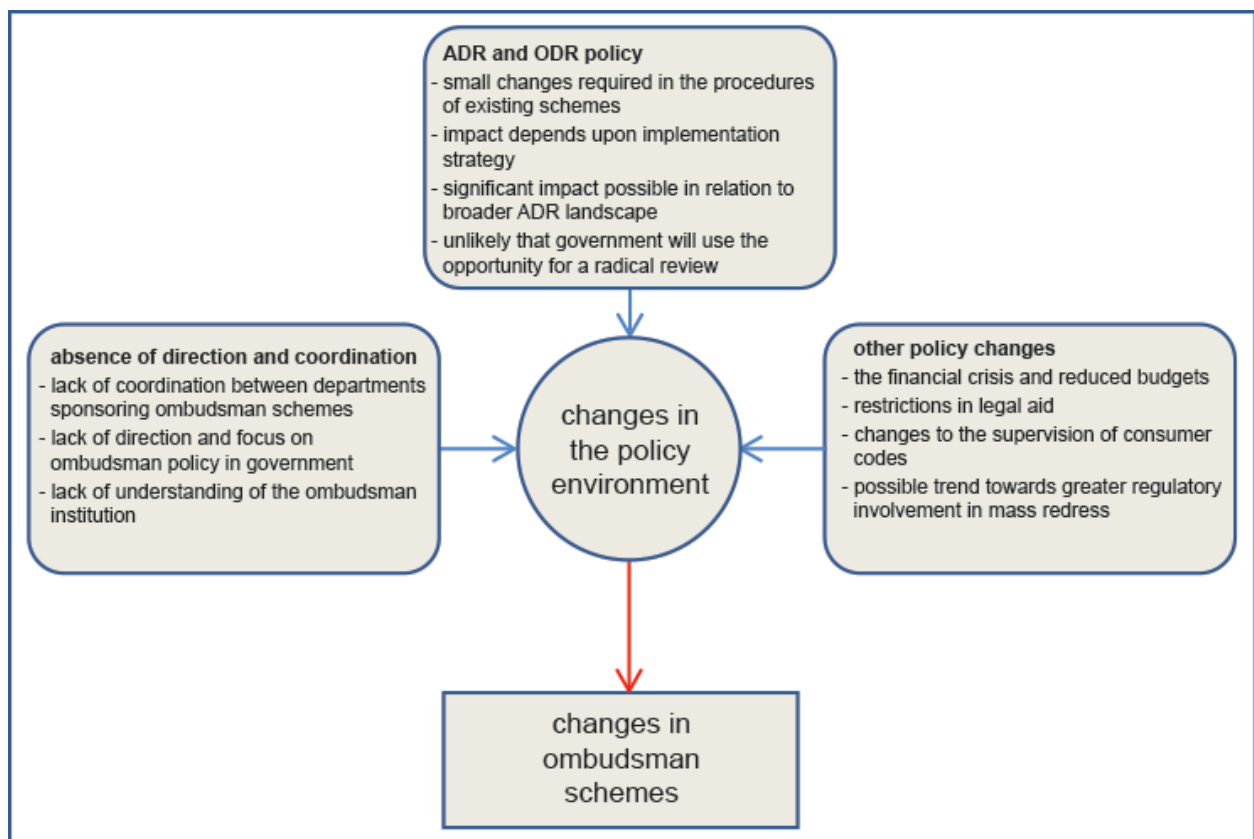


figure 5: changes in the policy environment driving change in ombudsman schemes

absence of direction and co-ordination on ombudsman policy in government

3.35 As we saw in section 1, the ombudsman and dispute resolution landscape is fragmented, complex and incoherent. A key issue which participants in the research commented on was the absence of clear direction from government on ombudsman schemes and dispute resolution. While one participant talked about significant co-ordination between government departments with regard to the implementation of the ADR directive

(Policy Official 2), another commented that there was 'very little' routine contact with other departments with responsibility for ombudsman schemes (Policy Official 1). One participant noted that there was little sense of an overall vision for ADR policy in government:

It doesn't feel like anyone in government is, sort of, thinking ADR. How can this have an ADR landscape? It's, sort of, oh, lawyers, problematic, right, we'll put in the legal ombudsman, oh, claims management companies, problematic, like, it's all been done, sort of, department by department... it doesn't feel like that thinking is being joined up. (Consumer Policy Adviser 1)

Another participant responded 'absolutely not' when asked whether there was joined up policy within government on ombudsman schemes (Ombudsman Expert).

3.36 Participants reported having most contact with government through their sponsoring department or the department responsible for their sector. Several participants referred to the Cabinet Office's role in terms of co-ordinating policy on ombudsman schemes and the guidance they had issued on setting up new ombudsman schemes. However, one participant questioned the extent to which the Cabinet Office was proactively involved in ombudsman policy:

It [the Cabinet Office] issues the guidelines which I'm not sure that I see much evidence that everyone takes that much account of. (Ombudsman 1)

Another participant similarly noted that the Cabinet Office had not taken a very broad view of the ombudsman sector and had tended to focus only on some schemes:

They've seen the PHSO as being their main ombudsman. I think that needs to change, as they need to have an understanding of ombudsmen across the board, and not just public sector ombudsmen. (Ombudsman 8)

3.37 Several participants commented on the fact that the absence of coordination and joined up thinking in government, was matched by a lack of central coordination and representation in the ombudsman community. One participant said:

And our problem is, as an ombudsman community, we have no real structure to help us lead that. So I think there's an issue to do with the future of the Ombudsman Association and what it might look like in the future. (Ombudsman 3)

Another participant noted the need for more of a focus point for ombudsman policy both within government and the ombudsman community:

Somebody the other day said to me that they thought the government thought that dealing with us was like dealing with wet fish. I think we would say dealing with the government is a bit like dealing with wet fish too. So, yes it's not ideal. (Ombudsman 5)

The dangers of a lack of clear direction in terms of ombudsman policy was highlighted by a participant who commented:

Everybody [is] feeling that they can... pile in and direct and tear apart and piece together again. That didn't work, let's do it this way and nobody standing back and looking at the bigger picture. That I think particularly for the UK is an issue. (International Ombudsman 1)

- 3.38** In addition to noting a lack of direction and focus in government on ombudsman issues, several participants raised concerns about the lack of understanding of the ombudsman institution amongst government officials and Parliamentarians:

One of the big problems we have now is that governments and MPs and MSPs just really don't understand what ombudsmen are about, they just really don't get it... that's a huge worry. (Ombudsman 3)

One participant noted that more required to be done to educate policymakers about different redress mechanisms and to be clearer about the role of an ombudsman:

There needs to be far more education to get people to understand that they [courts, tribunals and ombudsman schemes] are different and each one is fit for its own particular purpose... it's not always easy to carve out the precise territory with an ombudsman scheme... So I think the public at large, we all struggle a bit with those distinctions. (Policy Official 3)

- 3.39** Increased parliamentary scrutiny and the vagaries of the policy process can have a negative impact on ombudsman schemes. A recent report into the effectiveness of the Local Government Ombudsman (LGO) noted that the Communities and Local Government Committee had failed to understand the role of ombudsman organisations (Thomas et al 2013). Indeed, this report highlighted this issue as one of particular concern, noting that:

Despite the 46 year history of public service ombudsman schemes in the UK, there remains an almost systematic failure by all parties concerned to adequately explain the ombudsman model of justice to its various stakeholders (Thomas et al 2013).

An example of the dangers involved in a lack of policy understanding of ombudsman schemes occurred in Scotland in 2007 when the Crerar Review (Crerar 2007) recommended that the SPSO's role in the resolution of disputes should be removed. Had it been implemented, this recommendation would have led to the effective abolition of the ombudsman institution in Scotland, based on a failure to understand the unique role of the ombudsman (Gill 2013). Examples from abroad also indicate that ombudsman schemes are not sacrosanct, with the Canadian state of Ontario coming close to abolishing the office in 2005 (Marin 2007).

Alternative Dispute Resolution and Online Dispute Resolution policy

- 3.40** The EU's Directive on Alternative Dispute Resolution for Consumer Disputes (the directive) COM (2011) 793 was mentioned by many participants as a key driver for change.

A number of participants noted that the directive had potential to significantly alter the ADR landscape, although its exact impact was hard to predict:

It feels like... [the directive] has the most potential to really change the ADR landscape in the UK. Whether it does, I think, will come down to how much... the government pushes that because although the directive says that there has to be ADR on all consumer sectors it doesn't say that traders have to use it, which is just a massive gaping hole. (Consumer Policy Adviser 1)

One participant noted that there were a number of questions that would need to be addressed in the course of implementing the directive:

We've got the directive and the regulation now, but there's still a lot we need to think about when it comes to implementation... for example, ... how we enshrine our providers across the board, ... who is the competent authority or authorities, how does that work? ... So lots of big issues to resolve in the next two years. (Policy Official 2)

Consumer groups, in their responses to the BIS consultation on the proposals for the directive, questioned the likely impact and effectiveness of the directive if membership of ADR was not made compulsory (Citizens Advice 2012; Consumer Focus 2012b). One participant noted that it was unlikely the UK's implementation of the directive would go beyond fulfilling its minimum requirements (Ombudsman Expert).

3.41 In terms of the impact of the directive on individual ombudsman schemes, participants said this was likely to involve small changes:

It's really just around the procedure rules and some of the timings that are involved. I mean, that seems to be the main issues for ADR providers at present. (Policy Official 2)

Another participant noted that the dispute resolution principles contained in the directive matched the Ombudsman Association's existing principles reasonably well although there were some areas in which ombudsman schemes may have to make adjustments:

The bit about [the directive] where the Ombudsman Association members would have difficulty in meeting the criteria is... two of the ten commandments from Sanco are actually about making sure that members of the public know you exist and what to expect from you. So there's actually two bits about publicity in it... And yet most ombudsmen don't advertise because you really ought not to, it's not gentlemanly. (Ombudsman 3)

3.42 While one participant referred to the direct impact of the directive on individual schemes as involving 'minor tinkering' (Ombudsman Expert), the potential impact on the ADR landscape (and hence the indirect impact on ombudsman schemes) was seen to be more significant:

I don't know whether we are going to find really that there are large numbers of dispute resolving bodies lying around the place all competing with each other but it's possible... Many of them won't be ombudsmen but they will in some way be dispute resolvers, and that could have a significant influence on what consumers expect when they come to an ombudsman. They may

even not want an ombudsman anymore... I could almost envisage a world, if I was really guessing what things might look like in 20 years' time, in which in the private sector at least there aren't any ombudsmen as we see them now. There are just other organisations that don't necessarily call themselves ombudsmen and don't necessarily have the same degree of independence and follow the same kinds of due process, natural justice principles that we all do at the moment... I hope... that everybody will understand that all of these other things going on underneath aren't quite as good... so that the dispute resolvers who aren't ombudsmen will aspire to become them, but I think there's quite a lot of work to be done to establish a brand that has that quality. (Ombudsman 5)

The potential for the directive to encourage new, simpler and cheaper forms of dispute resolution could, therefore, have a significant impact on ombudsman schemes.

- 3.43** The extent to which proliferation of ADR schemes occurs as a result of the directive is likely to depend in part on whether competition between ADR providers is allowed, although it appears that government does not have a defined position on this at present:

I don't have a set view, because I can see... the arguments [of] both sides, where it is good to have a trusted body in place who knows that sector and has a good reputation, but on the flip side, competition could drive up standards. (Policy Official 2)

Thomas and Frizon (2012) have argued that in the financial markets at least competition between ombudsman schemes is unlikely to be appropriate:

Such a choice presents severe risks to independence and impartiality – because financial businesses may favour the ombudsman they consider likely to give businesses the best deal.

The Sohn Review of the Energy Ombudsman (2010) also concluded that a single well regulated redress scheme was better than competition between service providers and that there is a risk that the focus of providers who deliver different schemes may be distracted if they are competing for business. Despite this, competition between ombudsman schemes does exist in some sectors in the UK, namely telecommunications and estate agency.

