

Emily O'Reilly's speech

Lord Chief Justice, Ombudsmen, Ladies and Gentlemen, it is a great honour to be invited to speak at this very special anniversary event and I am very grateful to Dr Tom Frawley for the invitation to do so. At dinner last night, we toasted and celebrated with appropriate levels of gusto, the 40th birthday of the Northern Ireland Ombudsman's Office. Today, in the more formal surroundings of this conference and with us all hopefully in a collective state of complete sobriety, let me again congratulate Tom's Office and wish it continued success in the years ahead. As the incumbent of a sprightly 25 year old Office we have, I suppose, only recently come of age. But during its formative years, and just as would happen with a younger sibling, my Office was guided and supported by its Northern Ireland counterpart. I want to put on record our appreciation for that support, which came not only from Tom's predecessors but also from the staff of the Office.

We are bound not only by close ties arising from the common interests we share as two Parliamentary Ombudsman Offices within the same island. Our relationship is also both unique and novel. I refer, of course, to developments arising from the Good Friday Agreement which gave both our Offices jurisdiction over the North South Implementation Bodies. These bodies were established in December 1999 following an international agreement between the British and Irish Governments and are funded by the relevant government departments, north and south. The legislation underpinning ombudsman oversight of these bodies obliges the Offices to consult each other in relation to the handling of complaints and, where appropriate, files on such complaints may be exchanged or, indeed, one Office may assign a staff member to assist the other Office in the conduct of a particular investigation. However, the determination of any particular complaint rests solely with the Ombudsman within whose remit it falls. These cross-border cooperation arrangements between two Ombudsman Offices are, I think, unique. They are also novel in that they provide a practical and finely-balanced method

of overseeing the decisions of public bodies whose remit covers both Northern Ireland and Ireland. And one of the more pleasing side-effects of these arrangements is that it institutionalises cooperation between our respective Offices.

In 1969, when the Northern Ireland Ombudsman Office was established, there were about ten such offices world-wide. Today there are more than one hundred. Looking back over those forty years - which also almost exactly span the duration of the "Troubles" - I doubt if any other office has witnessed anything like the same degree of political and social change. And quite apart from the changes, one can only barely imagine the challenges the Office faced in those early days in asserting and protecting its independence and impartiality across the divided Communities, challenges which Maurice Hayes so skilfully outlined earlier. But its efforts were recognised and rewarded. The prize, and one much cherished by the then Ombudsman, Gerry Burns, and his staff, was a new status deriving from the creation of the Northern Ireland Assembly.

The theme of my paper today is also about change, specifically, the role of the Ombudsman in an economic downturn. I am not going to rehearse here the cataclysmic series of events that led to the financial crisis in the South, or as Phoenix magazine describes it, "Hibernicus Apocalyptus". It would be too depressing to do so. Besides, today is a celebration and I have no intention of prematurely snuffing out the birthday candles. However, I would like to share with you some of the challenges that my Office is facing now that public bodies are suffering drastic cuts in their budgets.

Before doing so, I might briefly remind you that my Office was a casualty of the last recession in the late 1980s and only narrowly survived a series of disproportionate cuts. It was almost a case of sudden death syndrome, as the Office had been in existence for only three years at that time. Following a general election in 1987, the incoming

Government, responding to the emerging fiscal crisis, set about implementing a round of swingeing financial cuts in the budgets of government departments and offices. Many areas of expenditure were cut back. Vacant posts were left unfilled, recruitment was put on hold and the Civil Service Commission was put on a caretaker footing. But disproportionate cuts were made in the budget of the Ombudsman's Office to the extent that it was unable to handle its caseload. As one commentator put it:

"These reductions were explained by reference to the crisis in public expenditure and to cuts elsewhere in the public service. But it was noticeable that the cuts in public expenditure in other sections of the public service did not amputate nearly a half of the establishment."

The late Michael Mills, who was Ombudsman at that time, responded by making a special report to the Oireachtas highlighting the effects of the cuts which resulted in the loss of almost half of his 16 investigator posts. He called on the Oireachtas to intervene in having his staffing complement restored. The dispute received extensive media attention fuelled by reports that the then Taoiseach, Charles Haughey, was hostile to the concept of an Ombudsman's Office and to Ombudsman Michael Mills, in particular. Further evidence of this personality clash was Haughey's decision to wait, quite literally, until the very last moment before nominating Michael Mills for a second term as Ombudsman in December 1989. However, the Ombudsman's special report secured the strong support of the Oireachtas and had the desired outcome in that it led to a restoration of the Office's staff albeit at somewhat reduced levels than existed prior to the budgetary cuts.

