

## **“Promoting good governance in the public interest”**

Speech by Peter Tyndall, Ombudsman and Information Commissioner

Governance Forum, IPA, 27 March 2014

Governance is a topic at the heart of my work as Ombudsman. It’s relatively easy to lead and manage organisations when things are going well and resources are plentiful. However, the real tests of management and governance come when things go wrong. I want to start today by briefly looking at the role and history of my office, before going on to suggest that learning from complaints is a fundamental element of good governance and I will finish by looking to some possible future developments.

Ireland’s first Ombudsman was appointed in 1984. This year we are celebrating our 30<sup>th</sup> Anniversary.

The characteristics which lie at the heart of an effective Ombudsman’s office are

- Independence
- Fairness
- Effectiveness
- Openness and transparency
- Accountability
- Excellent complaint handling and
- Good Governance

Over the past 30 years, the Office of the Ombudsman has firmly established itself as an integral part of the system of administrative justice in Ireland. Administrative justice covers complaints managed by public bodies themselves, public services ombudsmen and ultimately, judicial review by the courts.

Buck, Kirkham and Thompson in their publication, *'The Ombudsman Enterprise and Administrative Justice'* provide a useful summary. They suggest that there are three fundamental elements in achieving administrative justice –

- ✓ Getting it right
- ✓ Putting it right, and
- ✓ Setting it right

Setting it right is the process of improving services by embedding learning from complaints.

Ombudsmen deal with complaints. The people who come to us are not happy about their experience of public services. Often, they will say that their motivation in complaining is to ensure that what happened to them, or indeed their loved one, will not happen to anyone else.

In considering complaints, my office will look firstly to see whether anyone has got it wrong. The initial task of an ombudsman is to consider the facts objectively and to reach a balanced conclusion. But the role of an ombudsman has two components, to investigate complaints, and, to improve services.

Sometimes, people are unhappy even when the service provider has made no mistakes. Our job in those circumstances is to offer an explanation as to how a decision was reached or why an action was taken.

However, if the provider did get it wrong, then we need to establish why, and in doing so, to determine what needs to be done about it. There are, in my experience, four categories of failings which lead to injustices.

The first is the one off error, something which couldn't have been foreseen and is unlikely to be repeated. Other than providing redress for the individual, there is no need for any systemic recommendations here.

The second is a local failing arising from, for example, failures in management, record keeping, training or processes which can be corrected. Here, recommendations can be made to both offer redress to the individual but also to secure change to prevent a recurrence.

This might be to change processes, to introduce training or to strengthen management. One of my personal concerns is that as an office we need to do more to obtain evidence that the necessary changes have been put in place. This particular kind of learning is one which engages governance issues, and to which I will return.

The third category of failing is one where the failing is likely to affect more than one service location. These typically involve failures in guidance or process leading to mistakes across organisations. Here, the recommendations have got to go beyond the individual case and ensure that the underlying cause is addressed, often by Government agencies.

Finally, we sometimes encounter circumstances where an injustice arises not from an error in practice, but as an unintended consequence of a policy or administrative scheme. An example of this was the Motorised Transport Grant, where the provisions of this administrative scheme were not consistent with the Equality Act. You might recall that my predecessor Emily O'Reilly vigorously pursued this issue and there was a great deal of media attention about it. In such instances, the Ombudsman will normally draw the attention of Government to the failings and ask them to address them through revised schemes, legislation or guidance.

Returning to cases where local managerial change is required, ombudsmen often find that despite reassurances that action has been taken to prevent the recurrence of a failing, new complaints arrive with similar, if not identical, characteristics. Typically, this is because the failings arise because of the culture of the organisation, and despite the commitment of managers and those charged with governance to addressing them, the behaviours driving the problems are deep seated and resistant to change, and staff are liable to revert to them once managerial attention moves elsewhere.

Let me illustrate this with an example. In my previous position, I had a succession of complaints about end of life care in a particular hospital. In each instance, I was given reassurances that the matter had been tackled and that the same circumstances would not arise again. My scepticism was reinforced when I received a letter from a woman who had made a similar complaint about the poor care received by her late father in the same hospital ten years previously.

She too had received assurances that the matter had been dealt with and would not happen again. I met separately with the Chair of the Health Board and the Chief Executive. I had no doubt that their reassurances were genuine, and that they believed the action they were taking would achieve the necessary outcomes. I was, nonetheless, not persuaded.