- 3.44** Another way in which the ADR directive could impact the ombudsman sector is by increasing pressure for greater accountability and professionalisation:

You come down to whether the people who offer these [dispute resolution] services have to be in some way registered. How do they get paid, who pays them? In getting paid are they registered as professionals, but who tells you that they are professionals as opposed to cheerful amateurs? (Policy Official 1)

- 3.45** Several participants commented on the fact that the directive represented an opportunity to rationalise the dispute resolution sector and to strengthen current arrangements, although it was unlikely this opportunity would be grasped:

I was rather hoping that the need to implement the directive might encourage BIS to stand back and take the opportunity to look at the ombudsman landscape and see whether it can be

restructured or not but they're not showing any anxiety to do that at the moment which is a great shame and a lost opportunity, I think. (Ombudsman expert)

We've had various conversations and I think people will acknowledge that it could be better but I don't think there are any great hopes for any kind of wholesale review. (Ombudsman 1)

other policy matters

3.46 Participants spoke about a number of other policy-related issues in the course of the research, including the impact of fiscal austerity, changes in legal aid, changes to consumer codes and regulatory policy. In relation to austerity, most participants commented on having reduced resources with which to carry out higher workloads. The documentary analysis shows the importance of this theme, with five out of the eleven ombudsman schemes included in the documentary analysis highlighting the impact of this on their work (see annex 3). One participant's comment on this issue was representative of several others:

What else is going on in the public policy world? Well, money, money being saved left, right and centre and the general drive to reduce cost and become more efficient. (Ombudsman Expert)

Some participants felt that the impact of the austerity agenda would be particularly felt in the public sector:

I think one that any public body's going to talk about are financial pressures. If you're reducing the level of finance that public bodies have got, then naturally ...the quality of service delivery is going to decrease, which in turn gives rise to more complaints. (Ombudsman 8)

Others commented that austerity was likely to result in similar pressures on private sector ombudsman schemes, with some referring to the legal area:

We're funded by a levy on.. [the industry] rather than by public money... but nonetheless we've got that kind of political with a small p pressure... we can't very well be seen to have our budget increasing at a time when no-one else's is. (Ombudsman 4)

I think the legal profession who pay for this through their representative bodies are getting really very angry about the amount of money that government is cutting back from publically available legal advice. Many people who are very angry about that, resent the fact that they're having to pay part of their membership fees to the Law Society and the Bar Council ... to pay for the new regulatory system. (Policy Official 1)

3.47 In terms of the effect of austerity in operational terms, one participant noted that it had led to a reduction in the ambition of her plans:

Like everybody else, we are having to tighten our belts somewhat... we've stopped doing some things we were doing... the two key ones [are] around communications and external stuff. We probably would have had somebody here... thinking about broader issues. (Ombudsman 5)

3.48 Linked to the austerity agenda, several participants commented on restrictions to legal aid:

There is an awful lot of the public who may be quite vulnerable [who] will be affected by changes in legal aid policy... That will actually impact the [legal] market and actually what lawyers out there are doing and what services they may offer. (Policy Official 1)

One participant commented that austerity and cuts in legal aid represented both a threat and an opportunity for ombudsman schemes (Policy Official 3). On the one hand, there was a danger that ombudsman schemes could be swamped with more work, while on the other this would provide ombudsman schemes an opportunity to fill the gap left by restrictions in legal aid and the greater difficulty in accessing the court system. Cartwright (2011) for example has argued that the Financial Ombudsman Service has already replaced the courts as the main forum for resolving financial consumer to business disputes.

3.49 The government has also recently simplified the institutional framework for the provision of consumer advice by making Citizens Advice the single point of contact for consumer advice in the UK (BIS 2012a). If Citizens Advice does become the first port of call for aggrieved consumers with a complaint, this may both help increase awareness of ombudsman schemes as well as acting as a filter which would ensure the right cases reach the right ombudsman schemes. This may release ombudsman schemes from their roles as 'traffic directors' and allow them to focus on disputes that they can deal with themselves.⁴ However, it is unclear whether such improvements will result from the changes to Citizens Advice role, particularly since the Citizen Advice helpline is likely to be dealing with increased demand and financial constraints.

3.50 One participant noted that changes to the operation and enforcement of consumer codes may also have an impact on ombudsman schemes and may lead to increased ADR coverage. She pointed out that organisations covered by consumer codes of conduct would need to be members of an ADR schemes in order to be approved by the Trading Standards Institute.

3.51 Developments in regulatory policy around the provision of mass redress were also commented on by some participants. One participant noted that the Financial Conduct Authority had been given powers to set up redress schemes in areas where there was evidence of large scale problems and that a similar measure was being introduced by the Energy Bill 2012 to give OFGEM, the energy regulator, similar powers:

⁴ For example, many of the schemes already deal with a high proportion of enquires or complaints that can be defined as premature or which are outside their jurisdiction. In future it could be expected that some of these could be dealt with Citizens Advice. Statistics from the Financial Ombudsman Service show that only 1 in 4 of the contacts they receive turns into a formal dispute (FOS 2013). 25% of the contacts that LeO received in 2012 were defined as premature (LEO 2012). Three quarters of complaints received by the Telecommunications Ombudsman were outside their jurisdiction (Graham 2012).

Maybe there is going to be a trend towards that. A trend towards, in the regulated areas, you know, giving the regulators power. Not to deal with individual cases but rather to deal with mass issues in that way which might on the one hand be seen as taking work away from the ombudsman but on the other hand might generate work for the ombudsman if the people... within the scope of the scheme feel they're not being properly dealt with within the scope of the scheme. (Ombudsman Expert)

This trend can also be seen in proposals to give Trading Standards Officers powers to require traders to provide redress to consumers who have suffered loss as a result of a trader's actions (BIS 2012b).

4. strategic responses and perspectives

4.1 When discussing possible responses to the drivers set out above and likely future developments within ombudsman schemes, participants referred to two broad areas:

- responses required of individual ombudsman schemes; *and*
- responses required of the ombudsman community.

Figure 6 summarises the key responses that the research suggests may be required.

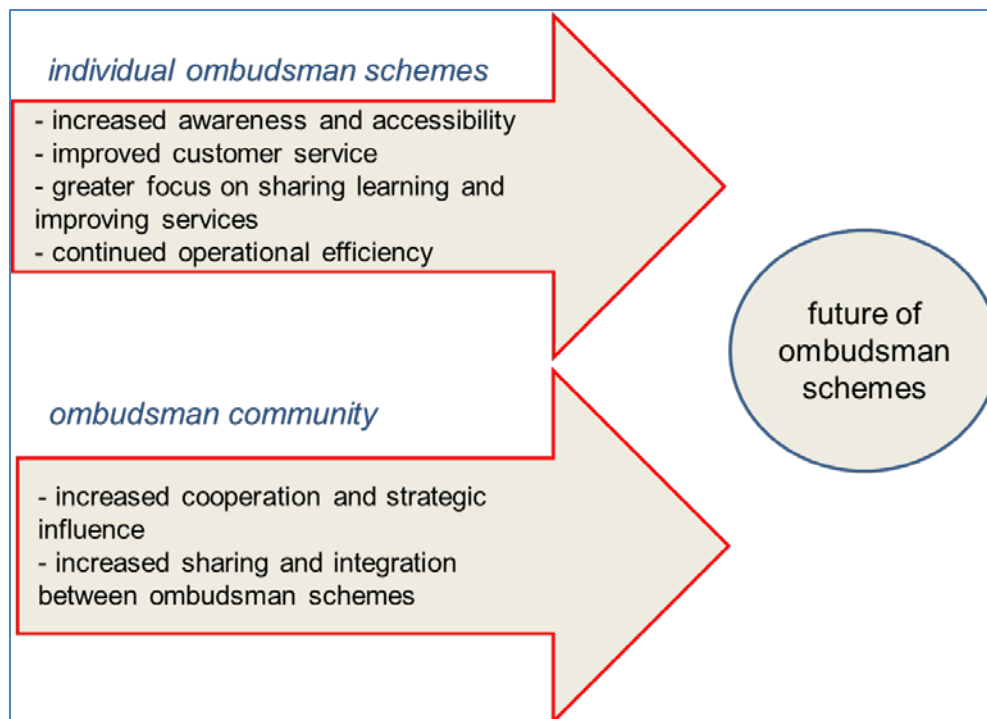


figure 6: changes required of ombudsman schemes and the ombudsman community

responses required of individual ombudsman schemes

4.2 Participants referred to a number of ways in which ombudsman schemes may have to adapt in order to meet current and future challenges. This was seen to involve:

- increased awareness and accessibility;
- improved customer service;
- greater focus on sharing learning and improving services; *and*
- continued operational efficiency.

increased awareness and accessibility

4.3 Although participants generally referred to increasing numbers of complaints, many participants nonetheless recognised a need to do more to increase consumers' awareness. One participant said that ombudsman schemes needed to be more vocal:

I guess, it's getting ombudsmen to, sort of, yell about their services a bit. Make it quite known what's happening... Getting people there. (Consumer Policy Adviser 1)

Another participant noted that ombudsman schemes should take a particular responsibility for helping consumers to navigate the redress landscape:

We assume too much knowledge on the part of the public. We don't understand how confusing it is for people to find their way around... So I think ombudsmen, certainly the big beast in the jungle, there's an onus on them to take the lead in helping people. (International Ombudsman 1)

4.4 In relation to how awareness and accessibility should be improved, some participants referred to the possibility of advertising and noted that the Public Service Ombudsman for Wales had begun advertising their Complaint Wales service on buses.⁵ Others were sceptical about advertising:

The way to tackle it is at the grassroots... to be saying to the bodies under jurisdiction, we're a stage or two removed from this community that we think is not coming to us. How can we work with you to make sure your complaints procedures appear to be attractive to these people to use when they're unhappy? ... So very quietly trying to address it in that way rather than saying let's throw £50,000 at an advertising campaign which is here today, gone tomorrow. (Ombudsman 6)

Another participant made a similar point, noting that the key to raising awareness was to ensure that people had relevant information at the point at which this was needed:

You could give me a multi-million pound advertising budget, and I still don't think our message would necessarily land with most of the public, because unless you've got a complaint... you're not going to be interested in hearing about what an ombudsman does. (Ombudsman 8)

4.5 A number of participants referred to the need for research to be conducted into consumer awareness of ombudsman schemes. Such research is likely to be important in understanding variations in awareness between schemes and the most effective ways of improving awareness levels:

Research... probably does need to be done into why aren't these consumers making it to the ombudsman? Where are the complaints going? What consumers do with complaints? All that sort of stuff. (Consumer Policy Adviser 1)

⁵ Complaints Wales is a signposting service offering advice to consumers on how to complain about public services. See <http://www.complaintswales.org.uk/>.

One ombudsman scheme referred to its powers to require organisations to publish complaint information and suggested that this would allow her scheme to understand where there are issues with accessibility and the best ways in which to resolve them:

[This will] give us comparable data across all the authorities..., all the....boards... That kind of information should help the bodies under jurisdiction to understand whether large sections of the community are not accessing complaints procedures at all, and that should then enable us to sit down with them, and for them themselves to say, how can we reach that group? (Ombudsman 6)

4.6 In terms of accessibility, many participants also referred to the need to change the way in which ombudsman schemes provided customer service, in order to be more accessible to a wider range of consumers. These changes are covered in the following section.

improved customer service

4.7 Participants noted several ways in which customer service needed to change. This generally involved working more quickly and more flexibly and was often talked about in terms of increasing the use of ‘early resolution’ or ‘informal resolution’. One participant said that the two words she would use to describe how ombudsman schemes needed to change were ‘immediacy and informality’ (Ombudsman 5). Several participants noted that there was a continuing trend towards using quicker, less formal methods:

All the ombudsmen... are moving ... away from the idea of doing investigations towards dispute resolution. And I think that's quite a sea change... I think in a lot of cases, people don't really want to know what's gone wrong, they just want to put it right. (Ombudsman 3)

I'm not a purist, I'm a pragmatist. If we can help find a way to bring two sides together so something can be resolved to the satisfaction of both, let's do it. If that means it doesn't come here for investigation, fine. Absolutely fine. (Ombudsman 6)

Echoing the perceptions of participants, several commentators have noted a marked shift in the last twenty years towards increasingly informal processes to deal with complaints (Doyle 2003; Buck et al 2011). Seneviratne (2002) has previously described the ‘modern purpose’ of the ombudsman as being the resolution of complaints by all appropriate means, while Buck (2005) has noted that this kind of ‘pragmatic’ approach to complaints handling is likely to continue in future.

