

## **Address of Dr Tom Frawley CBE**

### **Acknowledge the Past, Preparing for the Future**

It is my privilege as the current Ombudsman to address you on this the 40<sup>th</sup> anniversary of the establishment of the office of the Northern Ireland Ombudsman. We have heard today from distinguished speakers and guests about the impact of this office over the last 40 years and the constitutional significance of the Ombudsman. In doing so I wish to thank our learned and eloquent speakers, invited guests and my staff who have contributed so much to today.

Events like this provide an opportunity for reflection, to acknowledge the past, recognise the present and contemplate the future.

We are here also to pay tribute to former Ombudsmen and staff who have worked as part of the administrative justice landscape to address citizen's grievances. We look forward to the next decade and beyond to anticipate the emerging issues and prepare to meet these challenges

My Office is an important part of the system of administrative redress. Since its inception in 1969 there have been many changes in public administration and the office has evolved to meet those changes. All here have been affected by those changes and reviews of public services, whether as recipients of those services or in delivering the changes. We

have witnessed realignments, increased scrutiny and accountability as well restructuring across the Northern Ireland public sector. This modernisation goes unabated. With rapid change comes a sharpened need for a strong Ombudsman to protect the rights of all Northern Ireland citizens. A recent Omnibus survey revealed a high level of awareness of the existence of my Office but it is not until a person feels they have suffered injustice that the existence of my office becomes real and relevant. There remain gaps in the awareness of young people and certain other groups of the existence of the 'Ombudsman' and I intend to address this.

[The Lord Chief Justice has today described the complementary relationship of the Ombudsman to the courts and tribunals. In his address Sir Declan emphasised the importance of the office of Ombudsman as an integral part of that administrative justice landscape.]

We have heard from Dr Maurice Hayes with an interesting and insightful journey through the Office of the Ombudsman over the years. The pioneering work undertaken by previous office holders explored the boundaries of that amorphous phrase 'maladministration' in order to tackle injustices. I believe that one of the great strengths of the legislation which underpins my role is that 'maladministration' is not defined so that successive Ombudsmen can interpret this in the social and cultural context in which they operate.

I am delighted to be joined today by Ombudsman from other jurisdictions and we have enjoyed the wider perspectives of Ann Abraham

Parliamentary and Health Service Ombudsman and the Ombudsman for Ireland, Emily O'Reilly. Emily spoke to us from the perspective of an Ombudsman 'operating in a downturn', something we are also experiencing. This brings added pressure for government and citizens but renders our work more important than ever to ensure standards of public service are maintained. Emily's insights are therefore timely but of concern. Ann Abraham reminded us of the relationship of the Ombudsman to the legislature, the Executive and the judiciary, all represented here today. She reminded us of the true purpose of an Ombudsman and the challenges facing the role particularly in a devolved context. I join with Ann in seeking closer working relationships between Ombudsmen and look forward to provision for such joint working in any new legislation proposed for my office.

In designing today's event, I was aware of the need to hear from our stakeholders and the afternoon sessions focussed on their views of the 'Omnibus' man.

It is important that we hear about the individual who uses our office and Les Allamby, provided his thoughts on our work. Thank you Les for reminding us of those who may be suffering financially, socially or psychologically through unremedied injustice. They have a right to complain about failures of public service and a right to have those complaints adjudicated upon in a fair and open manner by the body complained of. They also have a right to come to my office as a 'last resort'

to have their grievances re-examined independently and where maladministration is found, to have an appropriate redress.

Housing has always been an emotive issue here in Northern Ireland and Paddy McIntyre has provided us insights into issues which have been brought to my Office over the years involving the homeless and his tenants. This is invaluable feedback from a Chief Executive with a long and distinguished career in public service.

Health and Social care complaints currently comprise almost 60% of the work of my office. Hugh McCaughey, coming from a health background, showed us the reality of dealing competently with complaints during a difficult period of change in health service provision. The removal of the second tier in the health service complaints process has brought challenges for my staff and for Hugh's but it does mean a swifter form of recourse for the patient or recipient of social care services.

