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# Forty years of Administrative Justice in Northern Ireland



Tom Frawley, in light jacket (current NI Ombudsman) and former NI Ombudsmen (L-R) Maurice Hayes, Jill McIvor and Gerry Burns

By Marie Anderson, Deputy Northern Ireland Ombudsman

The 25 November 2009 marked the 40th Anniversary of the Northern Ireland Ombudsman's Office. In 1969, the newly formed Office was established as a direct response to the demands of the civil rights movement at the time for an end to discrimination in housing and employment. For some, the creation of the Office was too little too late, for others it represented a response to non-existent grievances.

Forty years on, the Office of the Northern Ireland Ombudsman has gained widespread respect and acceptance across the community. The Office now

deals with a wide range of complaints against central and local government, as well as health and social care cases. Its establishment in 1969 was highly significant given the backdrop of civil unrest. The Northern Ireland Ombudsman was the second Ombudsman's office created in the UK to deal with complaints against public bodies; the first was the Office of the Parliamentary Commissioner for Administration created in 1967. At that time, a trend was growing across Europe to provide an independent office to hold public services to account and remedy, if appropriate, the complaints of citizens about public service failures.

Now the NI Ombudsman is

the Assembly Ombudsman, and deals with complaints about NI Departments and their agencies. In parallel the Northern Ireland Ombudsman also holds the position of Northern Ireland Commissioner for Complaints. In this capacity he investigates complaints about health, local government, housing and the wider public sector. There have been seven previous holders of this post, which in earlier times had been the subject of internal appointments within the NI Civil Service. Since the Belfast, or Good Friday, Agreement, the Office is recruited to by way of open competition, with appointment being made by the Crown through the issue of a Royal Warrant. The current

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**A note from the Editor**

Two years ago, we celebrated the fortieth anniversary of the UK Parliamentary Ombudsman. This year, congratulations are in order to the Office of the Northern Ireland Ombudsman on achieving the same milestone. Our cover story takes us back through the history of the Office, and outlines the current review that will in part shape its future. Also in this issue we hear from two titans of ombudsmanry – Jerry White and Walter Merrick, who have retired to work in other areas of public life. A Senior Investigator with 25 years experience from the Office of the Ombudsman of Ireland gives her reflections too, and our Q&A features Richard Thomas, former Information Commissioner and the new Chair of the Administrative Justice Tribunals Council. High volumes of casework are



something that most schemes are currently labouring under – Roy Hewlett of the Financial Ombudsman Service offers some coping strategies. Also from FOS, we have an article about data publication by firms. And there is more food for thought about

ombudsmen ‘making a difference’ in a summary of a study that examines the impact of decisions on the administrative decision-making of housing departments.

Our Fair Premises are those of the Independent Police Complaints Commission in High Holborn. Our profiles feature Judy Clements, the Adjudicator, and Adam Sampson, Ombudsman and Chief Executive in the Office of Legal Complaints. The Spotlight falls on the Removals Ombudsman and we have the last in our series about good writing. Finally, to ease us into seasonal mood, our article about the origins of Public Administration International involves Belgian ‘Trappist’ beer...

With best wishes to you all for the Christmas and New Year break,  
Emma

**LGO’s jurisdiction set to expand**

The work of the Local Government Ombudsman (LGO) is set to extend into two new areas next year, now that Royal Assent has been given on two bills.

The Health Act introduces a responsibility for the LGO to deal with complaints from adults who purchase their own care services from the independent sector, including private care homes and home care agencies (the LGO already deals with complaints about local authority provided and funded facilities). The new service is planned to take effect from October 2010.

The second new area relates to the Apprenticeships, Skills, Children and Learning Act which creates a new role for the LGO to deal with complaints about the internal management of schools. This will initially involve a pilot starting in April 2010, before being extended in September 2010.

**New Chair of Scottish Committee of AJTC**

Richard Henderson has been appointed to the Chair of the

Scottish Committee of the Administrative Justice and Tribunals Council (AJTC). The AJTC is an independent advisory non-departmental public body. Its function is to keep under review the administrative justice system as a whole, with a view to making it accessible, fair and efficient.



Richard Henderson

Mr Henderson was the Solicitor to the Scottish Executive and Head of the Government Legal Service for Scotland until 2007. During his career as a government lawyer which started in 1972 he dealt with work from across the whole range of government including (prior to 1999) issues arising from Whitehall as well as Scottish departments. Following his retirement in 2007 he held office as President of the Law Society of Scotland between August 2007 and May 2009. He was made a Companion of the Order of Bath in the New Year’s Honours List 2007.