4.8 In terms of what these more informal resolution processes look like in practice, several participants commented on dividing their processes into a resolution stage and an investigation stage:

I think the benefit of that is that it's much easier to provide the slightly more tailored individual service to individual consumers...I think a number of ombudsmen are going down this route of being able to flex the different parts of their service to meet that demand. (Ombudsman 8)

Another participant noted that having a two-tier model, where most the complaints were filtered out at an early stage was essential in order to ensure the speedy resolution of complaints:

When the [ombudsman scheme] was created, we had the opportunity of, sort of, thinking about the process again and thinking about it the other way round as a sort of a funnel with all the stuff coming in at the front end and trying to resolve it at the earliest possible stage ... if ombudsmen are going to survive in a useful form early intervention is the key. (Ombudsman Expert)

4.9 Several participants noted that the speed with which cases were resolved was important and was valued more highly than detailed reports of investigations:

Speed is very important... People can't wait often for you to go through a long rigorous intellectual process to get a complaint resolved ... sometimes it does mean taking a slightly more informal approach, trying to get the parties to agree on a resolution without the need for a formal investigation, ultimately giving the public what they need, when they need it. (Ombudsman 8)

I could probably be making, certainly for those new consumers we could be making much more informal decisions... Somewhere in the middle of all this I happened to be looking at decisions of the Social Security Tribunals... and... their decisions, say... pay it or don't pay it. It'll be a kind of three liner decision, there'll be a reason, it'll be, new evidence produced, or, on basis of advice of doctor, something like that. But, it's not going to be the sort of ten pages we might write now. (Ombudsman 5)

4.10 While the move towards greater informality is driven by powerful and, in many cases, valid concerns there has been a lack of clarity about how informal resolution processes work in practice. As Doyle (2003) has noted:

An increasing number of complaints are now being resolved through some form of informal resolution; this process remains undefined and for the most part unexplained to users. Complainants' perceptions of fairness are affected as much by the process as the outcome achieved, so it is important there is clarity about the process being used.

While this situation has no doubt improved in the last 10 years, it is likely that public understanding of ombudsman processes, particularly those that do not constitute 'investigation', remains quite low. The private nature of ombudsman procedures and the fact that much of the investigation and consideration of a complaint occurs out of sight means that ombudsman organisations can appear to be something of a 'black box' to outsiders.

4.11 At its simplest level, increased informality has involved making greater use of the telephone and email to speed up processes that would otherwise have been conducted by post or face-to-face (Merrick 2011). It has also, however, involved substantive developments in complaint handling procedures. Two models have recently been suggested to describe the operation of redress mechanisms, which may be helpful in

allowing us to visualise what the process of informal resolution involves (Bondy and Le Sueur 2012). The 'filtering model' emphasises how redress mechanisms (including ombudsman schemes) tend to structure their work to limit access to detailed and expensive procedures by filtering out cases that are unsuited to further enquiry on procedural, jurisdictional or discretionary grounds. In this model, the bulk of the work involves screening cases out and preserving investigative resources for only a small number of cases. The 'resolution model' emphasises the resolution of grievances at the lowest cost and within the shortest possible period of time. There are two main ways in which grievance mechanisms can seek to achieve the goal of resolution: arriving at an outcome without going through the 'formal' process of investigation (using mediation, for example) and helping organisations to deal with complaints better themselves. The 'filtering model' and the 'resolution model' appear to provide good descriptions of some of the processes now followed by UK ombudsman schemes: an initial screening or filtering stage, followed by a resolution stage, followed by a final, more formal stage.

- 4.12** Technology was seen by participants as having the potential to facilitate better customer service and provide consumers with a quicker and more tailored experience. One participant gave an example of the way in which online systems could be developed to make the ombudsman process more user-friendly for consumers. She referred to other online systems for consumer transactions as a possible model:

You know, you have the little set of arrows across the top of the screen. You know where you are and you certainly know where you've been... You have a rough idea of what's happening next and how many steps there are before you get to the end of that process and I don't think consumers have that sense when they're dealing with an ADR, even if they're dealing with the ADR through online communication. (Ombudsman Expert)

One participant referred to developing a new system which allowed for all information about a complaint to be uploaded to an online portal, which the parties to the complaint could access at any time to see what was happening to the case and to provide information:

But the expectation is very much that people should be able to access you online, that you'll provide answers by email... people will be able to access their own case through a portal. And when any action is taken, then they'll get a...text alert. (Ombudsman 3)

Another participant noted the need to use technology to help advise consumers and suggested the idea of:

...a very strong online tool for identifying what your problem is...then the advice comes up, as does a toolkit of how you could approach the resolution of your dispute which promotes the Citizens Advice Bureau as a place that you could go to for advice (Consumer Policy Adviser 2)

- 4.13** Some participants expressed caution about the way in which technological solutions could be used to develop services, with one participant commenting that there was 'a danger that you create new forms of inaccessibility by not allowing for older systems of

communication' (Ombudsman Expert). The Legal Services Consumer Panel (2013a) have commented that:

Digital technologies have their place and we encourage their development, but they should be seen as a supplement to traditional advice formats not a substitute for them.

Consumer Focus (2010) have also highlighted the fact that online services do not meet the needs of all consumers, particularly the disadvantaged. Some participants talked about the need to improve interpersonal communication, rather than focus on technological solutions. One participant referred to the need to shift from a system which was primarily based on writing to one based on talking:

I suppose, the summary would be... we're going to have to move away from the written into spoken. Away from the legalistic into the emotional, if you like. (Ombudsman 4)

This point was emphasised by several others who stressed the importance of a more empathetic approach, making use of the telephone as much as possible to make processes quicker and more user friendly:

But also, particularly, at the earlier stages, the case, telephone is by far the best effective form of communication... increasingly as people get used to sitting down in front of their computer at 11 o'clock at night... you're not getting that dialogue... it's almost back to letters to and fro. (Ombudsman Expert)

We need to get people to talk, you know? And so what we're trying to do is to encourage our people to talk to people more on the telephone as they're investigating cases, and where necessary break down the door and barriers to people by telephone... That is a bigger challenge in cultural terms than dealing with new technologies. (Ombudsman 6)

One of the most important words we used in our PDR [Proportionate Dispute Resolution] report was the word telephone. We think there's enormous scope for a great deal more to be done by all the schemes through telephone and similar contact. (Policy Official 3)

4.14 A number of participants referred to organisational barriers to making greater use of informal ways of working, such as the different skill set required of staff:

Simply because you want to work in another way doesn't mean to say that people can automatically change their mind set and skills to deliver that. (Ombudsman 6)

Another participant noted that training was important if ombudsman schemes aspired to provide high levels of customer service, such as those in parts of the service industry:

When they're interfacing with an organisation and they want to talk to a person... I have never been into a branch of Pret A Manger where the staff have been less than thoroughly charming... they are being trained properly to do all of that... I'm not sure that... the generality of ombudsman

are doing that... And the people in the ombudsman need to be like the people in Pret A Manger. (Ombudsman Expert)

One participant noted that change was not only required of staff at the front end of ombudsman schemes, but across the board:

Getting our managers to think more about coaching and shifting that behaviour away from the legalistic kind of checking... and that has an impact on our board as well because it means that our board would need to recognise behaviours that normally they don't see... [It's] easy for our board to praise phenomenally detailed written reports but they never see people who are on the phone resolving things... the organisation would... in the past... probably value people with that... legalistic bent whereas in the future the real value comes from people who are good at talking and fixing things and that's quite a change. (Ombudsman 4)

4.15 While there was broad agreement amongst participants that ombudsman schemes would need to become quicker and less formal in future, many noted that there were limits to the extent to which this could be done:

My problem with all of this is that I'm subject ... [the jurisdiction of] the High Court, or the Court of Session... and so the High Court expects very different things to [a consumer]... and I've got to write decisions to satisfy both of them. (Ombudsman 5)

One participant noted that a move away from the formal investigation of complaint could lead to consumers' and other stakeholders' expectations not being met:

What we're trying to do is provide the public with what they need, and that might be that they don't need a detailed investigation, they need something that's quicker and more informal, but, as I say, it's then perceived that you're not meeting a traditional ombudsman role, so it carries that sort of reputational risk. (Ombudsman 8)

Another commented on whether ombudsman schemes could realistically experiment and adopt more dynamic approaches to dispute resolution:

If we were saying that you needed to be either more entrepreneurial or emotionally intelligent or more innovative none of those are words that you tend to associate with ombudsmen and if you said ombudsmen you imagine kind of staid regulation bound by very strict rules. (Ombudsman 4)

A danger mentioned by one participant was that increased use of early resolution processes could risk preventing the development of important principles of good practice:

Governments are trying to push things out of the courts into other methods of dispute resolution ... One of the issues we have in the UK is that a lot of the legislation is actually created through the interpretation in the courts and precedent and common law and stuff. And okay, if stuff goes to an ombudsman, and you always say an ombudsman's not creating precedent but, to a certain extent, that's not true. But an ombudsman's not investigating any longer, where are we going to get that kind of close look at what's going on? (Ombudsman 3)

4.16 Many of these points echo concerns within academic literature about the shift towards greater informality within redress systems. Doyle (2003), Le Sueur (2007), Gilad (2008), Gulland (2011) and Bondy and Le Sueur (2012) have all highlighted potential issues with informal resolution processes, including:

- whether parties enter into informal resolution in a voluntary and informed way;
- lack of clarity over whether informal resolution means the consensual resolution of a dispute between parties or simply ‘recommendation without investigation’;
- the confidentiality of informal resolution, which means that opportunities to learn from complaints may be lost;
- the lack of transparency and visibility of informal resolution process; *and*
- Whether the informal resolution process amounts to consumers being ‘cooled out’ and placated about their complaints.

Although each of these concerns can be addressed, they nonetheless represent a risk to ombudsman schemes. While consumers do want quick results, disappointed consumers may find fault with these procedures if their complaint is not upheld. In addition, the logic of the ‘resolution model’ of redress may well favour settlement at the expense of both consistency and principle. The consequences of such an approach in the longer term may be significant and open ombudsman schemes up to public criticism.

4.17 Interestingly, one participant suggested that in future consumers might be given more choice about the procedures available to resolve disputes:

Well, I think we are always going to be constrained by due process and natural justice and the dull things like that. But, it may even be in some world that I can only barely imagine that it will be acceptable for the parties to waive their rights to due process and natural justice in some strange way... I can see that there is a world in which you would be able to say, look our basic service is you tell us what the problem is we’ll try and sort out, and at the end of that you go away. That’s the base level service, you can have a more sophisticated one if you want but that will take six or seven months as opposed to the week that we expect the basic service to take. (Ombudsman 5)

greater focus on sharing learning and improving services

4.18 There has been ongoing discussion in the literature about whether public service ombudsman schemes should primarily focus on individual grievance resolution (which involves sorting problems out for an individual consumer) or on using complaints to bring about systemic change (which involves sorting out wider problems within organisations). These approaches have been conceptualised respectively as ‘fire-fighting’ and ‘fire-watching’ (Harlow and Rawlings 2009) and recent literature has suggested that public service ombudsman schemes in the UK are increasingly adopting the more systemic ‘fire-watching’ approach (Buck et al 2011; Gill 2013).

4.19 Private sector ombudsman schemes have generally been more reticent about adopting systemic approaches, due to a nervousness about encroaching on regulatory territory (Gilad 2008). However, the idea that ombudsman schemes are able to avoid any kind of

'regulatory' influence as a consequence of their decision-making has been described as 'misleading and disingenuous' (Morris 2008). This is because consistent decisions on certain types of cases create, if not precedents, then at least principles which guide future decision making. Others have argued that private sector ombudsman schemes have been unnecessarily cautious about systemic approaches and that this has limited their impact (Brooker 2008). The Sohn Review (2010) of the Energy Ombudsman concluded that the 'Energy Ombudsman should be more active in identifying and commenting on systemic issues'.