My thanks again to the speakers but I am mindful we have a wide audience and some of you will not have been aware of the unique role of the Ombudsman. I would like to remind everyone of the reason my Office exists and of our purpose.

## What does an Ombudsman do?

As Ombudsman I consider complaints from citizens about how they have been treated by government departments or other public bodies. In doing so I hold government to account for its actions or failures. There are over 170 public bodies within my jurisdiction accounting for over two thirds of public expenditure in Northern Ireland. My function is to investigate complaints from individuals who believe they have suffered injustice because of maladministration. Put plainly that means complaints about poor public service. Where there are failures in public service, as Ombudsman I have a role in judging whether maladministration is present. If found, I can recommend appropriate action to remedy that injustice.

In 1956 US Associate Supreme Court Justice Brennan said this about access to justice:

*"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with, but injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in the benefit of impartiality and fairness".*

The decision to introduce the office of Ombudsman into the UK represented an important milestone in the administrative justice landscape. Richard Crossman as Leader of the House sought to reform Parliament and in doing so he created the specialist Select Committee system and the Parliamentary Ombudsman Scheme. The first such Ombudsman in the UK was created in 1967 two years before our own Office was established and it was not until 1984 that the Ombudsman was established in the Republic of Ireland.

The institution of Ombudsman in the UK as a mere 42 year old may be young in comparison with the courts and history of public law but it has served its 'apprenticeship' well and is ready to play a full role in the field of administrative justice.

## The role of Ombudsman is unique

The concept of an Ombudsman has its origins in Sweden, this year celebrates 200 years of the Ombudsman, so there is more than one birthday celebration here today. The role of the Ombudsman or 'trusted official' is distinct from that of judge or advocate. Trust is essential to ensure that individuals bring their complaints freely to the office and that public bodies implement recommendations. The courts rule on legal issues, order compensation or impose sanctions. I can do none of these, my recommendations are not binding yet they have the moral weight of the authority of this office and are seldom ignored. What I can do that courts often cannot, is find out the why and the how and offer explanations. My recommendations often lead to systemic change and their impact is wider than the individual complaint.

In the classic film 'It's a Wonderful Life' the leading character George Bailey (Jimmy Stewart) is given the chance to see what life would have been like for others if he had never been born. In preparing for today my staff and I have been looking back over the earliest reports of my predecessors, you can see some of their pictures at the back of the room. This prompted the thought - if there had been no Ombudsman created in 1969, what would the lives of ordinary people have been like in Northern Ireland. In that gloomy scenario I envisage a catalogue of injustices unresolved, systemic failures and countless people without access to justice. The family unable to find out how their loved one died, the resident parent whose child

maintenance payments were constantly miscalculated; real stories, real lives blighted. As in the film, there is a happy ending. The Office of the Northern Ireland Ombudsman provides a free, independent and accessible complaint handling service to all while maintaining impartiality and fairness.

The Ombudsman in investigating complaints fulfils a unique constitutional role. In accession states, as a condition of entry to the EU, a country must as a protection have an Ombudsman arrangement available to its citizens. The Office provides a system of justice that is both flexible and adaptable to changes in public administration. I was struck by Ann Abraham's pithy cartoon which explains succinctly the role of the Ombudsman in holding the government in its various forms to account. In doing so the Office of Ombudsman has provided the citizen with a unique form of redress when other avenues of redress would either be closed to them or impractical to pursue, not least because of the cost.

### The Ombudsman and Administrative Justice

A key theme of today has been the role of an Ombudsman in the system of administrative justice.

