

SPEAKING TRUTH TO POWER
The role of the Ombudsman in the 21st century

Opening session – Thursday 15 November 2012

Chair

David Miller, Editor, Journal of the International Ombudsman Association

Presentation by Ann Abraham

**UK Parliamentary Ombudsman and Health Service Ombudsman for England
2002 to 2011**

The brief

In austere times, how can an Ombudsman be effective and bring about a culture of fairness and a sense of equity within the government's administration, humanise the relationship between the government and governed, convince public administrations before a complaint arises that it is in everybody's interest to treat all our citizens with respect and dignity?

Abstract

The presentation focuses on ways to maximise the Ombudsman's influence, impact and effectiveness in a difficult and constantly changing environment, including:

- Developing and applying commonly accepted principles of good administration.
- Engaging proactively with a wide range of stakeholders including government, parliament and service users.
- Using evidence from the Ombudsman's casebook to illustrate vividly the complainant's experience.
- Demonstrating accountability and practising what you preach.

Speaking truth to power

The theme of our conference is speaking truth to power.

Let me start with an example of the Ombudsman speaking truth to power.

This is Mr and Mrs J's story.

Mrs J was 82 years old. She had Alzheimer's disease and lived in a nursing home. Her husband visited her daily and had done for the past 9 years. Mr and Mrs J had been married for over 50 years and they enjoyed each other's company. One evening Mr J arrived at the nursing home to find that his wife was quite unwell, and had breathing difficulties. An ambulance was called and Mrs J was taken to hospital at about 10.30 pm. She was admitted to the Accident and Emergency Department for assessment. Mr J was asked to wait in a waiting room.

Mrs J was very ill. Some hours after her admission she became unresponsive and, following a medical review, a decision was taken not to resuscitate her. Mrs J died shortly after 1.00 am. The nursing staff telephoned the nursing home half an hour or so after she died and were reminded that Mr J had accompanied his wife to hospital. The Senior House Officer found Mr J still waiting patiently in the waiting room and informed him that his wife had died.

In the three hours or so that Mr J had been in the waiting room, nobody spoke to him or told him what was happening to his wife. They had simply forgotten about him.

Mr J suspected that he had been deliberately separated from his wife because the hospital staff had decided to stop treating her. He felt the hospital had denied him and his wife the opportunity to be together in the last moments of her life. As Mr J saw it, *'they decided that enough was enough without bothering to include me in'*. He described it as *'a shabby sad end to my poor wife's life'*.

Mr J complained to the Ombudsman and his complaint was upheld. We said that Mr J should have been told what was happening, should have been involved in decisions about his wife's care and should have been able to be with her when she died.

We also found that aspects of Mrs J's clinical care and treatment fell below the standards set out in national guidance and established best practice.

The hospital apologised to Mr J and paid him a small amount of compensation (£2,000) in recognition of the distress he had suffered. The hospital's Chief Executive met with Mr J to apologise personally and explained the changes they had made to their processes following his complaint, to prevent the same thing happening again.

We subsequently included Mr and Mrs J's story in a high profile report on care of older people by the National Health Service (NHS) called *Care and compassion?*. The report featured the stories of ten people who suffered unnecessary pain, indignity or distress whilst in the care of the NHS.

Care and compassion? was published in February 2011, extensive and prolonged media coverage – including a cartoon in The Times newspaper - which used the well-known image of the signposting seen at the entrance to every NHS hospital and underneath the

more familiar arrows pointing to Cardiology, Gynaecology, Radiotherapy and so on, added signage indicating ‘Lackofsympathy’, ‘Zilchsensitivity’ and ‘Denialofdignity’.

The report generated a huge response from patients, carers, politicians in both Houses of Parliament, regulators and health practitioners.

It led directly to a series of unannounced inspections of hospitals, focusing on dignity and nutrition, by the standards regulator, the Care Quality Commission; and to the establishment of a Commission on Improving Dignity in Care for Older People, set up by the NHS Confederation (the membership organisation for all the bodies that commission and provide NHS services), the charity Age UK, and the Local Government Association – to which the Ombudsman’s office gave evidence.