4.20 There are signs that private sector ombudsman schemes have, however, begun to develop their activities in this area (such as publishing more casework decisions and working in cooperation with organisations to help them improve their complaints handling). Nonetheless some commentators have argued there remains scope to do more and Brooker's (2008) suggestion has stayed pertinent:

In order to maximise their potential, ombudsmen should view their role as that of change agents as well as complaint-handlers, seeing the resolution of individual disputes as a prism through which to promote systemic change in markets.

Some of the developments in this area have been brought about by an increased need to demonstrate value for money and taking a broader view of the costs of complaint systems as a whole. Even before the impact of PPI was being fully felt at the Financial Ombudsman Service, the Hunt Review concluded that in relation to the large volumes of complaints the Financial Ombudsman Service was receiving:

Mass produced alternative dispute resolution is rarely, if ever, a satisfactory and sustainable solution in such cases (Hunt 2008).

Hodges et al (2012) argue that effective ADR procedures have the potential to deliver effective redress for consumers whilst also increasing consumer protection more widely by improving trading standards and market regulation as an alternative to mass redress mechanisms. Their research found many examples of consumer ADR schemes providing feedback which could then be used to improve the wider regulatory environment.

4.21 Several participants considered that, in future, ombudsman schemes would have to develop the systemic aspect of their role, although different schemes (particularly in the private sector) placed different emphases on this. One participant saw her scheme as facilitating improvements rather than driving them:

Well, I think ombudsmen in different industries and different sectors have quite different approaches to this... the role we have to play is to share that insight and knowledge with policy makers so that they can make better policy... it's sort of facilitating that policy, rather than driving it ourselves. (Ombudsman 1)

Another participant seemed to view the remit of her ombudsman scheme more narrowly:

I think it is particularly around the remit to deal with systemic issues, or to support complaint handling... [that] there are significant differences between the public sector and private sector... I'm perfectly happy to be an adjudicator and not a lot more than that. (Ombudsman 5)

4.22 Other private sector ombudsman schemes, while also distancing themselves from a regulatory role, were much more comfortable with developing best practice and helping organisations to improve. One participant noted:

We're actually supposed to do it [carry out systemic work], we get into trouble if we don't. So, I mean, maybe... that's because most of what we do is covering... public services provided by the private sector. We have a duty to feed back. (Ombudsman 3)

Another private sector ombudsman had a clear role in producing systemic improvements in the industry she oversaw:

We've got a statutory duty around best practice... More and more if you're doing prevention then it will drive down your volumes... it's a response to how do we deal with this challenge of more work... The profession is actually looking for us to do this. There is an appetite for it... so how for the three million pounds that we spend on you, how is the... world any better. (Ombudsman 4)

The same participant noted that having a greater involvement in sharing lessons and creating improvements was the unique selling point of ombudsman schemes:

I don't think that what you're adding is the ability to process complaints. That's a very poor kind of USP. Your reason for existence should be that there's a level of insight or engagement with the profession that only you can offer. (Ombudsman 4)

Another participant considered that part of his role was to issue guidance to ensure that complaints were reduced in future:

Well, what I'm doing by issuing those guidelines to... [businesses] primarily but I also do some consumer guides... and influence business practice... the success of an ombudsman scheme is to work itself out of business. (Ombudsman 2)

One participant noted that his scheme was moving towards much greater partnership working with public bodies in order to tackle systemic issues:

So being seen and promoting ourselves as being people who move ahead in partnership, and not people who necessarily just stand on the sidelines and commentate on what's happening... We're seen to be engaging, we're seen to be working in partnership... with a common aim of improving services. (Ombudsman 6)

Although there was some ambivalence towards the idea that ombudsman schemes should be more proactive in helping organisations to improve, it is interesting to note that the

documentary analysis shows that sharing learning from casework was the most frequently cited issue in ombudsman schemes' annual reports and corporate plans (seen annex 3).

4.23 As touched on above, most participants noted that there was a danger that an increased role in generating improvements would be resisted by regulators:

In financial service, there's a Financial Conduct Authority, in legal services there's the legal services board and the frontline regulators in telecoms there's OFCOM... I think, you could make arguments that an ombudsman should have a role in all of this but whatever arguments the ombudsman made, you know, the regulators would fight tooth and nail because it's the regulators job and, I think, it's not a bad thing perhaps the division of roles. (Ombudsman Expert)

4.24 The issues surrounding the relationship between ombudsman schemes and regulators point to an important question for those who advocate increased systemic approaches: what are the proper limits that should apply to this role? While ombudsman schemes may currently be criticised for being too cautious, they may well be criticised in future for pursuing such a role over-enthusiastically. Australian public service ombudsman schemes make an interesting case study in this respect, since they have been developing increasingly systemic and proactive approaches to their work for some time (Buck 2005; McMillan 2007). Based on the situation in Australia, Stuhmcke (2012) has identified three models to describe the extent to which ombudsman schemes are either 'reactive' or 'proactive':

- *Reactive Ombudsman Model (ROM)*. This model involves a predominant focus on 'fire-fighting'. However, a secondary focus is to make sure that mistakes are identified and prevented from occurring again. Therefore, although the model is called 'reactive' it does, nonetheless, contain a proactive element involving systemic investigation and the improvement of organisational processes.
- *Variiegated Ombudsman Model (VOM)*. This model involves an extension in the scale and scope of the ombudsman's jurisdiction. A feature of this model is the inclusion of a large number of jurisdictions in a single ombudsman institution and the development of additional roles and responsibilities. Other indicators for inclusion in this model include a bolstered training function and issuing guidance on administrative improvement. While this model involves an increasingly proactive orientation, the focus of the ombudsman remains on the individual redress function.
- *Proactive Ombudsman Model (POM)*: This model essentially represents an extension of the VOM. Its key feature is that the individual redress function is no longer central to the ombudsman's work. This involves a conscious decision to decline to consider less serious complaints in order to focus on complaints indicating systemic issues. Stuhmcke argues that the core values of ombudsmen, especially with regard to independence, can be maintained under this model, with the departure from the VOM being a matter of the extent to which proactive functions are pursued.

It is not inconceivable that UK ombudsman schemes may eventually follow the Australian trend and there are signs, for example, that the SPSO is moving towards the VOM (Gill 2013). While it is unlikely that private sector ombudsman schemes will significantly depart

from the ROM in future, Stuhmcke's models provide a helpful insight into what an increasingly strategic and proactive ombudsman scheme might look like.

- 4.25** In addition to adopting more strategic approaches to casework, some participants referred to ombudsman schemes needing to be more influential in the policy sphere:

You have to see yourself as an influencer up there, not just somebody who's there, just there doing what they're supposed to on the tin, which is important, but to really have a kind of a high level vision. That you're in position of leading, rather than you're in a kind of supine position being at the mercy of political whims. (Ombudsman 9)

I think sometimes in the past, the ombudsman community has sat back and has allowed things to happen to it... the advantage we've got over many, many other organisations that collect statistics and things like that [is that] we actually bring the people back into the bureaucracy... I think that gives us a really unique selling point, to use marketing terms, when we're trying to engage with policymakers. (Ombudsman 8)

One participant noted that greater strategic awareness could help ombudsman schemes respond better and more proactively to threats and challenges:

It's all to do with reputation management. And I think again I would want to see ombudsmen on the front foot to try and foresee that happening. So when I talked earlier about education of the political and the legal classes, I suppose I certainly meant the media class as well and the general public class but through the media. (Policy Official 3)

Ombudsman and complaint handling organisations are extremely well placed to use the knowledge and insight from complaints to drive innovation and transform services. If it is accepted that 'a complaint is a gift', this places the onus on the receiver to invest wisely the endowment of knowledge that it represents. Complaints feed innovation through the identification of poor performance requiring service improvement, or the identification of unmet need requiring development. But they can only spark innovation if they are discussed and addressed adequately (Simmons and Brennan 2013).

continued operational efficiency

- 4.26** Given the many pressures facing ombudsman schemes and the likelihood of either increased or variable workloads, a number of participants commented that a key response would be to continue to provide an efficient complaint handling service. One participant, referring to an ombudsman scheme that had recently been subject to intense Parliamentary scrutiny, said:

It is absolutely vital that their office is... fit for purpose. I think it has to be a lean, mean complaint handling machine... I think if that isn't done, then there is like an open wound waiting for the infection of parliamentary scrutiny to come in. (International Ombudsman 1)

Another participant noted that operational efficiency was the foundation on which all other priorities rested:

And that side, the kind of dirty side of the business, is one that is the platform. If you don't get that right, you can't do anything... If I'm looking at all the strategic things we want to do in the next four or five years, if we had still stayed with the model in 2009 we would sink, probably without trace. (Ombudsman 6)

The documentary analysis showed that maintaining efficient operations was a clear priority for most ombudsman schemes with this issue being the second most cited in ombudsman schemes' annual reports and corporate plans (see annex 3).

responses required of the ombudsman community

4.27 Many of the challenges faced by ombudsman schemes require a coordinated response and participants noted two main ways in which the ombudsman community needed to come together:

- increased cooperation between ombudsman schemes to achieve greater strategic influence in the policy environment; *and*
- increased sharing, integration and merging of ombudsman schemes to help rationalise the dispute resolution landscape.

increased cooperation and strategic influence

4.28 A number of participants noted that the ombudsman community needed to become more proactive and that the Ombudsman Association should shift its focus:

Historically it was a bunch of ombudsmen gathering together 20 odd years ago, and the time honoured phrase that's cropped up ever since then is 'huddling together for warmth'... in its present form it couldn't do some of the things that probably need to be done in order to establish the brand, liaise with the various governments, not only Westminster but the devolved bodies and Dublin. (Ombudsman 5)

Commenting on the current focus of the Ombudsman Association and its ability to influence strategic change in the dispute resolution sector, one participant said:

It probably feels a bit more like a supportive group for ombudsmen rather than something that's... a think tank or a driver for change but... that's what the Ombudsman Association would have to become... [in order to] create the sand in the oyster. (Ombudsman 4)

In a presentation by the Parliamentary and Health Services Ombudsman at the recent Ombudsman Association conference, the following strengths, weaknesses, opportunities and threats were identified:

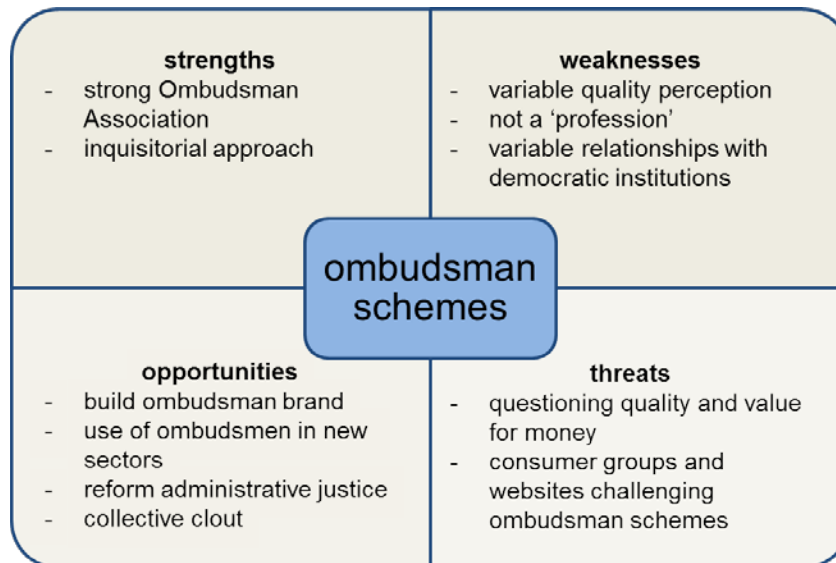


figure 7: strengths, weaknesses, opportunities and threats for ombudsman schemes (adapted from Mellor 2013)

In relation to how the Ombudsman Association needs to develop the Parliamentary and Health Services Ombudsman suggested that it should:

- achieve more policy influence;
- help create a career path for staff and increase professionalism; *and*
- develop quality standards and benchmarks for the sector.

