

## **Appearance before PSOP – 1 October 2014**

Chairman, Members

I am very grateful for the invitation to speak with you today. I welcome your initiative to review what an Ombudsman is, what an Ombudsman does and what the public expect or understand is the role and function of an Ombudsman. You have posed a series of questions which I will address briefly in my opening remarks and which I am sure will form the basis of the subsequent discussion.

The Ombudsman is the ultimate element of a complaints system. Ombudsmen offer individual redress to service users who believe they have not been treated fairly or not received a service to which they are entitled. Ombudsmen determine complaints individually on their merits. They are not advocates for service users, unless a complaint is upheld. When a complaint is upheld, they endeavour to put the complainant back in the position they would have been in had the injustice not occurred. Our service is free, independent and impartial.

Ombudsmen also work to improve public services using the lessons they have learned from complaints. To that end, I am pleased to be able to announce that the first edition of the on-line Casebook which I have previously discussed with you is now available. This is particularly aimed at service providers so that they can learn from their own mistakes and those of others. One Local Authority has already described it as “a fabulous resource”. (The casebook can be seen at [www.ombudsman.gov.ie/casebook](http://www.ombudsman.gov.ie/casebook).)

In considering the fundamental characteristics of an Ombudsman it is particularly helpful to look at the definition of Ombudsman as it exists in the recognition criteria of Ombudsman bodies. The British and Irish Ombudsman Association have a set of criteria, and I will draw on them as I speak. I have attached a copy to my paper which I submitted to the Committee together with a copy of the similar criteria for the International Ombudsman Institute.

Both sets of criteria emphasise above all the importance of independence, particularly from bodies in jurisdiction. They say that this independence should be guaranteed in the statutory basis of the Office, and I would argue as have my predecessors, that this should be underpinned by constitutional status as is the case in many countries worldwide. They talk about the need for appointment processes which are also independent of any body in jurisdiction. They stress the importance of having a term of office which is long enough to enable the Ombudsman to be effective. They emphasise the role of independent funding and having sufficient resources to do the job properly, an issue which came to the fore when Michael Mills

was Ombudsman. They also speak of the need for a comprehensive jurisdiction, and sufficient powers to undertake investigations and to report on the outcome.

The Ombudsman's Office in Ireland has been highly regarded for the 30 years of its existence, and I have paid tribute in the past to the achievements of my three illustrious predecessors and the staff of the Office. It has been successfully modernised over the years and has recently benefited from a comprehensive development following the 2012 Amendment Act. However, I believe that there is considerable scope for further development.

In considering how the Office measures up to the international criteria, I will also endeavour to answer the questions you have raised.

I believe that all users of all public services should have access to fully independent redress. That is not the case currently. I have spoken with you previously about the impact of changes in the way in which public services are delivered. The recent removal of water services from my jurisdiction, just at the point when complaints are likely to increase, is a wholly retrograde step. I should stress that although there have been discussions between the Commission for Energy Regulation and Irish Water regarding a voluntary arrangement for independent review, the Commission's website as of today refers all complaints back to Irish Water. Even were a voluntary arrangement in place, this would not be an appropriate alternative to proper statutory access to redress.

In any event the role of a regulator is not to examine complaints and provide individual redress. Regulators and Ombudsmen should work alongside each other, one regulating and the other investigating complaints, as is the case in Health, for example, where the Ombudsman can investigate individual complaints while HIQA regulates. Any lessons arising from the Ombudsman's work are fed into the work of the Regulator to ensure that services are improved.

There are other key aspects of the public service which remain out of jurisdiction, despite the very welcome extensions in recent times. These include areas where vulnerable individuals are often particularly in need of independent redress including prisons, asylum and immigration services, particularly Direct Provision, and clinical judgement in the health sphere.

You have heard my predecessors and me ask regularly for jurisdiction in prisons and over immigration matters. Most developed countries have access in these areas to truly independent redress, a service usually provided by an Ombudsman. I believe there comes a time when the arguments against giving an Ombudsman jurisdiction must be put to one side and the right thing should be done. I hope we are approaching that time.

