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Ombudsmen

Sir Edward Osmotherly explains who they are and what they can do for clients

Ombudsmen often deal with complaints that are made to them at the suggestion of advisers. They welcome contact with advice agencies and want to work with them. They want to improve understanding of what ombudsmen can and cannot do to help people who have suffered hardship or injustice. The British and Irish Ombudsman Association's definition of the core role of ombudsmen is: 'to investigate and resolve, determine or make recommendations with regard to complaints against those whom the ombudsman is empowered to investigate ...'. Ombudsmen can:

- resolve problems for individuals
- obtain redress, including financial compensation and
- get changes made to poor administrative practice

but ombudsmen are not the answer in all cases. They cannot give a definitive view on interpretation of the law - a matter for the courts - and there may be a limit to what they can do in an emergency, although they may be able to ask a body to hold action pending consideration of a complaint.

There are currently 17 ombudsman schemes in the UK which are full members of the British and Irish Ombudsman Association (BIOA) (see www.bioa.org.uk). To be accepted into full membership, ombudsman schemes have to meet strict criteria, including

- full independence from the bodies they investigate
- accessibility
- free service and so on.

The schemes span almost all the public sector and important parts of the private sector. New schemes - such as the Removals Ombudsman - are in the pipeline.

This article is about five of the

ombudsman schemes which are most relevant to advice agencies (see Box 1):

- Parliamentary
- Health Service
- Local Government
- Financial and
- Housing.

The Parliamentary, Health Service and Local Government Ombudsmen are statutory public sector schemes. The Financial Ombudsman Service and the Independent Housing Ombudsman Scheme were also created by statute and have jurisdiction over private sector organisations. There are now only two truly voluntary private sector schemes: the Estate Agents Ombudsman and the Telecommunications Ombudsman.

Characteristics of the ombudsmen

All these ombudsmen are:

- independent of the bodies or people they investigate
- impartial: they are not 'on the side' of either the complainant or the respondent
- set up by or under statute
- inquisitorial, not adversarial
- make no charge to complainants
- conduct their investigations in private and do not disclose the names of complainants in their published reports
- have power to award or recommend remedies for complainants and
- are not punitive (see Table 1).

Other than with a small number of schemes, the ombudsman's decision is not binding on the complainant, who may take the matter to court if s/he wishes. In a scheme where the ombudsman's decision is binding, the complainant is informed of this in the literature published by the ombudsman. There is no right of appeal against the merits of the decisions of any of the ombudsmen. The decisions of these ombudsmen are, however, subject to judicial review.

Complainants have to complain to the body by whose actions they are aggrieved and give them a reasonable opportunity to respond before they come to the ombudsman. There are time limits for this, although ombudsmen have discretion to accept late complaints. They will also accept complaints made on behalf of others - provided the complainant has given consent - and so advisers can make complaints on behalf of their clients. The ombudsmen particularly welcome this when advisers are acting on behalf of vulnerable or socially excluded members of society.

There are some differences between ombudsman schemes. The Parliamentary and Local Government Ombudsmen are concerned with complaints that injustice has been caused by 'maladministration'. This is not an easy concept to grasp, but should not deter advisers from using ombudsmen. Essentially, ombudsmen can look at the **way** in which decisions are taken (or policies are implemented), but not at the **merits** of the decisions or policies themselves. There is no statutory definition of maladministration, but it includes such things as delay, incompetence, rudeness, giving wrong information, arbitrariness, discrimination and neglect. The main test of whether there has been maladministration is whether the authority or body has acted reasonably in accordance with the law, its own policies and generally accepted standards of administration.

On the other hand, the Financial Ombudsman Service (FOS) and the Independent Housing Ombudsman Scheme (IHOS) can go wider than simply looking for 'maladministration'. They decide what would have been 'fair and reasonable' in the circumstances of the case. The Health Service Ombudsman is able to look at the clinical

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Box 1			
Ombudsman	Covers mainly	Website	Helpline
Financial Ombudsman Service	Banks, building societies, insurance companies, investment firms, financial advisers etc	www.financial-ombudsman.org.uk	0845 080 1800
Health Service Ombudsman (England)	The National Health Service in England	www.ombudsman.org.uk	0845 015 4033
Health Service Ombudsman (Wales)	The National Health Service in Wales	www.ombudsman.org.uk	0845 601 0987
Independent Housing Ombudsman Scheme (England)	Registered social landlords and some private landlords	www.ihos.org.uk	0845 712 5973
Local Government Ombudsman (England)	Local authorities and some other bodies in England	www.lgo.org.uk	0845 602 1983
Local Government Ombudsman (Wales)	Local authorities and some other bodies in Wales	www.ombudsman-wales.org	01656 661325
Parliamentary Ombudsman (UK)	UK Government departments and many other public bodies	www.ombudsman.org.uk	0845 015 4033
Scottish Public Service Ombudsman	Scottish public bodies, councils, housing associations and the NHS	www.scottishombudsman.org.uk	0870 011 5378
Welsh Administration Ombudsman	National Assembly for Wales and other Welsh public bodies	www.ombudsman.org.uk	0845 601 0987