The degree of stress that this caused on a personal level to Michael Mills, who sadly passed away last year, was revealed publicly at his funeral when a priest friend recalled how Michael had spoken of the tremendous personal pressure he was under during that period and had asked for prayers. That to me underlines the particular pressure

that all Ombudsmen are subject to when we take a battle to a certain point and then have to put our faith into parliament or Oireachtas to do the right thing.

The debacle might well be an example of what Maurice Hayes - a good friend of Michael's - described as "the executive's attempts to muzzle the watchdog or induce torpor through malnutrition".

Fortunately, there has been no repeat of this approach but it does underline the need for proper safeguards to protect the institution and its finances from disproportionate cuts. One of the most effective ways of doing this would be to afford constitutional status to the Office. Although recommended, regrettably this has not yet happened in the case of my Office. As far back as 1996 an independent review of the Constitution reported as follows:

"It is clear that in recent years a consensus has emerged in the two Houses of the Oireachtas about the desirability of not only maintaining the institution of Ombudsman but of strengthening and developing it. The role of the office will become all the more necessary if devolution and delegation within the public service develops as envisaged..... A constitutional guarantee for this independence would reinforce freedom from conflict of interest, from deference to the executive, from influence by special interest groups, and it would support the freedom to assemble facts and reach independent and impartial conclusions."

The Review Group went on to recommend that a new Article be inserted in the Constitution confirming the establishment of the Office of the Ombudsman, providing for the independent exercise of such investigation and other functions of the office in relation to administrative actions as might be determined by law and making other provisions similar to those applying to the Comptroller and Auditor General and

consistent with Ombudsman Act, 1980, as amended.

Subsequently, an All-Party Oireachtas Committee on the Constitution in its First Progress Report (April 1997), endorsed the Review Group's recommendation and recommended a specific text for inclusion in the Constitution. As I have said it is regrettable that the Committee's recommendation has not yet been implemented, but at least the importance of maintaining and strengthening the Ombudsman's Office has been clearly recognised. On the occasion of my Office's 20th anniversary, and thinking it would make a nice birthday present, I called on the government to initiate the process of conferring constitutional status on the Office. I pointed out that such status was very much the norm in other modern democracies. Regrettably, my call fell on deaf ears. But not being one to give up easily, this time I am shouting it from across the Border!

I now want to move on to the role of my Office in an economic downturn. And I would like to begin by posing a question. What is it that makes an Ombudsman's Office effective in the first place?

As I see it there are three principal requirements. First, it helps if the Ombudsman operates in a public service culture which is disposed towards modernisation, continued improvement and is client-focused. A central aspect of all public service modernisation programmes is to make the public service concerned more responsive to clients' needs. And a key element in this process is the attitude adopted to complaints and how they are handled within public bodies. Thus, the modernisation programme can help to create an environment where public servants are more responsive to complaints against their organisations and, in turn, more receptive to the role which an Ombudsman plays in this process. In short, a complementarity is created between the objectives of the modernisation programme and those of the Ombudsman.

The second requirement is an office which itself embodies all of the criteria and

principles of a soundly constituted Ombudsman's Office. I am thinking here of the criteria for full membership of the British and Irish Ombudsman Association (BIOA) (independence, accessibility, effectiveness, fairness and public accountability). It will also conform to other BIOA standards in relation to principles of good complaint handling and good governance. And it will embody best practice in terms of principles of good administration and provision of remedies.

The third requirement for effectiveness comes draws on the personal skills of the particular Ombudsman. The principal requirements are strong leadership, courage and tenacity, a sense of fair play, a client-focused approach, an understanding of the culture and values of the bodies in jurisdiction, a focus on systemic change and a strong sense of what is achievable and what is not.

The second and third requirements might be loosely called "structure" and "style" and I do not intend to dwell any further on them. But I do want to say more about public service modernisation. It seems to me that in an economic downturn this is the area that has most implications for the Ombudsman's effectiveness.