The Commission’s report, *Delivering Dignity*, was published earlier this year (February 2012), and called for a ‘*major cultural shift, to tackle the underlying causes of poor and undignified care of older people in care homes and hospitals in England*’.

What made that report so effective?
Why did it have the impact that it did?

I’m going to try and answer those questions by addressing some rather more general questions that go beyond the specifics of Mr and Mrs J’s story – and the *Care and compassion?* report - and trying to draw some general lessons out of that.

So here are my three questions:

- What gives the Ombudsman the right to speak truth to power?
- How do we make the truth unassailable?
- How do we make the truth palatable?

Speaking truth to power

What gives the Ombudsman the right to speak truth to power?

It was always the case – and it is even more so in these austere times – that the Ombudsman needs to be able to demonstrate that their office is well-run and makes good use of the public funds entrusted to it.

If you’re going to criticise other people for a living you need to be very good at what you do - and able to show it.

We also need to be proactive about demonstrating our accountability for public money – not wait to be asked.

For example, PHSO publishes information about the Ombudsman’s travel expenses alongside the annual accounts – rather than wait for the Freedom of Information requests. They are going to come anyway so better to be on the front foot and ahead of the game.

The 21st century Ombudsman’s office needs to have in the public domain clear and accessible information about its objectives, plans and targets – and regular reports on its performance.

We will all have different ways of articulating our objectives and measuring success, but I would suggest that, as a minimum, we all need to know the answers to the following questions – not least because they are the questions that any taxpayer – or Parliamentary Select Committee – might reasonably ask:

- Do people who need the Ombudsman’s service know about it and can they access it easily?
- Is the office on top of its workload – and meeting published service standards?
- How satisfied are users of the Ombudsman’s service?
- What percentage of the Ombudsman’s recommendations do bodies in jurisdiction accept?
- What impact do the Ombudsman’s reports have?
- Is the office well-run and delivering value for money?
- What do the staff say about the Ombudsman as an employer?

And one final point in relation to the question of what gives the Ombudsman the right to speak truth to power - we have to practise what we preach.

Any Ombudsman who doesn’t do that leaves themselves wide open to allegations of hypocrisy.

For me, one of the best tests of that is the systems we have in place in our offices for responding to - and learning from - complaints about our decisions and our service.

Our own complaints systems can be nothing less than exemplary.

This is what PHSO’s Ombudsman’s Principles (of which more later) say public bodies should be doing:

In relation to the Principle ‘**Putting things right**’

- Acknowledging mistakes and apologising where appropriate
- Putting mistakes right quickly and effectively
- Providing clear and timely information on how and when to appeal or complain
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

In relation to the Principle ‘**Seeking continuous improvement**’

- Reviewing policies and procedures regularly to ensure they are effective
- Asking for feedback and using it to improve services and performance
- Learning lessons from complaints and using them to improve services and performance.

And the Ombudsman needs to demonstrate that she or he is doing these things as well.

- Asking for feedback, and use it to improve services and performance
- Providing clear information about how and when to complain
- Acknowledging mistakes
- Apologising where appropriate
- Providing appropriate remedies for upheld complaints
- Learning from mistakes – and doing things differently as a result.

So, if demonstrating accountability and practising what we preach give us the right to speak truth to power, how do we make the truth unassailable?

Speaking truth to power

How do we make the truth unassailable?

I know I don't need to tell this audience about the importance of thorough investigations, robust testing of the evidence, and fair processes. Those are given.

I guess we all know too that adopting the approach of 'I'm the Ombudsman and I know maladministration when I see it' is a pretty high-risk strategy these days.

So how do we mitigate that risk?

We need our decisions to be consistent - and made in accordance with criteria that are open and clear, understood and commonly accepted as fair by complainants and public bodies alike.