judgement of practitioners. Moreover, the FOS and IHOS are expressly available as an alternative to the courts in suitable cases. The Health Service, Local Government and Parliamentary Ombudsmen may not accept a complaint for investigation if the complainant has a right to seek a remedy from the courts or a tribunal unless, in the ombudsman's opinion, it would be unreasonable to expect the complainant to exercise that right. The ombudsmen make wide use of this discretion.

Sometimes advisers are put off complaining to an ombudsman because they do not know which one to complain to. In principle, ombudsmen will try to direct complainants to the right ombudsman or to an organisation which may be able to help them. The way they do this varies from scheme to scheme. In addition, situations can arise where what appears to the layperson to be one complaint would require investigation by more than one ombudsman. This problem has already been addressed in the financial sector, where the FOS has replaced the separate Banking, Building Societies and Insurance Ombudsmen etc schemes. It is still an issue in the public

sector where, for instance, complaints could involve the Health Service and social services. In Scotland the new Public Services Ombudsman covers the whole public. The Government has no immediate plans to do the same in England, but the offices of the Parliamentary and Health Service Ombudsman and the English Local Government Ombudsmen (LGOs) are looking at ways to work jointly so as to minimise the problems of access to their services.

The Parliamentary Ombudsman

The present Parliamentary Ombudsman, Ann Abraham, is a former Chief Executive of NACAB (now Citizens Advice) and the first woman to hold the post. The Parliamentary Ombudsman looks into complaints from members of the public - which must be referred by MPs - about government departments and other public bodies. Top of the league each year is the Department for Work and Pensions (DWP) followed by the Home Office, Inland Revenue and the former Lord Chancellor's Department (now the Department for Constitutional Affairs). The Ombudsman also investigates

complaints about problems in obtaining access to government information.

The Ombudsman is independent of Government. She is a Crown Servant, appointed by the Queen, and reports to Parliament. The Select Committee on Public Administration oversees the work of her Office. She has the powers of the High Court to obtain papers and interview anyone she wishes for the purposes of an investigation.

In recent years her Office has tried to settle complaints informally and quickly without the need to launch a statutory investigation. In 2002/03, over half the complaints against the DWP were settled in this way.

It is important to remember that the Ombudsman is looking not only for evidence of some sort of failure of service but also for a link between that failure and a personal injustice to the complainant. She also has to consider whether her intervention would be likely to secure a worthwhile remedy. In some cases the Ombudsman's recommendations at the conclusion of an investigation into one complaint can trigger an improvement in the quality of information or services provided by a government department to all members of the public with whom they have

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dealings. This is an important social policy issue for advisers to consider when deciding on a course of action with a client.

At the end of an investigation the Ombudsman may uphold a complaint fully or in part, or find that it was not justified. If she upholds a complaint, she will make recommendations to the department concerned to try to put things right. This may mean making a payment for out of pocket expenses and, perhaps, for the complainant's time and trouble in trying to sort things out. Quite large sums can be paid when a department has, for example, made errors which have led to a complainant incurring unnecessary costs.

If faults in procedures or systems are revealed, the Ombudsman's investigation report can lead a department to revise its procedures so that others do not suffer the same difficulties. The Ombudsman sees her Office as instrumental in raising the standard of public service delivery and is keen to help improve complaints handling across the public sector.

The Health Service Ombudsman

The posts of Health Service Ombudsman and Parliamentary Ombudsman have always been held by the same person.

The Health Service Ombudsman has always been able to look into the classic ombudsman territory of maladministration in the NHS. However, in 1993 the remit was widened and the care and treatment of patients and the actions of family health service practitioners came within her jurisdiction. This marked a huge change of emphasis in the investigations carried out by her Office and now almost 90% of complaints coming to her concern clinical matters. These are often supplemented by allegations of poor communication and complaint handling.

Complaints about the NHS are, on the whole, less suitable for informal resolution than are complaints against government departments. Many complainants come to the Ombudsman before they have been through the NHS complaints procedure and have to be

referred back for the necessary action, as required by law. Before complaints are taken on for investigation, investigating officers will ask the Ombudsman's internal professional advisers for advice on the clinical aspects of the case (including physicians, surgeons, nurses, a GP, psychiatrist, pharmacist, dentist, anaesthetist and obstetrician). If advice at screening stage is needed in relation to any other specialty, external advisers are appointed. Normally two external advisers are appointed to produce a report into the medical or nursing aspects of each case investigated. The lay investigator retains overall control of the case.