With regard to complaints about health and social care; there is no statutory right in this country to have a complaint examined, either by the HSE or by me, where it relates to the judgement of a clinician in the diagnosis or treatment of a condition. This is not in the citizen's interest, nor is it in the interest of accountability and good governance. I believe the law should be amended to widen the citizen's rights in this area, as has been done in Northern Ireland, England, Scotland and Wales, for example. Bodies such as the Medical Council can look at clinical judgement, but patients and families should not be limited to going to professional regulatory bodies to examine such matters. My office has access to independent, expert advice which can assist us in examining complaints relating to clinical judgement.

I believe that to be independent, public services ombudsmen should be funded directly from the central fund in respect of publically provided services and from the bodies in jurisdiction by way of a levy or a charge per case where services are provided privately.

Where services are privately provided, the Ombudsman's recommendations should be binding on the body in jurisdiction and only capable of review through the courts. Where they are publically provided, then there must be democratic accountability for the implementation of recommendations. The role of this Committee is vital in the accountability framework. I believe findings should be legally binding, but that recommendations should be subject to the democratic process. The suggestion regarding recommendations is worthy of serious consideration.

The ability or otherwise of public bodies to grant redress or other remedies on foot of an Ombudsman recommendation also needs to be addressed. Ombudsman legislation often makes explicit provision regarding the authority of bodies in jurisdiction to comply with the Ombudsman's recommendations or proposals for settlement. Where this is the case, there is no need for separate provision in the legislation covering the provision of public services. An explicit statutory authority allowing all reviewable agencies to make any expenditure arising from a recommendation made by the Ombudsman (for example, the payment of redress or a payment with regard to time and trouble), without the need to seek sanction should be included in any new legislation to avoid any doubt which may exist regarding the entitlement of bodies to comply.

Creating the authority for bodies to comply in this way would in no way bind them to do so. This would remain a decision for them to take, but with the provision that such non-compliance could, as now, be reported to this Committee and to the Oireachtas.

I would also like to mention briefly the subject of powers. Ombudsman investigations are conducted confidentially, and there should be no obstacle to the Ombudsman

obtaining or viewing any information required to properly investigate complaints. The current situation is not satisfactory and doubt exists regarding some classes of information and legal privilege is sometimes claimed. This should be addressed in any new legislation.

In my view, the perceived impartiality of the Office would be enhanced by constitutional status and by allowing greater freedom in the recruitment of staff. The Office outlined its case in detail in its submission to the Convention on the Constitution and I have provided a copy of the submission for the information of members. Changes to the appointment process of the Ombudsman, and financial independence from Government would also assist.

I believe we have a historic opportunity to revisit the Ombudsman landscape in Ireland. The Office of the Ombudsman should become a constitutional one, the appointment and funding should be undertaken by the Oireachtas and the remit should be extended to all public services, however delivered. The other existing Offices dealing with public services would benefit from similar changes.

On the private sector issues, the existing Financial Ombudsman should be supplemented by a consumer ombudsman dealing with the wholly private sector and funded from the relevant industries. In this way all service users in Ireland, whether they are accessing public or private services, would have access to effective redress when things go wrong, and there would be mechanisms in place to drive improvements in services for the benefit of all.

Finally, as we have discussed previously, I would like to see a standard approach to complaint handling across public services, 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, would bring real dividends. I believe there should be a common complaints policy used across all public services in Ireland. It would mean that a single investigation could address complaints across multiple providers. It would allow for standardised complaint training for staff of all public service providers. It would give complainants certainty about what they should expect. A common complaints system should be streamlined and based on an "Investigate Once, Investigate Well" approach. It should eliminate multiple stage processes which create work and delay resolution.

In order to do this, legislation along the Scottish model, where the Ombudsman is the statutory Complaints Standards Authority, would allow the Ombudsman to develop a common approach and ensure that it was effectively implemented. In addition, power to take action to improve complaint handling, e.g. through training, issuing guidance, signposting complainants etc. would be highly desirable.

I would also like to see the introduction of a single portal for all public service complaints which would allow service users to make their complaint on line, by letter

or by phone without needing to negotiate the maze of complaints processes which exist at the moment.

By simplifying and modernising our complaints landscape, we can ensure that we have excellent public services that are improved continuously by learning from their mistakes, and that users of public services can expect to have things put right promptly when they go wrong.

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