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**New Independent Complaints Mediator for Criminal Records Bureau**

The Criminal Records Bureau (CRB) appointed Trish Longdon as its new Independent Complaint Monitor (ICM) in November.

Trish replaces Ros Gardner who stepped down from the ICM role in September 2009.

Trish has a long and distinguished background in public service, including the post of Deputy Parliamentary and Health Service Ombudsman. She has held senior positions in the Audit Commission, with the Local Government Ombudsman, and she is currently a Non Executive Director of NHS Hammersmith and Fulham.

**New Police Complaints Commissioner for Scotland**

John McNeill was appointed as the new Police Complaints Commissioner for Scotland from 17 August, replacing the former Commissioner, Jim Martin. Mr McNeill’s role is to independently examine the way police handle non-criminal complaints from the

public. His office can also re-open complaints which he considers have not been handled correctly.

Mr McNeill is a member of the Northern Ireland Probation Board, Civil Nuclear Police Authority and Service Complaints Panel and is part time commissioner of the Scottish Human Rights Commission. He was previously a prison governor in both Scotland and Northern Ireland, Chief Executive of the Scottish Association for the Care and Rehabilitation of Offenders, a Member of the Parole Board for England and Wales and a Member of the Risk Management Authority. On taking up appointment as Police Complaints Commissioner, he will stand down from the Scottish Human Rights Commission and the Civil Nuclear Police Authority.

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**Scottish Parliament Bills**

The Review of SPCB-supported Bodies Bill and the Public Services Reform Bill continue their passage through Holyrood. They are likely to lead to a transfer of prison complaints, and

possibly complaints about water, to the Scottish Public Services Ombudsman.

**Ombudsman Services**

The members of staff for the company which runs Otelo, The Energy Ombudsman and the Surveyors Ombudsman Service were unanimous in their support for the announcement that they need no longer state their employer to be tOSI. The company has changed its name to 'Ombudsman Services'.

Chief Ombudsman Lewis Shand Smith, said, "we now run three large national schemes and it is time to develop a brand which reflects where our skills actually lie. We hope this simple approach will help us to continue our success in developing the ombudsman model in the private sector."

**Appointment to the House of Lords**

Dame Nuala O'Loan, former Police Ombudsman for Northern Ireland, has been appointed to the House of Lords. She stepped down from the Ombudsman post in 2007 and is now working with the Home Office on claims of abuse by people being deported from the UK. Dame Nuala is also the Irish government's representative for conflict resolution and its special ambassador for Timor-Leste and for women, peace and security.

**New right of redress for music users**

On the 1 August, Ombudsman Services opened a new ombudsman scheme for PRS for Music. PRS for Music licenses the use of copyright music in the

UK. A license is needed by anyone, usually a business or organisation, who wishes to play or perform music outside the home environment. The scheme has been set up to handle complaints between PRS for Music and those who may require or have obtained a licence for the public performance of music.

PRS for Music acting Chief Executive Jeremy Fabinyi commented: "We have listened to our customers and their representatives and we hope that the introduction of the Ombudsman will assure them that we are making a genuine commitment to good conduct."

**Joe Meade – Ireland's Financial Services Ombudsman**

With effect from 2 January 2010, his 60th birthday, Joe

Meade will be retiring from the position of Financial Services Ombudsman. By then he will have served over 42 years in the Irish and international public services and since May 2005 as Ireland's first Financial Services Ombudsman.

As an independent statutory office (established on 1 April 2005) the Financial Services Ombudsman ensures that unresolved complaints from customers of financial service providers are mediated, investigated and adjudicated in an impartial and independent manner. He can in addition to rectifying matters make compensation awards up to €250,000 which are binding on both parties subject only to appeal to the High Court.

Since its inception, over 23,000 complaints have been received and a minimum of €55m has been refunded to consumers as a result of the ombudsman's work.

**Northern Ireland Assembly welcomes the European Board of the International Ombudsman Institute**



(L-R) Dr Tom Frawley (NI Ombudsman), Rafael Ribó (Ombudsman for Catalonia), Dr Peter Kostelka (Austrian Ombudsman), William Hay MLA (Speaker of the NI Assembly)

Parliament Buildings in Belfast took on an international flavour in October as the Speaker of the Northern Ireland Assembly, William Hay MLA, welcomed the European Board of the International Ombudsman Institute (IOI) as part of a two-day visit to Belfast. Board member and Assembly Ombudsman Tom Frawley was accompanied on the visit by Dr Peter Kostelka, Ombudsman for Austria, Rafael Ribó, Ombudsman for Catalonia, Professor Yorgos Kaminis, Ombudsman for Greece and Mats

Melin, Ombudsman for Sweden.