At PHSO we developed, published and applied the Ombudsman's Principles – Principles of Good Administration, Principles of Good Complaint Handling and Principles for Remedy - and demonstrated their application in our published case reports.

The Ombudsman's Principles are general standards of good administration and good public service:

Ombudsman's Principles

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement

Of course, there are similar principles and standards of good administrative behaviour in use across our global Ombudsman community.

For example, there are the Public Service Principles for EU civil servants developed by the European Ombudsman:

- Commitment to the EU and its citizens
- Integrity
- Objectivity
- Respect for others
- Transparency

and I am sure you will know of other examples.

Usually such principles will have been developed in consultation with a wide range of stakeholders - and ideally they will have been endorsed and adopted by bodies in jurisdiction. PHSO's Principles were endorsed by the Westminster Parliament, by the UK government and by the National Health Service – and referenced in HM Treasury's guidance to public bodies, *Managing Public Money* and the NHS Constitution (and its Finance Manual – very important to get the accountants on side when it comes to paying out compensation).

Such principles give us a shared and commonly accepted understanding of what is meant by good administration, good complaint handling and a fair approach to providing remedies.

General and specific standards

At PHSO we refer to the Ombudsman's Principles – together with principles of public law – as the 'general standard' against which complaints are determined.

We also set out the 'specific standards' that are relevant to the investigation.

Sometimes that will be a specific piece of legislation – the Disability Discrimination Act for example.

More frequently it is the public body's own guidance – published or not - their organisational standard – on which we rely.

For example: In an investigation which concluded in 2006, we found that information provided for the public by the Department for Work and Pensions about the security of final salary occupational pension schemes fell significantly short of the Department's own standards – causing injustice to a large number of people who, as a result, lost the opportunity to make informed choices about the future – with very serious consequences.

- The Department for Work and Pensions' internal guidance on providing information and advice to the public said that information should be '*accurate and full*'.
- Our investigation concluded that the information the Department provided for the public was '*sometimes inaccurate, often incomplete*' – which meant it was not only misleading, it was also maladministrative.

Going back to Mr and Mrs J's case, the application of these general and specific standards meant we were able to uphold the complaint on many levels:

We said that Mrs J's care and treatment fell below the standard set out in national guidance and established best medical practice – she wasn't monitored properly after she arrived at hospital, no observation chart was started, no further assessments were documented after the first assessment and she waited for a medical review which did not take place.

We said that Mr and Mrs J's experience - and the experience of all the people whose stories were told in the *Care and compassion?* report - did not reflect the values set out in the National Health Service's own Constitution. The NHS Constitution talks about:

- Respect and dignity
- Commitment to quality of care
- Compassion
- Improving lives

The NHS Constitution also says that '*Everyone counts*'. Tell that to Mr J.

In our published report we placed the words '*care and compassion are what matter most*' – a direct quote from the NHS Constitution – alongside Mr J's words, '*a shabby sad end to my poor wife's life*', contrasting in a very stark way the policy aspiration and the patient experience.

Mr and Mrs J's experience – and the experience of all the people whose stories were told in the *Care and compassion?* report - illuminated the gulf between the principles and values set out in the NHS Constitution and the felt reality of being an older person in the care of the NHS.

Of course, we could have simply said that the hospital fell far short of the Ombudsman's Principle of 'Being customer focused' – '*dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances*'.

That would have been perfectly legitimate – and probably persuasive. But using the organisation's own values and principles – and the good practice guidance of the nursing and medical professions – as the basis of our assessment made our conclusions unassailable.

Unfortunately, however, unassailable truths don't generally communicate themselves.

Hence, I would recommend the addition of two other ingredients at this stage – to make the mix a more powerful one:

The first is good story telling; the second is resonance.

Good story telling

I learnt many things during my time as an Ombudsman. One of the most important was that the 21st century Ombudsman needs a strong communications function and a proactive approach to communication.

In 2003, when I published the report of my first investigation into the regulation of the Equitable Life Assurance Society, I told my Communications Team that ‘the report will speak for itself’. How wrong was that?