The Ombudsman's staff obtain all the papers relating to the care and treatment of a complainant and, in the light of what they disclose, decide which members of staff to interview. The complainant is usually interviewed at the start of the investigation. Most want an explanation of what went wrong, an apology and an assurance that the same thing will not happen to anybody else. At the conclusion of an investigation, a

Table 1

Frequently asked questions

	Financial Ombudsman	Health Service Ombudsman (England)	Health Service Ombudsman (Wales)
Is it free?	Yes	Yes	
Can I complain direct to the Ombudsman?	Yes, but complain to firm first	Yes, but complain to NHS first	
What parts of Britain does the Ombudsman cover?	England, Scotland, Wales	England	Wales
How long have I got to get my complaint in?	6 months from firm's final letter	12 months from first knowing of the matter	
Does the Ombudsman have discretion to waive the time limit if there are special circumstances?	Yes, but used exceptionally	Yes	
Can someone complain on my behalf?	Yes	Yes	
Does the complaint have to be made in writing?	No, but the complainant must sign	Yes	
Is the Ombudsman's decision binding on the organisation complained about?	Yes		
Can the Ombudsman recommend financial compensation?	Yes	Yes, but it's unusual	
Can I go to court about the same matter at the same time?	No, but you can after if you don't accept the decision	No	

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detailed report is produced. The Ombudsman has the power to report any medical practitioner whom she considers to be a danger to patients to the General Medical Council.

The Ombudsman's over-riding aims are to give a better and speedier service to complainants and to contribute to the raising of standards in the NHS. She is keen to maintain a dialogue with advisory organisations and professional bodies to help her achieve that. She publishes anonymised accounts of her investigations.

The Government intends to set up independent complaints advocacy services (ICAS) to assist individuals in making complaints against the NHS. A number of organisations, including Citizens Advice, have been approached to provide this service as part of a pilot scheme.

The Local Government Ombudsmen

There are three LGOs in England - Tony Redmond, Patricia Thomas, and Jerry White - and a separate LGO for Wales.¹ The LGOs investigate complaints

against all local authorities (except town and parish councils), education appeal committees, housing action trusts, police authorities, and a range of other bodies providing local services. The vast majority of complaints they receive are about local authorities.

The LGOs can investigate complaints from members of the public about most council services, including:

- housing provided by local authorities (but not by social landlords, covered by the Housing Ombudsman)
- housing benefit
- planning
- social services
- school admission appeals and
- special educational needs.

Some matters are expressly excluded from the LGOs' jurisdiction (eg. personnel matters affecting pay, appointments and discipline, and the internal management of schools).

The LGOs have the powers of the High Court to obtain written and oral evidence.

The LGOs are often able to achieve fair remedies for complainants (called 'local settlements') without the need to

complete formal investigations. Where they complete an investigation, they issue a report which includes their findings and conclusions. If they find that injustice has been caused by maladministration, they usually recommend the authority to provide a remedy. This could be, for example, financial compensation, the provision of a service or benefit, or changes to administrative systems. As far as individuals are concerned, the aim is to put them back in the position they would have been in but for the maladministration. Sometimes this is not possible and financial compensation is the only option. It is very rare for an authority not to provide the recommended remedy in full.

As well as their main role of investigating complaints, the LGOs also have a role in disseminating good practice among the authorities they investigate. They do this by feeding back to individual authorities the lessons learned from the complaints considered each year by publishing guidance notes on good practice and by issuing special reports on specific topics, drawing on

Housing Ombudsman	Local Government Ombudsman (England)	Local Government Ombudsman (Wales)	Parliamentary Ombudsman	Scottish Public Services Ombudsman	Welsh Administration Ombudsman
Yes	Yes		Yes	Yes	Yes
Yes, but complain to landlord first	Yes, but complain to council first		No - go through your MP	Yes, but complain to public body first	Yes, but complain to public body first
England	England	Wales	UK	Scotland	Wales
12 months from exhausting landlord's procedure	12 months from first knowing of the matter		12 months from first knowing of the matter (to MP)	12 months from first knowing of the matter	12 months from first knowing of the matter
Yes	Yes		Yes	Yes	Yes
Yes	Yes		Yes	Yes	Yes
No, but the complainant must sign	Yes		Yes	Yes	Yes
No - but refusals to follow the Ombudsman's recommendations are rare					
Yes	Yes		Yes	Yes	Yes
No, but you can after if you don't accept the decision	No, but you can after if you don't accept the decision		No	No, but you can after if you don't accept the decision	No

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the findings of a number of investigations. They are also currently working with the voluntary sector to establish way of improving access to complainants through advisers. The first initiative will be a special page on their website for advisers.