The IOI was established in 1978, and is a worldwide organisation of ombudsman offices. Institutional Members are public sector, independent ombudsman offices located around the world. Specialised ombudsman offices and public human rights organisations can become Institutional Members if they meet the criteria. The Secretariat of the IOI, originally based in Alberta, Canada, has recently relocated to Vienna.

**Proposed Ombudsman for the Isle of Man**

The Council of Ministers has launched consultations on proposed legislation to strengthen the independent scrutiny of the Isle of Man Government and its accountability to the public.

The Tynwald Auditor General Bill and the Tynwald Commissioner for Administration Bill are the subject of separate consultations. They provide for two new roles to be appointed by Tynwald to carry out expert and impartial investigations into spending issues and public complaints in relation to Government Departments and other public bodies including local authorities.

The Tynwald Commissioner for Administration would perform an ombudsman role with power to investigate

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## Fair Premises

# 90 High Holborn, London

## The Independent Police Complaints Commission

No. 10 in a series

By Ian Pattison, Secretary, BIOA

The Independent Police Complaints Commission (IPCC) occupies part of the office building known as 90 High Holborn in London. This is the Commission's Head Office and also its London and South East regional office. It has other regional offices in Cardiff, Coalville (in Leicestershire), Wakefield (in Yorkshire) and Sale (near Manchester).

The IPCC became operational on 1 April 2004. It is a Non-Departmental Public Body (NDPB), funded by the Home Office, but by law entirely independent of the police, interest groups and political parties and whose decisions on cases are free from government involvement. It has a legal duty to oversee the whole of the police complaints system in England and Wales, created by the Police Reform Act 2002, and to transform the way in which complaints against the police are handled.

Holborn is an area of Central London and is also the name of the area's principal east-west street, running from St Giles's High Street as High Holborn, to Gray's Inn Road to Holborn Viaduct, crossing the borders of the City of Westminster, London Borough of Camden and the City of London. The area's first mention is in a charter of Westminster Abbey, by King Edgar, dated to 959. This mentions 'the old wooden church of St Andrew' (St Andrew, Holborn). It was then outside the City's jurisdiction and a part of Ossulstone Hundred in Middlesex. In the 12th century St Andrew's was noted in local title deeds as lying on 'Holburnestræte' – Holborn Street.

The name Holborn may be derived from the Middle English 'hol' for hollow, and bourne, a brook, referring to the River Fleet as it ran through a steep valley to the east. The 16th century

historian John Stow attributes the name to the Old Bourne ('old brook'), a small stream which he believed ran into the Fleet at Holborn Bridge, a structure lost when the river was culverted in 1732. The exact course of the stream is uncertain, but according to Stow it started in one of the many small springs near Holborn Bar, the old City toll gate on the summit of Holborn Hill. Other historians, however, doubt that in view of the slope of the land.

The original Bars were the boundary of the City of London from 1223, when the City's jurisdiction was extended

several times beyond the original Walls, ending up at the junction of Chancery Lane. Since the abolition of the Metropolitan Borough of Holborn in 1965, the area of Holborn now forms part of the London Borough of Camden.

The area is very much part of 'legal London', with Lincoln's Inn just to the south of High Holborn and Gray's Inn just to the north of it. These are two of the four Inns of Court, the professional associations to one of which every barrister in England and Wales must belong. The other two are The Inner Temple and The Middle Temple, both situated a little further south of Lincoln's Inn, between Fleet Street and the River Thames. There are also many solicitors' practices in the Holborn area and, indeed, 90 High Holborn was co-developed by law firm Olswang and its major property client Minerva, and Olswang is the major occupier of the building. The building was designed by international architects Gensler, and it was completed for occupation in December 2002.



*Continued from page 3*

complaints from members of the public that they had suffered injustice or hardship as the result of alleged maladministration or service failure on the part of Government or other public body. Such an investigation could only be made after a complaint had first been pursued with the body in question.

The Tynwald Commissioner for Administration Bill has its origins in a review by the Council of Ministers of the existing Government complaints procedure. The review concluded that there was merit in the Island introducing an ombudsman scheme to provide fair and impartial assessment of complaints separate from political or administrative involvement.