These developments would extend the role of the Ombudsman Association significantly and bring it closer to that of a professional body. Although several participants referred to the need for more cooperation, it is unclear whether a stronger role for the Ombudsman Association would be welcomed by the ombudsman community:

I don't know whether [we would become a] trade body, we would continue to avoid that... I don't think it's going to spend its life promoting its members; it should be promoting ombudsmen which is slightly different... Whether there's an appetite for it, yes I think there probably is amongst certainly some of the members, what I don't know is how widely held that is and whether it can be backed up with higher fees which would inevitably follow, because if we're going to do more it will cost more. (Ombudsman 5)

4.29 There appeared to be more consensus around the role that the Ombudsman Association could play in promoting the ombudsman approach to dispute resolution, particularly at a time when the justice landscape may have to become more inquisitorial:

The ombudsman model I think has got lessons for the rest of the dispute resolution business... most ombudsman schemes do deal with members of the public directly without intervention from lawyers... And I think that therefore means that ombudsman have got lessons to teach everybody else. (Policy Official 3)

The same participant noted however that ombudsman schemes needed to promote their strengths more vocally:

I think ombudsmen are more and more coming of age, need to be more self-confident and more assertive in really making sure people understand what they do and the benefits of doing things that way. And of course one of the trump cards is extremely popular with users and levels of customer satisfaction... they achieve far higher satisfaction ratings than the courts do. (Policy Official 3)

This view was reinforced from a consumer perspective:

I do feel that ombudsmen and complaint handling services do things very, very well for people. I think it's probably easier for some people to access ombudsmen and complaint handling services than it was to deal with the initial dispute in the first place...thinking of people like the Scottish Legal Complaints Commission...they're very forward thinking, in terms of their complaint handling...to help put forward the consumer opinion...I think ombudsmen and complaint handling services are in a much better position to develop from where they are than perhaps the courts... which is a much more traditional, and some would say, archaic system (Consumer Policy Adviser 2)

increased integration, sharing and merging

4.30 Several participants noted that in the absence of direction from government, ombudsman schemes should take it upon themselves to help make the redress landscape more consumer-friendly and to make ombudsman schemes fit-for-the-future. Several schemes mentioned the need for ombudsman schemes to do more joint working, to pool resources and to push for the rationalisation of the ombudsman landscape.

4.31 With regard to greater integration, most participants noted that there were currently too many ombudsman schemes:

There are too many ombudsman... It doesn't make sense... because everybody's duplicating, triplicating, however-many-placating the costs. (Ombudsman 4)

The same participant noted that there was a great deal of similarity in the basic task of complaint handling and that merging schemes could achieve economies of scale and allow bigger, better-resourced ombudsman schemes to adopt a more strategic approach:

If you said there's no problem putting... complaints about lawyers in the same box with complaints about my bin collection because fundamentally it's the same thing... You could end up with a model that's much more efficient at doing the sausage machine of complaint handling... and spend the resources where they should be on the things that genuinely help the profession and help the public with getting rid of complaints happening in the first place. (Ombudsman 4)

Another participant pointed out the benefits of there being fewer ombudsman schemes:

I think for the consumer, it would be desirable, at least...if not a one stop shop model, at least a one stop front end... I think the more the system is integrated, the better for both the public and the service providers, frankly. (Ombudsman 3)

Another participant pointed out that amalgamation of schemes in areas where sectoral boundaries no longer apply clearly would be 'inevitable':

It's inevitable that there's going to be more bringing together of schemes... amalgamation... is probably the way things are going... in the way that the financial ombudsman services model brought together banks, insurance companies, building societies and so on. (Ombudsman 2)

4.32 In terms of the benefits of integration and merger between schemes, one participant commented:

Size matters.... [Ombudsman schemes] who are best placed are those who have sufficient resource through size, through economy of scale to be able to tackle them... I think they are going to be better placed in the future and again that's partly a size thing. (Ombudsman 5)

Other participants noted, however, that the development of increasingly large schemes could pose other risks:

There is a cautionary note... in that, you know, people are complaining about the actions or inactions usually of the large organisation... if the scheme gets too big you're putting your complaint into a similar larger organisation with a similar potential for admin failures and, you know, lack of personal touch. (Ombudsman 2)

Another participant similarly commented that there was a need to avoid creating 'monolithic bureaucracies' (Policy Official 3).

4.33 Participants also commented on other barriers to increased cooperation such as the existence of separate regulatory frameworks and the diverse interests and needs that exist within the ombudsman community:

One could see that it could get worse rather than better because there's so much that could be done if ombudsmen worked more closely together... but some of the issues for the public sector ombudsman are significantly different from some of the issues for the private sector ombudsman... Most ombudsman schemes are very small and don't have the depth or time to think about the bigger picture... in some areas, you know, you've actually got commercial competition... which doesn't help in getting organisations to operate in a coherent way... One of the things that stands in the way of it is the regulators because they only see it from the point of view of the regulators and their ombudsman. (Ombudsman Expert)

Another participant noted that diversity could be justified in some cases:

The question is, are they all doing such different things that it would not make sense to link them all? Or are there some of them that actually are dealing with areas that interface so closely that it would be better to have one organisation... I don't know. (Policy Official 1)

4.34 Rather than wholesale merger, many participants referred to ways in which ombudsman schemes could cooperate more:

Actually what that will involve is all the various members of the [Ombudsman] Association can extend pooling some of their resources... so it means all of our schemes giving up a little bit of our time to ensure that we do speak with that one voice where we can. (Ombudsman 8)

Another participant referred to ombudsman schemes sharing duplicated functions:

There are probably some things that we could do as an ombudsman group. So, some of those things around back office, for example, we should be exploring as ombudsmen. (Ombudsman 4)

4.35 One of the ideas for future development mentioned by several participants was the creation of a single doorway through which consumers could access all ombudsman schemes, which would simplify the landscape while retaining diversity and innovation:

A horses for courses approach for different sorts of problems is not a bad thing... if you could create some sort of single point of entry for even that, a good, efficient referral system... then I think that would probably not be a bad outcome all-round. It would keep some diversity in the system. (Policy Official 3)

This was also supported from a consumer perspective:

One gatekeeper who could help people realise what was best for them and make an informed decision about their complaints would be ideal (Consumer Policy Adviser 2)

Another participant noted that there would be a danger that if the ombudsman community was too proactive it would remove any incentive for government to take action:

I hope the ombudsman schemes could do more than they have done up until now... So, ombudsman direct as it were, you know, some common portal through which the public can get at the ombudsman... But, as I say, the government doesn't appear to be very keen to cross that mantle... and if the ombudsmen do too much... there's less incentive on the government to do anything to sort the mess out. (Ombudsman Expert)

In terms of the format which a single portal approach might take, some participants referred to the Complaint Wales system as a potential model, although some noted that the resources required to create such a service meant it was unlikely to occur in the current financial climate.

5. conclusions

5.1 The conclusions are presented in two parts. The first summarises drivers for change and strategic responses identified in the course of the research. The second describes the features that successful ombudsman schemes are likely to have in future.

research summary

5.2 Overall, this research has identified that changes in ombudsman schemes are being driven by developments in consumer behaviour, service provision and the policy environment and that these drivers demand a response from individual ombudsman schemes and the ombudsman community.

5.3 *Consumer behaviour* is changing:

- *consumer demand is changing*, with increasing (though variable) levels of complaint, increasing (though still low) levels of awareness and difficulty in predicting future demand;
- *the consumer base is changing* for ombudsman schemes, with some move away from the traditional older, white, middle class and male demographic and with the impact of legal aid cuts and the growth of CMCs; *and*
- *consumer expectations are changing*, with some consumers increasingly demanding and resourceful and with greater expectations of speed, simplicity and online provision, although with some consumers remaining passive and vulnerable.

5.4 *Service provision* is changing:

- *operational practice is changing*, leading to unpredictable demand and the creation of higher expectations regarding customer service in the minds of consumers;
- *boundaries between service sectors are changing*, with the bundling together of services, Alternative Business Structures and the need to ensure joined up handling of complaints about increasingly integrated service sectors; *and*
- *boundaries between the public and private sectors are changing*, with public sector ombudsman investigating private companies, the public and private ombudsman models converging and the logic behind separation, perhaps, becoming undermined.

5.5 *The policy environment* is changing:

- *the ADR directive* will bring about small procedural changes for most schemes, but – depending on the government’s implementation strategy – could have a significant impact on the redress landscape and preferred models of redress;
- *other policy matters* such as continuing fiscal restraint, cuts in legal aid, changes to consumer advice and regulatory policy will bring about changes to the operational context for ombudsman schemes; *and*

- *lack of direction from government* will continue to expose ombudsman schemes to risks arising from a fragmented and incoherent landscape, while a lack of understanding in government may result in misdirected policy initiatives in future.

5.6 *The response of ombudsman schemes* may include:

- *increasing consumer awareness and accessibility*, with schemes promoting themselves more, conducting research into low awareness and working with service providers to ensure consumers reach ombudsman schemes;
- *improved customer service*, with schemes using more flexible, informal and speedy procedures (where appropriate), enabled through judicious use of technology while also developing interpersonal customer service;
- *greater sharing of learning*, with ombudsman schemes becoming more proactive in using casework intelligence to help service providers to improve and taking – along with regulators – a more strategic approach to dealing with disputes; *and*
- *continued operational efficiency*, with ombudsman schemes needing to maintain complaint handling efficiency, maintain reputation and trust and avoid backlogs.

5.7 *The response of the ombudsman community* may include:

- *increasing strategic influence*, creating a stronger Ombudsman Association that is able to influence policy, help drive change and play a part in filling the vacuum existing in government around ombudsman policy; *and*
- *increase sharing, integration and merging*, with ombudsman schemes sharing duplicated functions where appropriate, and working towards reducing consumer confusion either by pushing for mergers or developing a single doorway for ombudsman schemes.

the ombudsman of the future

5.8 Based on the findings of this research, figure 8 tentatively suggests a description of what ombudsman schemes may look like in future. It shows the direction of travel which ombudsman schemes will need to follow in order to respond successfully to the challenges highlighted in this report. There are eight key shifts in practice that ombudsman schemes will need to consider making. Four of these relate to the way in which ombudsman schemes handle complaints, while four relate to the strategic orientation of ombudsman schemes. Each shift should be seen as a move along a continuum of practice rather than an outright departure or reversal of existing practice. For each ombudsman scheme, the magnitude of each of these shifts will vary, depending on the local context and the extent to which they have already begun to work on some of these areas. There is clearly room for disagreement with the direction of travel suggested in figure 8 and the analysis that follows. It is important, therefore, to see these conclusions as offering a starting point for ombudsman schemes and their stakeholders to discuss what the future may look like rather than a fully realised act of clairvoyance. The following paragraphs now provide a brief description of each of the key shifts in the practice of ombudsman schemes suggested in figure 8.