The Housing Ombudsman

The Housing Ombudsman, Dr Michael Biles, deals with disputes between certain landlords and their tenants in England.² All social landlords (except local authorities, who are dealt with by the LGOs) are required to belong to the scheme.

Complaints can be made to the Ombudsman by tenants:

- whose home is owned or managed by a member landlord
- who have applied to be housed by a member landlord or
- who pay a service charge to a member landlord for the management of their homes
- if they think their landlord has done something wrong, such as failing to do repairs in a reasonable time, incorrectly claiming rent arrears, unreasonably refusing a tenancy or a transfer.

The Ombudsman can provide an alternative to the courts, but will not accept complaints about matters which are about to go to court or where he thinks the matter would be dealt with better by a court.

If the Ombudsman accepts a complaint, he may:

- try to resolve it informally
- issue a preliminary determination, invite comments on it and either confirm or modify the determination or continue enquiries
- arrange independent mediation (at no cost to the parties) if both parties are willing to try it
- arrange independent arbitration (at no cost to the parties) if both parties agree to it; the arbitrator's decision is binding on both parties and enforceable in the courts
- conduct an adjudication or
- conduct an investigation.

If the Ombudsman completes an investigation and finds the maladministration - depending on its severity - he may order or recommend

the landlord to provide an apology, pay compensation, do repairs, change systems or take some other action which the Ombudsman thinks would be fair in the circumstances. Landlords seldom decline to provide the remedies recommended by the Ombudsman. All social landlords must comply with his orders. If they do not, the regulator (the Housing Corporation) can take enforcement action.

The Financial Ombudsman Service

The FOS is the largest ombudsman scheme in Europe. The Chief Ombudsman is Walter Merricks. It operates according to rules made (or approved) by the Financial Services Authority (FSA). The FOS deals with disputes between consumers and financial firms such as banks, insurance companies and financial advisers operating in the UK. All firms regulated by the FSA are within the jurisdiction of the FOS and some others have agreed voluntarily to be covered by the scheme. Firms are required to have their own internal complaints procedure and to make it available to customers. In general, the firm must give the customer a final response within eight weeks of receiving the complaint.

The FOS aims to help customers and firms resolve complaints as quickly as possible. For example, it may be possible at an early stage for the FOS to be satisfied that the customer has been treated fairly or to propose some action that the firm should take to settle the dispute. If the customer and firm agree with the action proposed by the FOS, the complaint can be settled without more ado, but, if the complaint is complex or either the firm or the complainant is not content with the proposed settlement, a full investigation will begin. The FOS will obtain more evidence from the complainant and the firm. It may still be possible for the FOS to achieve a settlement while the investigation is in progress.

Where an investigation has been completed, the FOS sends the firm and the complainant a written view on the case, including conclusions about whether the firm has or has not acted

fairly and, if it has not, what remedy should be provided. If the complainant and the firm accept these findings, the complaint can be settled without further action. If either or both do not accept the findings, the Ombudsman makes a final decision, which is then sent to the complainant and the firm. If the complaint is upheld, the Ombudsman may make a money award of up to £100,000 or direct the firm to take any other steps he considers fair in the circumstances. If the complainant accepts the decision, it is legally binding on the firm. The complainant does not have to accept the Ombudsman's final decision and may instead choose to take legal action. The customer's statutory rights are not affected by bringing a complaint to the FOS.

Further information

All these ombudsmen have websites which provide more details about their individual schemes, including case studies. They are all very willing to answer questions from advisers and so it is often worth giving them a ring to check whether a particular case is suitable for an ombudsman investigation. All the ombudsmen featured here (except the Welsh LGO) have dedicated helpline numbers which are primarily aimed at advising the public, but advisers can use them too, and, if the helpline staff cannot answer a specific query, they can usually pass an adviser on to someone on the investigative staff who can. (See Box 1 for contact details.)

Footnotes

1. The Scottish Public Services Ombudsman deals with local government complaints in Scotland, and the Northern Ireland Ombudsman deals with them in his area
2. The service is provided in Scotland by the Scottish Public Services Ombudsman; in Northern Ireland by the Northern Ireland Ombudsman; and in Wales by the Welsh Assembly Government

Sir Edward Osmotherly CB, former Chairman of the Commission for Local Administration in England, is grateful for the contributions to the article from the ombudsmen of the schemes described.