As it happens, 2009 is also the 40th anniversary of the first significant move to modernise the Irish public service. This followed from the publication in 1969 of the Report of the Public Services Organisation Review Group (popularly known as the "Green Devlin Report") which, in yet another coincidence first mooted the ombudsman concept. The Group made recommendations for the restructuring of government departments along policy and executive lines. It also proposed the creation of a new appellate system including the appointment of a Commissioner for Administrative Justice. These proposals were based on the recommendations of a working party chaired by the Chief Justice. The proposals were, in fact, bound up with the Review Group's central recommendation of a restructured public service in which Ministers and their immediate staffs would formulate policy while responsibility for its day-to-day

implementation would be given to executive units with a high degree of freedom from Ministerial intervention. Within these units the Group envisaged delegation of specific executive actions to designated officers. As a consequence, it was recognised that this would necessitate the development of new means of redress for the aggrieved citizen.

A new government department, the Department of the Public Service was established in 1973 to implement the Review Group's recommendations. It had limited success; Ministers, for obvious reasons strongly opposed the policy/executive divide. However, the Department successfully initiated the Ombudsman Bill which led to the appointment of the first Ombudsman in 1984. The Department itself survived for just three more years before being subsumed into the Department of Finance.

The other most significant modernisation initiative began in 1994 and focused on strategic planning, performance management and development, customer service action plans, improved financial management and freedom of information and ethics legislation. The outcome of these initiatives has been very much of the curate's egg variety: a lot of mixing and matching, inconsistent take-up across the public service, deficiencies in coming to grips with cross-cutting initiatives and a worrying focus on process rather than outcomes. Subsequently, the Government commissioned the OECD to carry out an evaluation of the Irish public service and in 2007 it published its report "Ireland: Towards an Integrated Public Service". The Report called for a more integrated and more performance focused public service. The Government Task Force set up to implement the Report's recommendations identified the need for a citizen centred, performance focused approach to transforming public services - a theme which we all can agree, is dear to every Ombudsman's heart.

As you will appreciate, the financial crisis of the past year has pushed the OECD report from centre stage. But the Government remains resolute about the need for public service reform albeit mainly with a view to reducing the overall public service pay bill. It

wants a slimmed down public service with greater productivity and outputs but it will not be until December's Budget and beyond that the details of what it intends will be revealed.

So how have these various modernisation programmes and the recent downturn affected the work of my Office? Is the Irish public service getting any better and has my Office made any difference? Let me give a very brief assessment.

The Irish public service is operating today in a radically changed environment to what it was when my Office was established. Irish society is now more secular, pluralistic and despite the downturn, more affluent. The public service has responded well to these changes and its role in facilitating the Celtic Tiger years has been widely acknowledged. It has become more business-like in its approach to service delivery although much work still remains to be done. Quite reasonably, there is emphasis on efficiency, value for money and so on. The vocabulary of public service reform is taken from the world of business. But it sometimes concerns me that, in the midst of this change, we may lose sight of some of the fundamental values which have informed our public service since the creation of the State. These are values which, in many important respects, are at odds with the values of business. They have to do with fairness, equality, integrity, and a recognition of the notion of the common good. Efficiency and cost-effectiveness are, of course, key elements which the public service must pursue, but it must never be forgotten that, unlike his or her counterpart in the private sector, the user of public services seldom has a choice of an alternative competitive supplier. Fair treatment is vital and must not be lost sight of when efficiency measures are being introduced.

While it is not easy to identify any single trend running through the complaints I receive, I do detect that the values of fairness and upholding the common good, to some extent are under threat. It is not by any means that public servants set out to be

deliberately unfair or discriminatory in their approach to service delivery. They do not, and I do acknowledge that the vast majority of transactions between public bodies and their clients are carried out in a proper, fair and impartial manner. But particularly in these straitened times, public servants can struggle to meet competing interests of reduced budgets while, at the same time, attempting to meet rising demands for services. Inevitably, it is the budgetary constraints that win out. For example, over the years, my Office has seen instances where public bodies have introduced upper age limits to ration grants even though they had no legal authority to do so. We have seen homeless single people refused consideration for housing on the grounds of limited housing stock and the more pressing needs of homeless family units. It may seem reasonable to create such priorities but not when the governing legislation does not, in fact, authorise a public servant to ration resources in this way. We have seen nursing home subventions refused to elderly people on grounds of excessive means only to discover on further probing of the complainants' circumstances by my Office, that the means ought not to have been taken into account in the first place.