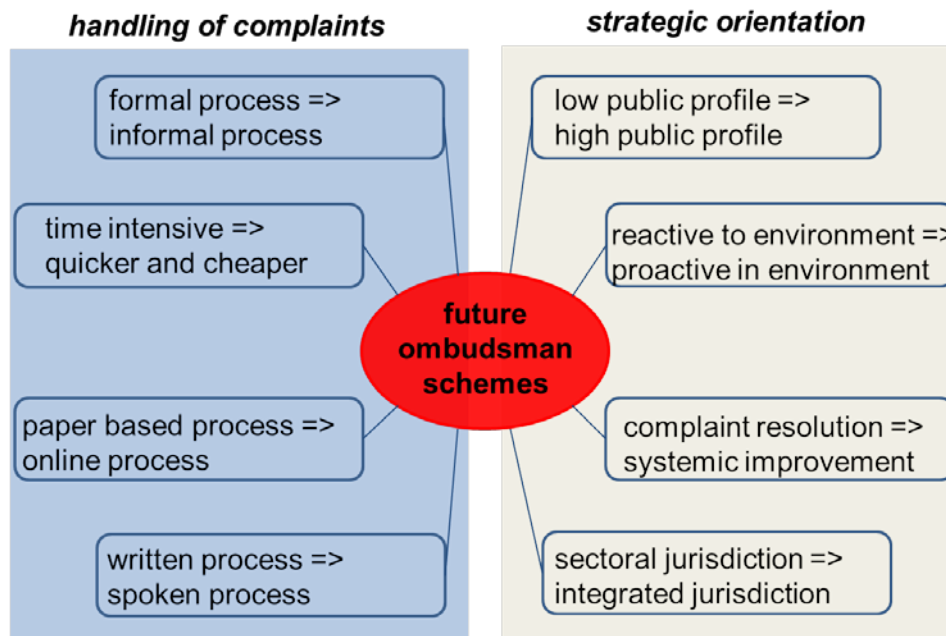


figure 8: tentative description of a successful future ombudsman

shifts in the handling of complaints

Formal process => informal process

5.9 The processes of ombudsman schemes will generally need to become less formal in order to become quicker and more accessible. The move away from investigation and towards dispute resolution is, therefore, likely to continue and to be required in order to respond to the various drivers identified earlier in this report. There are, however, a number of issues in shifting towards increased informality of complaint processes. The first is whether there is reliable evidence that consumers are demanding increased informality in relation to settling their disputes. The second is what we mean by ‘informal’ as opposed to ‘formal’ processes. And the third is how far ombudsman schemes can realistically take the notion of informal resolution, given the adjudicative nature of their roles and the legal frameworks in which they operate.

5.10 With regard to the first issue, the views of consumers regarding the desired degree of formality in second tier complaint processes have not yet been subject to systematic research. While increasingly expecting informality in other areas of their lives, it is not a given that consumers will expect similar levels of informality in the settling of their disputes. Indeed, formality may well be a continuing part of consumers’ expectations when referring their disputes to third parties. It is of interest that many of the consumers expressing

dissatisfaction about ombudsman schemes on the internet and in other fora appear to be calling for more rigorous and more formal procedures on the part of ombudsman schemes.⁶

5.11 With regard to the issue of what is meant by ‘formality’ and ‘informality’ in this context, the report has noted that there are a number of questions raised in the academic literature with regard to the informal settlement of disputes. One of the most important is whether consumers are clear about what informal resolution processes look like and whether they have appropriate assurance that they are fair. It is, therefore, important to explain clearly to consumers what is meant by informal resolution.

5.12 In our view, most ombudsman processes lack clarity about whether informal resolution is essentially a negotiated, conciliatory dispute resolution process or an inquisitorial, adjudicative one. Does informal resolution simply mean an adjudication provided by a junior member of staff as part of an inquisitorial process (subject to some kind of review at more senior level depending on the ombudsman scheme), or does it mean reaching mutually agreed settlements as part of a conciliatory process? Ombudsman schemes need to be clearer on these issues if they are to seek to increase the number of cases dealt with through informal processes. The kind of questions that ombudsman schemes should ask themselves include:

- what procedures are currently used to reach amicable settlements (e.g. shuttle negotiation, mediation, conciliation)?
- how are these procedures described (if at all) to consumers?
- are the staff responsible for achieving amicable settlements specialists in negotiated forms of dispute resolution?
- are the same staff responsible for both negotiated and adjudicated settlements, and is there a threat that consumers will perceive bias if suggestions are made in the course of exploring ideas for negotiated settlement by the same staff who then move on to adjudicate on the case?
- do staff have the appropriate skills for maximising the value of negotiated forms of dispute resolution?

5.13 With regard to procedures used to achieve negotiated settlements in ombudsman schemes, our experience of speaking with staff in UK and Irish ombudsman schemes in the course of delivering training is that shuttle telephone negotiation is the most prevalent form of negotiated dispute resolution process. There are however other models, including the use of formal mediation (for example, by the Irish Financial Ombudsman Service Bureau and the Scottish Legal Complaints Commission) and conciliation teleconferences (for example, by the Australian Financial Ombudsman Service). In addition to being clearer about current informal dispute resolution processes, therefore, it may be useful for

⁶ See for example, the Local Government Ombudsman Watch website: <http://www.ombudsmanwatch.org/>; and a website dealing with concerns about the Financial Ombudsman Service: <http://www.financial-ombudsman-problems.co.uk/>

ombudsman schemes to examine how other models of negotiated dispute resolution could be incorporated into their processes.

5.14 The limits of informality are a subject that requires greater debate and attention within the ombudsman community. How far can informality be taken, particularly when ombudsman schemes are subject to statutory restrictions on their procedures and the supervisory jurisdiction of the courts? While informality can be seen as a core feature of ombudsman schemes – a feature designed to help them achieve their access to justice mission – ombudsman schemes are increasingly central to the wider justice system. In some areas, such as financial services, the courts are becoming eclipsed as the primary vehicle for the settlement of disputes; in such a context, informal resolution requires to be accompanied by more formal, authoritative and public forms of adjudication in order for important principles of fairness to be developed in a coherent and transparent way.

5.15 The approach of ombudsman schemes to decision making has traditionally been guided more by pragmatism in resolving individual cases, rather than by principle. Ombudsman schemes should, in our view, begin to make greater efforts to ensure that their informal dispute resolution work is based on clear principles of fairness developed through the formal and more high profile part of their casework. Ombudsman schemes – particularly in a world that may see their increasing use due to restrictions on access to the formal court system and a general trend towards favouring cheaper, inquisitorial dispute resolution – must be able to make the argument that their decisions are more than pragmatic solutions that keep the status quo between consumers and organisations. Ombudsman schemes must, instead, be able to demonstrate clearly the nature and value of the unique system of justice which they exemplify. This system of justice reconciles informality and formality, pragmatism and principle, and must be explained in a way that is clear to stakeholders and the public. As pointed out in the recent review of the LGO there has been a significant failure on the part of all stakeholders to explain clearly the ombudsman model of justice to date.⁷ The continuing importance of formality to ombudsman schemes is dealt with further below in relation to the systemic improvement functions of ombudsman schemes.

5.16 Despite some of the concerns expressed above, however, the notion that ombudsman schemes will need to shift towards greater informality remains valid; pressures to achieve greater timeliness, deal with higher caseloads and cope with restricted funding mean that greater informality is likely to be inevitable. The purpose of the above analysis is merely to highlight that:

- we should be clear about the reasons for the greater use of informality in ombudsman schemes – is it in response to consumer demand or other pressures such as timeliness and unit cost;
- where informal processes are used, schemes must themselves be clear about what this involves and must then communicate this clearly to consumers; *and*

⁷ <http://www.lgo.org.uk/news/2013/apr/lgo-welcomes-independent-confirmation-fair-effective-ombudsman/>

- informality is not a panacea and does not involve the eradication of formal procedures: these are essential to the development of principled decision making within ombudsman schemes.

time intensive => quicker and cheaper

5.17 Ombudsman schemes will need to respond to consumer demand for quicker responses in new and creative ways. Much could be achieved by simplifying existing procedures and making more use of existing technology (the telephone) that it is surprising to find some schemes not using extensively at present. The idea of giving the consumer greater choice about how their complaint will be resolved and offering them a menu of dispute resolution options, each varying in speed and the level of procedural safeguards on offer, may be worth exploring further.

5.18 Some doubt must be expressed, however, about the extent to which ombudsman schemes can meet the expectations created in consumers' minds by faster, instantaneous transactions in other areas of modern life. Disputes are by their very nature complex matters rather than routine transactions that can be easily and speedily automated. Ombudsman schemes generally deal with protracted disputes, where consumers and businesses have reached an impasse. The idea that such disputes are amenable to very quick settlement must be in question.

5.19 Nonetheless, pressures to improve the timeliness of ombudsman schemes' dispute resolution processes now exist in the form of competition from other types of dispute resolution mechanism and the requirements of the ADR directive, regardless of consumer expectations and demand. In particular, article 8 (d) of the ADR directive states that dispute resolution procedures should generally not exceed 90 days, except in complex disputes. Although the ADR directive will not apply to all ombudsman schemes (for instance in the public sector), it does set new expectations around the speed with which cases should be dealt with that are likely to be challenging for all ombudsman schemes.

5.20 One of the effects of the ADR directive is that ombudsman schemes will increasingly come to be scrutinised in comparison to what other dispute resolution mechanisms, such as adjudication schemes, are able to offer in terms of timeliness. These mechanisms provide a significantly faster service than ombudsman schemes. For example, the Communications and Internet Services Adjudication Scheme resolves 94% of cases within 45 days,⁸ while the Postal Redress Service resolves 97% of cases within 45 days.⁹ These processes are significantly quicker than most ombudsman schemes and this raises a number of questions for policymakers and ombudsman schemes:

- to what extent are quicker timescales the result of the nature of the disputes being dealt with, as opposed to the nature of the mechanisms used to settle them?

⁸ <http://www.cisas.org.uk/media/text/CISAS-Q1.pdf>.

⁹ <http://www.postrs.org.uk/media/text/POSTRS-KPI-Report-for-Quarter-4->

- are there clear reasons in all cases why ombudsman schemes' and adjudication services' procedures are different?
- can ombudsman schemes learn from adjudication schemes in relation to timeliness?
- can ombudsman schemes incorporate such processes into their current procedures – for example, by offering consumers a choice in terms of the sophistication of procedure that is offered?

Answering some of these questions may help both to offer ideas about how timeliness can be improved as well as helping to define more clearly the unique selling point and added value that ombudsman schemes have compared to other forms of dispute resolution.

written process => spoken process

5.21 In order to be accessible to an increasingly diverse consumer base and to achieve the speedy and informal resolutions required in the future, ombudsman schemes will need to make more use of the telephone in pursuing enquiries and resolutions. While technological change may increasingly push consumers towards written forms of online communication, human interaction and the role of the ombudsman in humanising and personalising bureaucracy remain important. As noted above in relation to moves towards greater informality, spoken processes are key to achieving negotiated forms of resolution and, if such forms of resolution are to be encouraged further, then ombudsman schemes should give more attention to this area of their complaints handling practice.

5.22 There are, however, some issues with regard to telephone enquiries, particularly in relation to procedural fairness. New information disclosed to an investigator during telephone calls may be more difficult to identify and accurately share with the other party than information which is submitted in written form. In addition, reliance on telephone enquiries (unless these are recorded and kept on file) may open the investigation process up to challenges (such as judicial review or service delivery complaints) that a written process could perhaps counter more easily.

5.23 While participants in the research stressed the use of the telephone, other forms of spoken communication such as *Skype* or the use of *Adobe Connect* should be considered. In addition, although spoken processes are important where consumers have low literacy, in many instances the key to achieving quicker resolution of disputes is interactive and instantaneous communication, rather than necessarily verbal communication. As a result, instant messaging and web chats may be just as effective and may be preferred by the new generation of tech-savvy consumers identified in the report. These issues are dealt with in more detail at paragraph 5.25 below.

paper based process => online process

5.24 Article 5 (2) of the ADR directive requires that ADR providers have a website through which complaints can be submitted online and that they enable consumers to exchange

information with them by electronic means. At a minimum, therefore, ombudsman schemes subject to the directive will need to ensure that these requirements are fulfilled following the ADR directive's implementation. In addition, however, this research has suggested that consumer behaviour and technological change represent significant challenges for ombudsman schemes. Simply providing an online means of submitting a complaint is unlikely to meet the growing expectations of tech-savvy consumers. Ombudsman schemes will, therefore, need to ensure that they make full use of technology in order to communicate with consumers in the media they are accustomed to.

5.25 Indeed, there are a number of online communication tools which have the potential to improve consumers' experiences of the dispute resolution process and to facilitate dispute resolution. For example:

- *Skype* may be used to allow for more personalised, human, face-to-face communication between consumers and ombudsman schemes;
- *Adobe Connect* may be used to allow for group discussions, bringing consumers and businesses together to achieve conciliated settlements; *and*
- webchat applications may be used to allow for synchronous, interactive communication with consumers who may prefer to communicate in writing.

The development of simple online forms may also be used to help signpost consumers and help them to self-assess their complaints.