I was convinced that the management and governance structures in place allowed for false reassurances. Senior managers and the Board were receiving messages about action and its potential effectiveness, but did not have the necessary scrutiny and oversight to know whether the action was being taken, and more particularly, if it was working. Ultimately, both management and my office called for the regulator to undertake a detailed inspection, which revealed major shortcomings and led to resignations and new governance structures.

This particular episode also has strong resonance with the Francis report into Mid Staffordshire Health Trust. Failing to use the intelligence from complaints led to unnecessary deaths and very poor care continuing. Those charged with governance simply were not in a position to know what was happening, and were far too readily reassured. In circumstances such as these, it is essential that senior managers have detailed knowledge of complaints and other failures, that they see that plans are in place to address these failings, and receive clear unequivocal feedback on the implementation of these plans and the outcomes. Good organisations use complaints to drive improvement.

How they do so depends very much on the leadership style of the people at the top. One Chief Executive I dealt with greatly disliked having his organisation criticised in reports, and kept a personal overview of complaints which were not being resolved to avoid any reaching the Ombudsman. This is not necessarily an approach that would win favour in management journals, but is nonetheless effective.

Other Chief Executives seek to ensure that there is good visibility of complaints at every level, and that staff are empowered to make changes to resolve them and avoid recurrence. They also ensure that their Boards or others charged with governance are regularly updated and have sight of not just their own organisation's failings, but those of others so they can avoid repeating them.

Learning from complaints is a key characteristic of well performing organisations. It's good to learn from your own mistakes. Better yet to learn from those of others. The phrase Right First Time is a useful description of a key characteristic of good administration, and of course, the avoidance of mistakes saves time and money, as well as enhancing reputation.

One key innovation which my Office will introduce to promote learning is our new 'Ombudsman casebook'. This will be issued quarterly later this year and will include summaries of cases which have been examined or settled, as well as those which have been investigated. At the moment, only a small number of cases are published, and a selection of others is included in the annual report. By publishing summaries of many more cases on a regular basis, we believe that service providers can learn from the failures of others, and it will also help to reveal patterns of failure which may prompt future systemic investigations.

At this point I should mention my role as Information Commissioner, and Commissioner for Environmental Information. This role complements that of Ombudsman by promoting openness and transparency in the decision making of public bodies alongside the promotion of good administration by the Ombudsman.

In the coming months, there will be major changes to the FOI regime when new legislation is enacted. The implications of the FOI Bill include an extension of the remit of FOI. The FOI Act currently applies to approximately 480 public bodies. The FOI Bill proposes to extend FOI Act to a range of additional public bodies (up to 100).

Last year, the Ombudsman Amendment Act extended my remit to cover the administrative actions of around 200 additional 'public bodies', including publicly funded third-level education bodies, such as universities and institutes of technology.

The Amendment Act also placed a new duty on public bodies to provide reasonable assistance and guidance to the public to ensure that they are dealt with fairly and impartially, and to provide information on any rights of appeal or review they may have.

An element of the Ombudsman legislation which I am particularly keen to pursue is the extension to bodies with significant public funding. We have an increasingly diverse world of public service where substantial elements of provision are delivered by private sector or voluntary bodies. I believe that even where a public service is delivered by another organisation, independent redress should be retained or provided through my office or another appropriate route.

This leads me on to my ideas and hopes for the future.

Looking forward I see a number of areas where there is potential for improvement. I include in this the improvement of oversight by extending the Ombudsman's jurisdiction to include public services provided by certain private bodies.

In April 2013 The European Council adopted two key legislative measures regarding dispute resolution. One was a Directive on alternative dispute resolution (ADR) and the second related to online dispute resolution (ODR). The aim of both was to offer consumers fast and cost-effective means to resolve disputes with businesses.

The ADR Directive imposes a requirement on EU member states to offer effective access to ADR services for resolving contractual disputes between consumers and businesses concerning the sale of products and services.

Over the years many services formerly provided by the public sector have been privatised – including, for example, energy suppliers and telecoms. These often fall into the category of networked services. So, what's this got to do with the Ombudsman you might ask? Well, for services provided by the state, there is clarity about access to redress. But when services are privatised, access to redress can become very unclear and even lost. It also raises the question – when do services provided for the public stop becoming public services?

The changes in the way public services are delivered have had a variable effect on access to redress. Some companies, such as Eircom, provide services that were once within the jurisdiction of the Ombudsman, but no longer are. Under the EU ADR directive, all of the networked services, including post, electricity, gas, public transport, and telecoms will have to come within the jurisdiction of an ADR entity.