It is often very difficult for any person who has been refused any of the above benefits or services to mount a successful appeal. A decision to refuse can look convincing to a lay person particularly when it begins with the words "it is not the policy of the [Minister, Health Service Executive, Local Authority, etc.] to pay a grant/benefit to someone in your circumstances". Many people will not even think it worthwhile referring the matter to my Office because of their genuine, but mistaken belief that they have no entitlement to the grant/benefit in question. But of course, those that do come to my Office, immediately have at their disposal the experience of my staff and their expert knowledge of all the relevant schemes and programmes.

I have no idea how many transactions are carried out by public servants every day. Clearly, the number must run to millions. And as I have said I accept that the vast majority of these are properly conducted. However, despite all the modernisation

initiatives and despite all the reviews and reports, I sometimes wonder how many public servants remain untouched and unaffected by all the talk about providing a better service to clients. You can teach people the rudiments of strategic and business planning, you can teach them how to manage the performance and development of staff and you can teach them how to draw up a quality customer service action plan. But at the end of the day, these are nothing more than processes. And although I would be the first to acknowledge we have to start somewhere, is it not possible that for some people at least, these may be nothing more than box-ticking exercises which make no impact at all on their attitude or behaviour towards clients?

Let me give you an example. By means of an informal social contact, one of my officials was told that a particular manager in a particular public body was regularly allowing his own personal prejudices to influence how he assessed applications for a particular service or benefit. His staff were very concerned about his behaviour but felt powerless to do anything about it. His own manager was unaware of the problem mainly because the assessment of applications was a delegated function. One of the unsuccessful applicants complained but the manager concerned refused to review his decision. The complainant then approached my Office and following contact with the public body, my Office upheld the complaint. At this point, my Office had no knowledge of the personalities involved.) However, as our contact subsequently informed us, the decision to uphold the complaint was considered and accepted at a higher level in the public body. This, in turn, triggered an internal review of other decisions of the manager, and to the considerable delight of his staff, resulted in his being moved to another area of work. Anecdotal, I know, and I am not drawing any other conclusions from the story. However, it at least begs the question as to whether we are underestimating the barriers to change and making too many assumptions about how change is inculcated within the public service.

Another area of concern arises from privatisation of public services and its effect on

core public service values. I have already witnessed these effects in the local authority service where the privatisation of waste collection services has made it increasingly difficult for local authorities to administer waste waiver schemes in respect of the charges payable by low income households. While many local authorities are very conscious of their social obligations in this regard, a small number seem to be moving towards the rules of the market-place stating that they are in competition with private operators and for that reason are unwilling or unable to introduce a waiver scheme for clients of the private operators. I carried out an own initiative investigation of this issue and my report which I published last year, is on my website (www.ombudsman.ie).

The OECD Report, to which I referred earlier, describes the public service's core values as "its greatest resource". Among these values are integrity, impartiality, effectiveness, equity and accountability. As we move towards a more challenging time for our public service, there is an obligation on Government, the Oireachtas and public servants to ensure that this remains the case.

Above all, in a downturn, the Ombudsman has to remain resolutely true to the values of the great institution that we serve. We may have to bend and bow with the economic winds but we cannot allow ourselves to break or to be broken. One economic commentator wrote in the Irish Times last week that fairness has to be a secondary consideration when the country's very solvency is threatened. I could not disagree more. Societies achieve strength and cohesion not just, not even, from tangible economic gifts, but from the intangible, transcendent gifts of trust, of mutual respect and co-operation, of fairness of equity. We splinter, fall apart, self destruct when those values are crushed beneath the heels of an over riding economic imperative. It is our job as Ombudsmen to preserve, protect and defend them and to educate others to see the actual economic value of so doing.

Finally, on a personal note, may I pay my own tribute to Tom. He has been a most cherished member of our little British and Irish public sector grouping, but more than that he has been a great friend and one who has brought enormous fun - as all of you here can imagine - to our gatherings. My most vivid memory is of sitting beside Tom, late at night, on a bus bringing us back from yet another dinner at yet another Ombudsman gathering somewhere in Europe. As each Ombudsman stepped aboard, Tom greeted them all in the manner of Terry Wogan at the Eurovision. Slovenia, he would cry, Austria, Catalonia. Everyone of them, naturally, being slightly less forward shall we say, than the Irish contingent, wished fervently that they were actually under the wheels of the bus instead, but it was highly entertaining to those of us who had thankfully managed to slip aboard before Tom did. So Tom, could I say, on behalf of all of your colleagues, may the wheels of your bus go round and round for many more years to come.