I now know that good communication is key to much of an Ombudsman’s success – and if we don’t go out and present our arguments – to Parliament, the media and the public – no-one else will do it for us.

In 2007, when I published the second - and substantive – Equitable Life report, there were:

- Briefings for MPs
- Technical briefings for journalists
- Media interviews
- A guide to the report; a summary report – and a summary of the summary.

I’ve learnt the importance of good communication – and good story telling. If you can, get the complainants to tell their own story. If that’s a step too far, tell it in their words. With *Care and compassion?* we used actors to give voice to what the complainants had told us about their experiences – and made those stories available for people to read – and to listen to - on our website.

This is a quote from a regional newspaper’s coverage of the report.

‘Health Service Ombudsman Ann Abraham’s report has all the more impact for relating the stories, not of ten case studies, but of ten individuals who were loving partners, parents and grandparents.’

Bournemouth Echo

We also thought long and hard about the language we used – and the tone.

We took some risks. They paid off.

This is what one highly-respected journalist, writing in one of the broadsheets said about *Care and compassion?*.

‘The National Health Service Ombudsman, Ann Abraham, has despaired of posh words in condemning the state of Britain’s hospitals and resorted to the methods of the redtops.’

Forget care professionalism, accountability deficit and compassion fatigue. Abstract nouns just wash off the political back. Give us Alfred, 69. It worked. He made the headlines in every paper.’

Simon Jenkins, The Guardian

Resonance

The second ingredient, if you can find it, is resonance.

This is a quote from the Chair of the NHS Confederation (the membership body for all organisations that commission and provide NHS services), who became the driving force behind the establishment of the Commission on Improving Dignity in Care for Older People.

'I can remember when the report landed. We took the view that this was a hugely important document. It said something about the NHS that was deeply shocking.'

'When you read the report, then read it for a second time, it resonated with every one of us. It described something we knew was wrong. So we took a decision to do something different. And that meant we had to hold the feet of the NHS to the fire and say this is not good enough.'

Sir Keith Pearson, Chair of the NHS Confederation, now Chair of Health Education England

There are two phrases in there that should warm the heart of any Ombudsman.

The first is:

'It resonated with every one of us - it described something we knew was wrong.'

The second is:

'So we took a decision to do something different.'

So, if the application of clear, transparent and consistently applied principles and standards, including public bodies' own internal standards, makes the truth unassailable - and good communication strategies make it more powerful - what makes the truth palatable to public bodies?

Speaking truth to power

What makes the truth palatable?

What makes the truth palatable?

Well the answer to that question is probably, 'Nothing really'.

But I think there can be ways to make the truth more digestible, to make it go down more easily. Here are three that worked for me.

First - no surprises:

- Never say anything publicly that you haven't already said privately.
- Tell them what's coming and when it's coming.

Secondly - roll the turf, try to get a positive response:

- With *Care and compassion?* we had a round of meetings with senior officials and Ministers, in advance of publication, which resulted in them publicly welcoming the report as an important wake up call – and commending it as a useful tool to improve the quality of care.

Thirdly - look for shared agendas, strategic alliances:

- With the *Care and compassion?* report and with an earlier report about the care of people with learning disabilities, we consulted with the standards regulator, the Care Quality Commission, and the Equality and Human Rights Commission. They made positive public statements about the reports and their resonance with their own work and used the publicity to promote their own initiatives in these areas.

As we all know, this sort of thing is much harder to do if you are cold-calling – which is why a stakeholder engagement strategy – and proactive engagement with a wide range of stakeholders - is essential to the success of any Ombudsman’s office in the 21st century. The contacts need to be made, the communication channels opened and trust established before we attempt to speak truth to power.

So those are a few thoughts from a former Ombudsman about speaking truth to power.

And a reminder of the three questions we might usefully ask ourselves as we go about our work in these difficult times.

- What gives the Ombudsman the right to speak truth to power?
- What makes the truth unassailable?
- What might make it easier for those in power to digest – and act on – what we have to say?