When public service fails the first avenue of redress is to the body concerned. From my experience, public bodies often struggle with devising complaints procedures that allow the body to put things right. In

light of this my staff have produced the Framework for Effective Complaint Handling and I commend this guide to you. I have drawn on the work of other public sector Ombudsman as well as the BIOA principles of Good Complaint Handling in producing this document. I am mindful also that when an individual exercises his right to complain he should do so courteously and provide all necessary information to the public body in a timely fashion. I will take account of the 'Responsibilities of Complainants' when considering my recommendations for redress. I hope the bodies within my jurisdiction find the 'Rights, Responsibilities and Redress' publication helpful in developing or reviewing their complaints procedures.

My office is an office of last resort, I expect individuals to exhaust internal complaints processes before complaining to me. When I investigate a complaint of maladministration the process is inquisitorial not adversarial. This form of intervention is recognised as more cost effective than litigation for failures in public service. The adversarial model used in our civil justice system does not necessarily address an individual's search for the truth. An Ombudsman will try to find out what happened, why it happened, and who if any one is at fault. Often I am able to vindicate the actions of the body complained of and will acknowledge good administrative practice where it is evident.

Administrative justice itself is evolving. In recent reviews of the administrative justice system there has been an acknowledgement that the Ombudsman is better placed to consider cases of maladministration

than the courts. The Administrative Justice and Tribunals Council set up in 2007, of which a number of my fellow Ombudsmen are members, was set up 'to keep under review the administrative justice system as a whole, considering how it might be made more accessible, fair and efficient.' The AJTC must ensure that the relationships between courts, tribunals, ombudsmen and alternative dispute resolution satisfactorily reflect the needs of the user. Disappointingly while there is a Welsh and Scottish Committee of the AJTC, there is no Northern Irish committee and I feel that the NI citizen is therefore at a disadvantage. I understand that legislation is needed to deal with this issue and I would urge the necessary authorities to move forward in this regard.

If the citizen is to be best served by the administrative justice system ,courts tribunals and Ombudsmen must find ways to work together more effectively. Each part of the system should in my view be able to signpost the citizen across the different redress options in a seamless way.

#### OFMDFM Review of the Office

In 2004 with the agreement of the Executive OFMDFM commissioned a thorough review of the Office of the Northern Ireland Ombudsman. The Review cost in the region of £50,000 and was later published. I have been able to deal internally with some recommendations such as the creation of a new website, which I have launched here today [website]. This will enable complainants and bodies to get up to date information about the

work of the office. For the complainant there is now an ability to lodge a complaint on line to my office.

While I have made some progress on internal matters, most of the Review's recommendations including the creation of a Public Service Ombudsman for Northern Ireland remain outstanding.

The purpose of the Review was to consider the structure, role and legislation governing the Ombudsman's Office and to ensure it was equipped to support the wider changes in public administration underway in Northern Ireland. In June 2002, the Executive had decided to review Northern Ireland's system of public administration with a view to putting in place modern, accountable and effective arrangements for public service delivery. This new public sector architecture has now been or is about to be put in place in areas such as health and local government. I am responsible for oversight of these areas and yet the Review which would, if implemented, complement these new structures is incomplete.

Unlike other parts of United Kingdom the scope of the Northern Ireland Ombudsman's legislation has not kept pace with devolution nor with the modernising public service which I must hold to account. My legislation dates from 1996 and is based on earlier 1967 instruments. In order to play its full part in delivering administrative justice the Review needs to be implemented.

The Northern Ireland Ombudsman's Office is central to a uniform and consistent approach to public sector complaint handling. The wide ranging analysis and recommendations contained in the Review are still relevant but have a shelf life. Therefore there is a need to action the Review recommendations.

As I anticipate the challenges of the next decade for my office, I see a strong legacy of the past. The work will go on and injustices will continue to be uncovered by this Office. I will continue to hold government to account and in so doing contribute to the modernisation of the Northern Ireland public sector by ensuring administrative justice is available to all citizens.

Once again I would like to thank everyone who has made this event so memorable and I am pleased to bring this 40<sup>th</sup> anniversary to a close.

**Dr Tom Frawley**

**Assembly Ombudsman**

**25 November 2009**