It is my view that they should come within the jurisdiction of the Ombudsman, to offer a one stop shop approach to redress for public services. The Ombudsman's office would then cover a mixture of state, independent and private bodies, a so-called hybrid model. However, this would not be an entirely new development as many services already under jurisdiction are provided by independent or private bodies on behalf of the State or Local Authorities. The new provision to draw in significantly funded bodies will introduce many more non-state-bodies into jurisdiction; the template is already in place.

A more fully evolved hybrid model would however need to see changes in the way the Office of the Ombudsman operates. At the moment, I make recommendations and do not have binding powers. My office is funded from the public purse, rather than by bodies in my jurisdiction. Private Sector Ombudsmen (such as the Financial Services Ombudsman) can be established by law and organisations in their jurisdiction can be required in law to co-operate with them. One important distinction from public services ombudsmen is that although such schemes can be created by statute, their funding is usually provided by the industry sector in which they operate, and not by the state.

In the hybrid model I am proposing, it is likely that binding powers would be needed in respect of private providers, who would be less susceptible to the democratic process and criticism by the Oireachtas. Funding would also need to come from the industry, whether through a levy, a charge per case, or a combination of both. The cost should not fall to the public purse. The cost can act as an incentive to get things right in the first place – the so-called “polluter pays” principle.

Such hybrid Ombudsman schemes operate successfully in Australia and elsewhere, and Ireland now has an opportunity to follow their example. It is the job of the State to ensure that citizens have access to public services. It is also widely accepted that citizens should have access to independent redress in the shape of Ombudsmen. Growing complexity in service provision should be counterbalanced by simplicity in accessing redress.

Often, complaints considered by my office about the services provided by public bodies have been compounded by very poor complaint handling. People face delays, a lack of information, incomplete answers, defensive attitudes and no effective redress. Widely varying approaches to complaint handling abound, with no obvious rationale for the differences.

Introducing a standard approach to complaint handling across the public sector, setting out clear timescales, standards for responses, a common approach to redress and above all, a focus on tackling most dissatisfaction at the time it arises, can bring real dividends. I want to work with Government and public service providers to introduce a model complaints policy to be used across all public services in Ireland. This has the potential to lead to greatly improved complaint handling. It means that a single investigation can address complaints across multiple providers. It allows for standardised complaint training for staff of all public service providers. It gives complainants certainty about what they should expect. A Model system would be streamlined and based on an “Investigate Once, Investigate Well” approach. It would eliminate multiple stage processes which create work and delay resolution.

Making it easy for people to complain is essential if we are to improve public services. I want people to be told as soon as they complain to any public service provider about their right to complain to the Ombudsman or to appeal to the Information Commissioner if they remain dissatisfied. I want them to be able to complain in a way which they find convenient, in a language they are comfortable with and in a medium which suits them, whether that is in a letter; filling in a form by hand or on-line; on the phone or in person. As social media, smart phones and tablets are now common; we need to facilitate their use in contacting the office, while not neglecting the interests of those who prefer more traditional means. A standardised public sector complaint process would also make it easier for the agencies within jurisdiction, with no need to re-invent the wheel and ready access to validated training modules, for example.

The complex pattern of public service delivery can also serve to confuse people who want to complain. They are not always sure where they should go and how they should make a complaint.



If you take the case of Irish Water as an example, they have contracted local authorities to undertake work on their behalf, such as fitting water meters, and they in turn use contractors. If a contractor damages the gas supply while fitting the meter, as happened in a recent case brought to my office, who should you complain to?

One way to address this confusion is to provide a single portal for all public sector complaints. The website [www.healthcomplaints.ie](http://www.healthcomplaints.ie) which was developed by my office in partnership with other bodies is a useful building block towards a telephone and online service which can signpost people who want to make a complaint about any public service, or capture that complaint and send it on their behalf. My Office already signposts many complainants to the appropriate agency or Ombudsman. Extending this service would cost money, and would need to be funded, but it is an idea we plan to develop for the future.

In its thirty years the office of the Ombudsman in Ireland has developed an enviable reputation for doing what Ombudsmen the world over do, highlighting failings and getting things put right. During my term of office I plan to build on its successful track record to continue to put things right for individuals while driving improvement in our public services.

Thank you for your attention.

**END**

You can contact the Office of the Ombudsman:

Website: **[www.ombudsman.ie](http://www.ombudsman.ie)**  
E Mail : **[ombudsman@ombudsman.gov.ie](mailto:ombudsman@ombudsman.gov.ie)**  
Telephone: **01 - 639 5600**  
LoCall: **1890 22 30 30**

Follow the Ombudsman on Twitter - [@officeombudsman](https://twitter.com/officeombudsman)