5.26 In addition, the development of online dispute resolution platforms has the potential to improve the consumer experience as well as lead to quicker and more transparent dispute resolution. One ombudsman scheme, for example, now has an online dispute resolution platform that allows consumers, businesses and ombudsman staff to upload all case-related information to a single online portal. Information can transparently be viewed by all parties, who can be notified of new information or case updates by email or by text message. Such online platforms also allow information to be uploaded including guidance notes on the particular issue being examined, similar cases and any other information that may be useful to the parties in developing an understanding of the issues in the case. This kind of transparency may be persuasive in demonstrating to the parties the fairness of investigations, leading to fewer service deliver complaints and less dissatisfaction with outcomes.

5.27 There may also be benefit in ombudsman schemes working with providers of online dispute resolution services, as part of efforts to ensure that consumers are informed of ombudsman schemes and able to access them. Websites such as *Resolver*, *I Want Great Care* and *Patient Opinion* offer significant potential to signpost and educate consumers about their rights of referral to ombudsman schemes. In addition, there is potential to make more use of the internet generally to ensure that consumers know about and use ombudsman schemes. A strong and proactive social media and internet presence on the part of ombudsman schemes could be used to help provide advice to consumers who

express dissatisfaction about services through social media or discussion boards on consumer websites. This would help to ensure that consumers' grievances reach ombudsman schemes, as discussed further in the following paragraphs.

shifts in strategic orientation

low public profile => high public profile

5.28 An unknown remedy is no remedy at all, and ombudsman schemes will need to continue to make progress in emerging from the shadows of the justice system. Initially, raising awareness should aim to ensure that more consumers know about the existence of ombudsman schemes. Current levels of awareness – although they vary between ombudsman schemes and depend on the methodology used in awareness surveys – remain relatively low across the board.

5.29 Raising awareness should not, however, be seen only as ensuring that consumers know that ombudsman schemes exist. Instead, awareness raising should be seen more broadly as helping consumers to understand the role of ombudsman schemes in redressing power imbalances and providing an effective conduit for consumers to challenge service providers. Several of the respondents in the research expressed scepticism about the potential for advertising in relation to awareness raising and preferred the idea of working more closely with providers to ensure that they fulfilled their responsibilities of informing consumers about their right to complain to ombudsman schemes. While working with service providers is clearly important, the possibility of targeted advertising should not be discounted. This may help give consumers confidence that ombudsman schemes want to hear from them, that they will be taken seriously and they can get results by escalating their complaints.

5.30 More proactive follow-up of premature contacts by ombudsman schemes may also be required to ensure that awareness of ombudsman schemes is converted into complaints. Ombudsman schemes could, for example, take a more active role in forwarding complaints to service providers when complaints arrive prematurely and then following up with the consumer and the organisation after a set period. In addition, taking stricter action against service providers who fail to provide information about referral rights to ombudsman schemes should become routine.

5.31 There are, however, limits to the extent that any single ombudsman scheme can expect to be known, recognised and understood by consumers. Individual action to raise awareness and ensure that consumers in a particular sector are able to access the relevant ombudsman scheme may, therefore, need to be complemented by ombudsman schemes taking collective action, for instance by pushing for the development of a single consumer facing portal for the receipt of complaints. This would have potential to reduce consumer confusion and allow for a high profile and visible doorway into all ombudsman schemes. This point is returned to again below in relation to ombudsman schemes shifting towards greater integration.

reactive to environment => proactive in environment

5.32 This report makes clear that there is both a general lack of understanding of ombudsman schemes and a lack of desire for reform of the sector within central government. Consequently, it is up to ombudsman schemes to come together and collectively make arguments for the simplification of the ombudsman landscape. In our view, the incoherence of the ombudsman landscape is limiting the extent to which schemes can be individually successful.

5.33 Several participants noted that ombudsman schemes were fundamentally reactive and demand-led organisations. While this is to some extent inevitable, ombudsman schemes should be able to exert some influence over each of the three key drivers for change identified earlier; rather than simply reacting to their environment, therefore, ombudsman schemes could do more to try to shape it. In relation to consumer drivers, for example, ombudsman schemes could do more to manage expectations and demand through consumer engagement and education. Similarly, as discussed further below in relation to the shift towards systemic improvement, ombudsman schemes could seek greater influence over the behaviour of service providers, taking a more managerial rather than reactive approach to how complaints are being dealt. We have already mentioned the need for ombudsman schemes to do more to influence the policy environment, filling the vacuum on ombudsman policy but also being dynamic in shaping local policy agendas.

5.34 In relation to the latter point in particular, it is important that ombudsman schemes are able to articulate clearly their expertise and the value of their work in order to contribute effectively to wider policy debates. As a community, there are a number of underlying issues that ombudsman schemes need to address if they are to have credibility in the broader environment; these include:

- achieving greater clarity about ombudsman schemes' unique selling point and the ombudsman model of justice;
- developing a stronger Ombudsman Association reconstituted as a professional body able to make collective decisions; *and*
- the development of a professionalised ombudsman sector.

5.35 In general, therefore, ombudsman schemes will have to stop becoming organisations to which things happen and begin taking their future in their own hands. A successful ombudsman scheme of the future will need to be a leader in creating a more unified, structured and coherent ombudsman community. This will involve creating a stronger Ombudsman Association, which should develop as an authoritative and leading voice within the redress sector. A professionalised and coherent ombudsman community should also act as a cheerleader for a conceptual shift in UK redress policy towards making greater use of inquisitorial methods in the provision of redress. The ombudsman community should see it as their special responsibility to improve access to justice and deliver fairness to citizens and consumers in the broadest context possible.

complaint resolution => systemic improvement

5.36 Despite the likelihood of continued resistance in regulated areas, ombudsman schemes will need to become more strategic and proactive in influencing the behaviour of service providers in order to avoid being swamped with complaints. Private sector ombudsman schemes, in particular, struggle to carve out an ‘accepted domain’ (Gilad 2008) for themselves amongst other forms of redress and regulators. Ombudsman schemes need to make the argument for pursuing more systemic approaches more clearly and forcefully, perhaps eventually gaining acceptance from regulators of their special role and expertise in developing standards for customer service and complaint handling.

5.37 Therefore, while the notion of a wholesale movement towards a ‘fire-watching’ approach to complaint handling is unlikely for many ombudsman schemes, nonetheless, some shift along the ‘fire-fighting/fire-watching’ continuum is likely to be necessary. The move towards ‘fire-watching’ is important to exert greater influence over service providers and become more proactive in managing stakeholders. It is also important in ensuring the development of a principled approach towards casework, which ensures that important cases are dealt with using formal procedures and reported in such a way as to achieve maximum exposure. Such an approach will help enhance consumer confidence – by demonstrating the ability of ombudsman schemes to hold services to account – as well as ensuring that clear principles are laid out through casework. This can help both to give certainty to the service areas under investigation and to guide ombudsman schemes’ decision making within the informal resolution processes.

5.38 As we noted earlier, ombudsman schemes should abandon the ‘misleading and disingenuous’ view that they simply deal with individual cases and that their casework does not have wider regulatory effects. Rather, they should now seek to maximise the impact of their casework in shaping industry practices. In addition to publishing, with greater fanfare, leading cases, ombudsman schemes could consider implementing the ‘FOS book’ idea that was recommended by Lord Hunt in his review of FOS (Hunt 2008). This involves publishing leading cases in various areas of the ombudsman’s jurisdiction in order to provide guidance to industry and to develop consistent and fair approaches to decision making.

5.39 Where ombudsman schemes are able to produce thematic or systemic reports, these should seek to draw on a wider range of evidence in order to be more persuasive and maximise their impact. This might include, for example, commissioning research to establish levels of likely consumer detriment in areas that are seen as being problematic or, when making recommendations for change, drawing on international experiences or other evidence to make such recommendations more compelling.

sectoral jurisdiction => integrated jurisdiction

5.40 There is widespread acceptance that there are currently too many ombudsman schemes in the UK and that some rationalisation is needed. As already noted above, the ombudsman community must come together, through the Ombudsman Association, to deal with this situation and attempt to simplify current arrangements and prevent future proliferation of ombudsman schemes. There is much potential for existing schemes to be integrated in ways which would simplify things for consumers and help ombudsman achieve economies of scale and greater influence. Obvious areas for rationalisation are those where there is competition between ombudsman schemes, such as in the communications area and the property area.

5.41 Generally, a debate must be initiated within the Ombudsman Association which takes the discussion beyond acceptance that the current situation is unsatisfactory and that there are too many schemes, towards the identification of which schemes should be merged and how rationalisation can be practically achieved. Either that or, as already noted above, ombudsman schemes need to agree on and begin planning for the development of a jointly funded and managed single entry point for complaints into all UK ombudsman schemes. This would provide a single shop front for consumers, behind which individual ombudsman schemes would need to cooperate more closely to ensure a seamless experience for consumers. Action is needed to begin developing a consensus around one of, or a combination of both, these options.

5.42 This concluding vision of the future has sought to show how ombudsman schemes could transform themselves to capitalise on the many challenges and opportunities facing them. However, as noted at several points during this report, there are no guarantees about the future direction of redress nor, indeed, about the continued survival of ombudsman schemes in any form. One participant noted this when she suggested:

Rather than what a good ombudsman scheme [looks like], the better question would be... what would good redress look like? And do ombudsmen have a part to play? And that's the objective, isn't it, not good ombudsmen. The objective must be... the consumer getting the redress they need. (Ombudsman 1)

A former ombudsman made a similar point in highlighting the formally independent, yet ultimately contingent, status of some ombudsman schemes:

We should be cautious in assuming that private sector ombudsman schemes are all safe. That which parliament has put in place, parliament can just as easily take away. Most government departments see their schemes as just that – theirs to amend, merge, contract or abolish should their own policy or political pressures dictate (Merricks 2009).

This report concludes, therefore, with encouragement about the possibilities that lay ahead for ombudsman schemes to develop in future, but also with a note of caution against the assumption that the ombudsman brand is sacrosanct. If ombudsman schemes want to continue to play a key role in consumer dispute resolution and administrative justice, they

need to articulate clearly the value of the ombudsman model justice and why it should be preferred over other dispute resolution mechanisms.

annex 1: methodology

research aims:

The overall research aim is *to identify the features that a good ombudsman scheme will need to possess in 5 to 10 years time in order to respond to various drivers for change.*

Subsidiary research aims are to:

- identify drivers for change affecting ombudsman schemes;
- identify how ombudsman schemes are responding to these drivers;
- suggest business models that might respond to these drivers.

research questions:

The following set of research questions were designed to operationalize and fulfil the research aims:

- (1) What are the drivers for change affecting ombudsman schemes?
- (2) How are ombudsman schemes responding to these drivers?
- (3) What business models could be adopted to respond to these drivers? In particular, what changes might be required to customer service?
- (4) What would a good ombudsman scheme look like in 5 to 10 years?

research design

The research questions were investigated using the following methods:

- academic literature review and analysis;
- documentary analysis of annual reports and corporate plans from selected ombudsman schemes; *and*
- qualitative interview research with ombudsman schemes, policymakers and consumer organisations.

academic literature review and analysis

A review of existing academic literature and documents produced by policymakers and practitioners was conducted in order to provide appropriate context for the data collected through the qualitative interview research. The research team identified a number of areas to explore based on the research aims and sought to identify and review literature falling under the following areas:

- Literature on changing consumer behaviours;
- Emerging ombudsman models;
- ADR policy in relation to the EU directive and regulation on ADR and ODR (online dispute resolution) respectively and how BIS propose to pursue this agenda;
- Evolution of the ombudsman institution;

- Policy developments on ombudsmen; *and*
- Administrative justice policy.

documentary analysis

Eleven ombudsman schemes were selected in order to conduct a documentary analysis exercise. Schemes were selected in order to include a mix of public and private sector ombudsman schemes. The aim of the documentary analysis was to identify what issues ombudsman schemes were identifying as drivers for change and what their plans were for the future. The documents subject to analysis were the latest annual reports of each scheme and (where available) their latest corporate or strategic plan.

qualitative interview research

Sixteen qualitative research interviews were carried out with ombudsman schemes, policymakers and consumer advice organisations. A list of potential organisations to interview was agreed with the Legal Ombudsman and participants were selected based on the likelihood that they would be able to provide relevant information regarding the research questions. Interviews were either conducted face to face or by telephone and lasted between 40 and 90 minutes. Digital recordings of the interviews were transcribed by a professional transcription company.