I’m enormously grateful to Bev Wakem – and all the IOI Board – for inviting me to contribute to the conference. I’ve had the great pleasure of meeting up again with so many friends and colleagues from across the world - and I hope my reflections have been of some interest.

Questions for discussion

I was asked to pose some questions for discussion – so I offer these three:

- A proactive approach is essential to staying relevant and credible in rapidly changing times. What techniques have delegates developed to make sure that they make time to think strategically and proactively?
- No doubt many delegates will have their own experiences of adapting to changing times. Is there anything more that the IOI could be doing to capture and share those experiences and that learning?
- It has been suggested that the IOI might develop an ‘Ombudsman’s Toolkit’ or ‘Getting Started Handbook’ for newly appointed Ombudsmen. Are delegates supportive of this idea and, if so, can they offer some ideas about what an Ombudsman’s Toolkit or Getting Started Handbook might need to contain?

An Ombudsman's epitaph

Let me finish by looking at these questions from a slightly different perspective.

This is from the perspective of a retired Ombudsman, reflecting on what she would choose to have as the epitaph on her tenure.

My question for aspiring, serving and retired Ombudsmen is this:

- What do you want – and not want - people to say about you?

So I thought I might share with you some of the things that people have said about me – and to me - over the years.

The first is from someone who had had a previous encounter with me in a former role, who wrote:

'My heart sank when I heard you had been appointed as Ombudsman.'

This rather more positive comment was by a journalist writing in the Sunday Telegraph in my early days as PHSO:

'Good old Ann Abraham. What a girl!'

Somewhat more seriously, I would suggest that no Ombudsman would want to people to say:

- That she or he is subjective, biased, lacking intellectual rigour, or – the worst insult for any Ombudsman - irrational
- That she doesn't practise what she preaches
- That she doesn't live in the real world
 - Is out of touch
 - Applies unrealistically high standards

If we are to speak truth to power, it has to be truth that is recognised.

So what do you want people to say to you – and about you?

This is what Mr J said.

'Thank you for pursuing my wife's case so faithfully and with such dedication.'

And these are a few of my favourites:

This is from a Judgment in the High Court in November 2011 following a legal challenge by the charity, Mencap, in relation to the Ombudsman's approach to resolving complaints about poor service provided to people with disabilities.

'The Ombudsman's approach is sensible and lawful'

This is a journalist writing in the Daily Telegraph following the publication of the Equitable Life report:

'It is an enormous piece of work. Its conclusions are trenchant and damning. The factual evidence on which they are based is detailed, objective and balanced.'

'The enormous body of evidence is exhaustively discussed and analysed. It is hard to see how any part of her report can be challenged by the fair-minded.'

And this is a senior manager in the National Health Service:

'It is often a lonely and challenging role to highlight uncomfortable truths but one you have carried out with honesty and fairness at all times.'

And finally, my favourite by far:

This is from the Deputy Chairman of the Westminster Parliament's Public Administration Select Committee, speaking in Parliament in July 2011.

'A genuine representative of the people she served'.

I can think of no better epitaph for an Ombudsman.