In order to safeguard the anonymity of participants, data has been reported anonymously. However, the following table shows the final sample and shows how each organisation has been referred to in this report:

table 1: list of participants in interview research

participant	name used in report
private sector ombudsman	ombudsman 1
private sector ombudsman	ombudsman 2
private sector ombudsman	ombudsman 3
private sector ombudsman	ombudsman 4
private sector ombudsman	ombudsman 5
public sector ombudsman	ombudsman 6
public sector ombudsman	ombudsman 7
public sector ombudsman	ombudsman 8
international public sector ombudsman	international ombudsman 1
international public sector ombudsman	international ombudsman 2
senior figure with previous and current experience in UK ombudsman schemes	ombudsman expert
official in a central government department	policy official 1
official in a central government department	policy official 2
official in a non-departmental public body	policy official 3
policy adviser for a consumer organisation	consumer policy adviser 1
policy adviser for a consumer organisation	consumer policy adviser 2

annex 2: UK ombudsman timelines

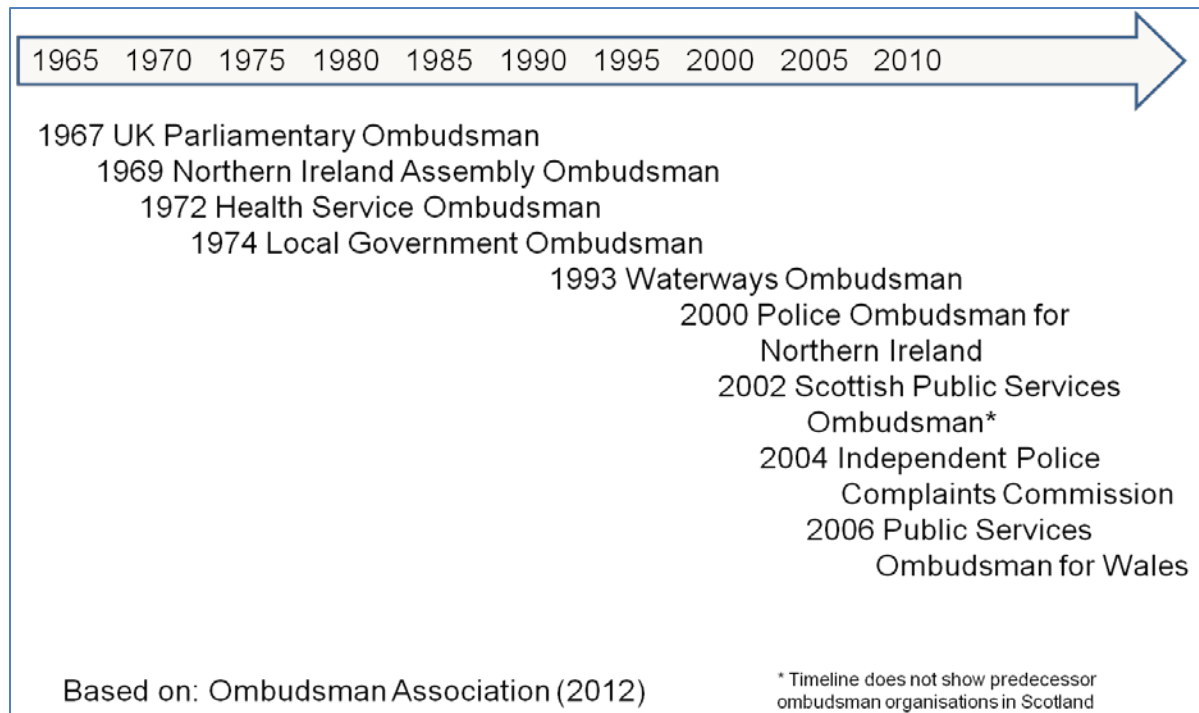


figure 9: the development of public sector ombudsman schemes

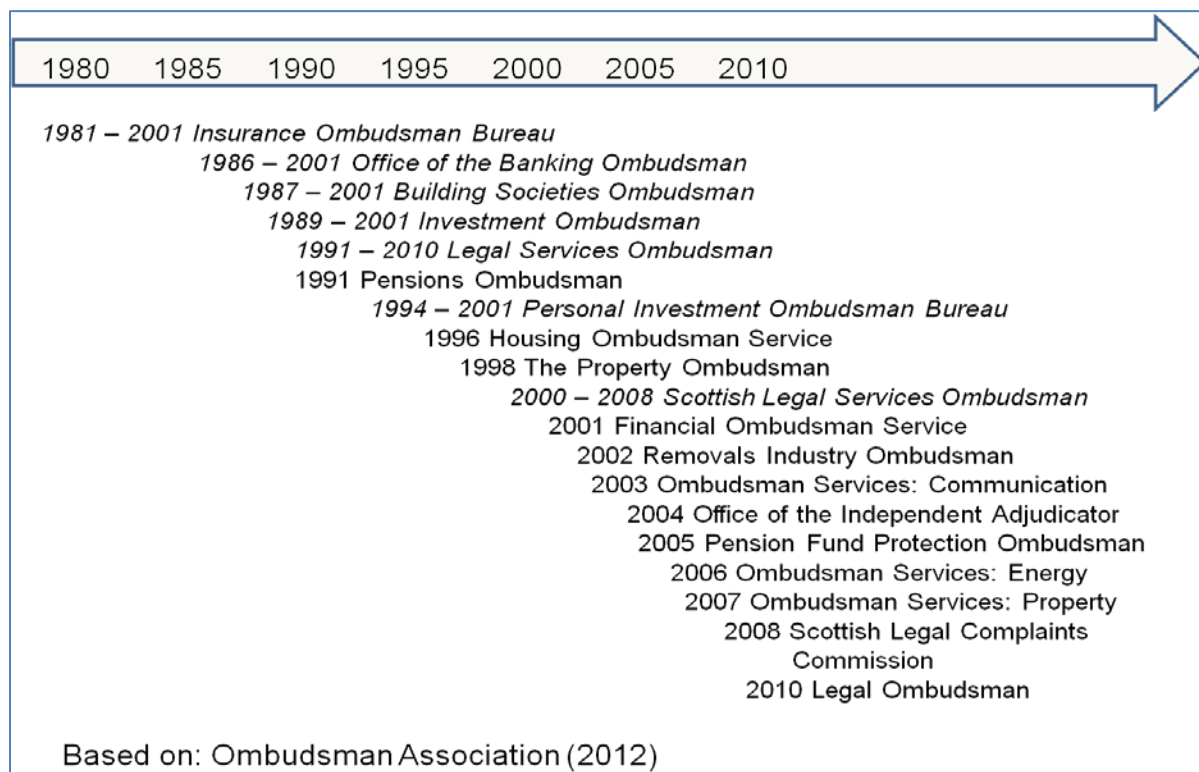


figure 10: the development of private sector ombudsman schemes

annex 3: documentary analysis

The latest annual reports and corporate/strategic planning documents (where available) of 11 ombudsman schemes were analysed to identify key drivers for change and plans for future development. The following ombudsman schemes were included in the documentary analysis:

- Financial Ombudsman Service
- Housing Ombudsman
- Local Government Ombudsman
- Office of the Independent Adjudicator for Higher Education
- Office of the Ombudsman (Ireland)
- Ombudsman Services
- Parliamentary and Health Services Ombudsman
- Pensions Ombudsman
- Property Ombudsman
- Scottish Public Service Ombudsman
- Scottish Legal Complaints Commission

With a few exceptions, the documents did not contain detailed or sustained analysis of drivers affecting the schemes. The focus in annual reports was, not surprisingly, on describing the previous year's activity in casework terms, while corporate planning documents tended to set out aims and objectives without always explaining the rationale or context for these.

Nonetheless, analysis of these documents was helpful to gain a sense of issues most commonly identified amongst ombudsman schemes and of the strategic priorities highlighted in their corporate planning.

drivers for change

Only issues that could be identified as drivers for change and that were generalizable to other organisations were included in the analysis. Drivers that were organisation specific (such as legislation or policy initiatives affecting only one ombudsman scheme or service sector) have been excluded.

table 2: drivers identified in annual report and corporate/strategic planning documents

drivers	number of ombudsman schemes citing driver
increase in complaints	7
impact of the financial crisis	5
impact of technology	2
changing complainant expectations	2
changes in complainant demographics	1
changes in service provision	1

Table 2 shows the drivers identified in the course of the documentary analysis and highlights the number of ombudsman schemes citing each driver. As might be expected, increased numbers

of complaints and the impact of the financial crisis emerged as the most important drivers. Increasing complaints was the most frequently cited driver, although complaints had either reduced or levelled off in four of the ombudsman schemes. Interestingly, the Financial Ombudsman Service's annual report commented that volatility in complaint numbers was an issue as much as increasing numbers. The impact of the financial crisis was the second most cited driver. The impact of this driver was either direct (cuts in budget for the ombudsman scheme) or indirect (the economic downturn making consumers more likely to complain and businesses less likely to settle).

A number of other drivers were mentioned, although these were not subject to widespread comment. The potential impact of technology was treated in detail by the Financial Ombudsman Service, whose strategic planning document noted that technological changes had the following implications:

- consumers were accustomed to automated transactions and being able to do business at their convenience;
- consumers had access to more information online, increasing their ability to sort out their problems; *and*
- consumers without access to technology faced being excluded.

Some also mentioned changes in consumer expectations, with consumers becoming more demanding and less trusting of authority. The Financial Ombudsman Service again dealt with this driver in detail in its strategic planning document, noting the following ways in which consumers were changing:

- consumers were more likely to take responsibility for themselves;
- consumers were more likely to challenge authority;
- consumers were more confident in expressing and sharing their views (for example on social networks);
- consumers were struggling to keep up with the pace of change; *and*
- consumers faced uncertainty due to the economy.

Two drivers were mentioned on a single occasion by the Financial Ombudsman Service. It cited the challenges posed by an increasingly diverse customer base as a driver for change, noting that an equal number of complaints were now received from readers of *The Star* as of *The Financial Times*. It also cited changes to the way services were being provided as a driver for change, with a blurring of boundaries between traditional business sectors, new business structures and the increasing 'bundling' of a range of services.

plans for future development

table 3: plans for future development identified in annual reports and corporate/strategic planning documents

plans	number of ombudsman schemes citing plan
sharing lessons from casework	10
efficient complaint handling	9
improved awareness and accessibility	5
quicker and more proportionate processes	5
publication of more casework	4
improved governance and organisational structure	3
improved stakeholder engagement	2
improved relationship with Parliament	2

The two areas cited by most ombudsman schemes were sharing lessons from casework and providing an efficient complaint handling service. The latter clearly remained the key priority for most schemes, with several of those who commented on this also referring to plans to introduce quicker and more proportionate processes for resolving complaints. The Office of the Independent Adjudicator for Higher Education, for example, had recently consulted on plans to introduce an early resolution process, while the Parliamentary and Health Services Ombudsman referred to resolving cases more quickly and informally and finding new ways of doing this.

The sharing of lessons from casework was cited as an area for development by most ombudsman schemes, both in the public and private sector. This often went hand in hand with plans to increase the amount of casework information being published, which was seen as helpful for assisting organisations to learn from complaints and for increased transparency. Although both private and public sector ombudsmen referred to sharing learning and helping support improvement, public sector ombudsmen seemed to place more emphasis on this and take a more proactive approach. The Parliamentary and Health Services Ombudsman, for example, had as one of two aims to 'drive improvements in public services', while the Scottish Public Services Ombudsman had three out of five strategic aims focusing on improvements in organisations and an overall concern with 'prevention'.

The third most cited area referred to the need to generate greater consumer awareness about ombudsman schemes and make services more accessible. The Financial Ombudsman Service referred to working in partnership with advice organisations to achieve this, while the Parliamentary and Health Services Ombudsman noted the need to make the ombudsman scheme more visible and make it easier for people to complain. Other areas cited included strengthening governance and operational structures, and developing relationships with key stakeholders.

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