Speaking truth to power The Ombudsman in the 21st century

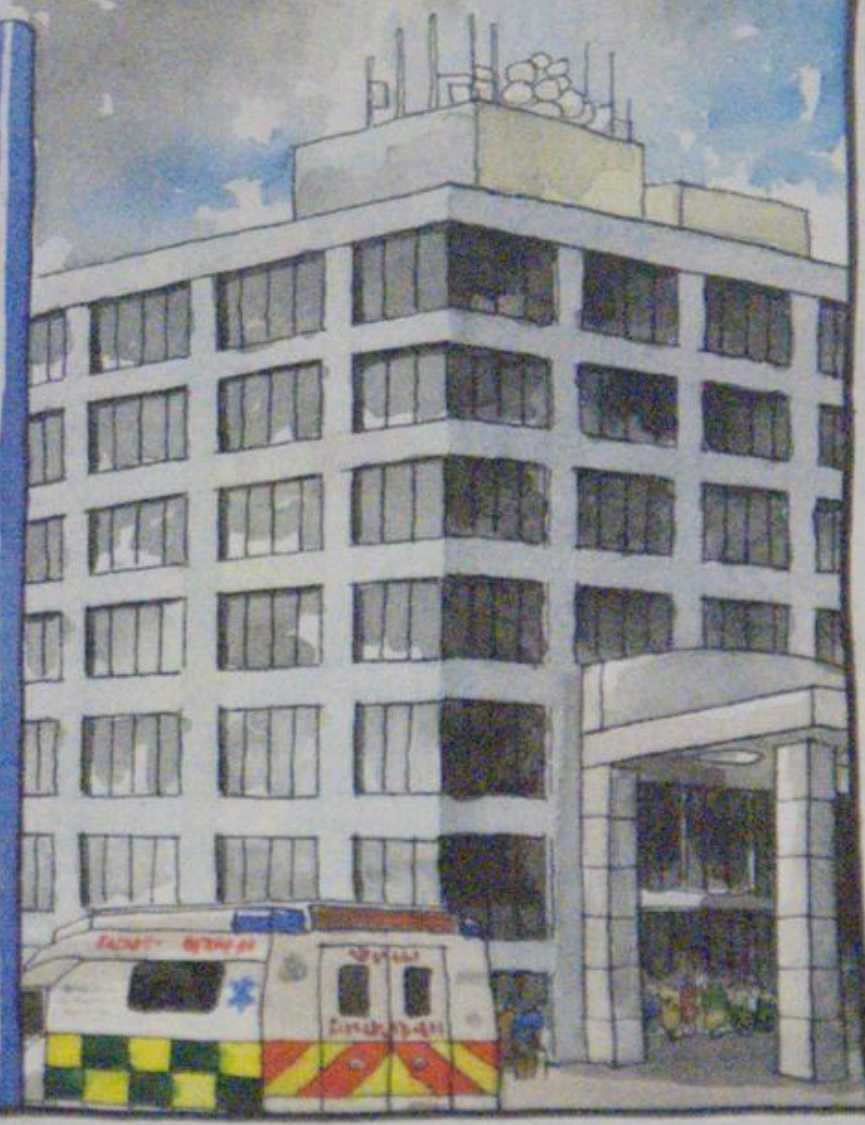
Ann Abraham

UK Parliamentary Ombudsman and
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Peter Brookes
16.11.11

NHS

- ↑ Cardiology
- ↑ Gynaecology
- ↑ Neurology
- ↑ Radiotherapy
- Lack of sympathy →
- Zero humanity →
- Denial of dignity →
- Zilch sensitivity →



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Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective
- Asking for feedback and using it to improve services and performance
- Learning lessons from complaints and using them to improve services and performance

Practising what we preach

- Asking for feedback
- Providing information about how to complain
- Acknowledging mistakes
- Apologising where appropriate
- Providing remedies for upheld complaints
- Learning from mistakes

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Ombudsman's Principles

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Public Service Principles for EU civil servants

- Commitment to the EU and its citizens
- Integrity
- Objectivity
- Respect for others
- Transparency

Ombudsman's Principles

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
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NHS Constitution – Values

- Respect and dignity
- Commitment to quality of care
- Compassion
- Improving lives
- Everyone counts

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Questions for discussion (1)

A proactive approach is essential to staying relevant and credible in rapidly changing times. What techniques have delegates developed to make sure that they make time to think strategically and proactively?

Questions for discussion (2)

No doubt many delegates will have their own experiences of adapting to changing times. Is there anything more that the IOI could be doing to capture and share those experiences and that learning?

Questions for discussion (3)

It has been suggested that the IOI might develop an 'Ombudsman's Toolkit' or 'Getting Started Handbook' for newly appointed Ombudsmen. Are delegates supportive of this idea and, if so, can they offer some ideas about what an Ombudsman's Toolkit or Getting Started Handbook might need to contain?

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