**BIOA Executive Committee**

**Vice-Chair**

Peter Tyndall, Public Services Ombudsman for Wales, has been appointed Vice-Chair of the Association on the retirement from office

**Future event – A date for your diary**

**Biennial Conference 2011**

The 9th Biennial Conference of the Association will be held on 12/13 May 2011 at Burleigh Court, part of the Imago conference facilities owned and operated by Loughborough University. Opened only two years ago, Burleigh Court offers excellent conference facilities including 225 high quality bedrooms and a 240 capacity Convention Room.

Imago (Loughborough) is in an excellent central location, and well served by flights from Dublin and Edinburgh to Nottingham East Midlands Airport, by a good train service from London and by road via the M1.

To view the facilities, visit [www.welcometoimago.com](http://www.welcometoimago.com) for a 'virtual tour'.

(and from the Executive Committee) of Jerry White, former Local Government Ombudsman for England.

**'Future Direction' Review**

As reported in this newsletter's April edition (Issue 37), BIOA commissioned a review earlier this year to look at the role and activities of the Association and to consider what its future direction should be.

It was agreed that the initial work would be carried out on

a paid basis and, after an open competition, Carolyn Hirst and Professor Janette Webb were appointed with a remit to:

- review the current functions, organisation and membership structure of BIOA
  - consult with members to ascertain their views on the current role and activities of BIOA, and on its future direction
  - identify what lessons can be learned from other countries and similar organisations
- Their report was delivered in August, and is available to

view (for BIOA members and their staff) in the 'members' area' of the BIOA website. (Note: access details are available from the Secretary)

The Executive Committee will be examining the report in detail and, in due course, will report back to the membership with recommendations.

**Interest Groups**

All four Interest Groups met during the autumn, as follows:

- HR Interest Group – on 7 October at the Financial Ombudsman Service (FOS), London, with Peter Stansfield, HR Director of the FOS, as Chair. As well as an overview of the FOS, the topics discussed included staff consultations, the pilot 'Award' accredited training course, and a general update of activity within those member schemes represented at the meeting.
- Communications Interest Group – on 8 October at the Financial Ombudsman Service (FOS), London, with Sue Fox, Director

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**Association Dinner and Annual Meeting 13 and 14 May 2010**

The 2010 Association Dinner and Annual Meeting will take place on 13 and 14 May respectively, both events being held at the National Museum of Wales in Cardiff.

On Thursday 13 May, an Association Dinner will be held in the evening in the Grand Hall of the Museum. This will be for all those attending the Annual Meeting on the following day, plus invited guests of the Association. Before that, during that afternoon, the office of the Public Services Ombudsman for Wales will run a 'fringe event' for staff of BIOA member schemes attending the Annual Meeting.

On Friday 14 May, the Annual Meeting of the Association will be held during the morning in the Reardon Smith Theatre at the Museum. As well as the normal business meeting of the Association, there will be guest speakers on the topic of 'Learning from complainants'. This will be followed by lunch.

Guest speakers at the Annual Meeting will be:

- Lord Dafydd Elis Thomas – Presiding Officer, National Assembly for Wales
- Peter Griffiths – Chief Executive, Principality Building Society



National Museum of Wales

- Dame Gillian Morgan – Permanent Secretary to the Welsh Assembly Government
  - Jorrit de Jong – Kafka Brigade, Netherlands and Harvard University, USA
- Full details will be sent out early in the New Year, when registrations will be invited.

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of Communications and External Affairs at the Information Commissioner's Office, as Chair. As well as an overview of the FOS, the topics discussed included managing customer expectations, the recent publication of complaint data (by firms) by the FOS, and a general update of activity within those member schemes represented at the meeting. There was also a presentation about market research and statistics given by Richard Abraham, Head

of Public Services Research at ORC International.

- Legal Interest Group – on 29 October at the Criminal Records Bureau (CRB) in Liverpool, with Anne Whitehorn, Legal Adviser to the Local Government Ombudsman, as Chair. As well as an overview of the CRB, the topics discussed included dealing with complaint cases which allege discrimination, Freedom of Information requests, and a free legal helpline for Interest Group members.



Table Mountain, Cape Town

**INFO 2010**

The 2010 Conference of the International Network of Financial Services Ombudsman Schemes (INFO 2010) will be hosted in Cape Town, South Africa from 28 – 30 September 2010. The local organisers aim to build on the success of the 2009 event that took place in Dublin, Ireland by offering delegates and their partners an unparalleled educational and cultural experience.

For further information, please visit [www.info2010conference.co.za](http://www.info2010conference.co.za) or contact the local conference organizer Ms Zelda Coetzee at [zelda@imfunzelelo.co.za](mailto:zelda@imfunzelelo.co.za).

**Working Groups**

- 'Accreditation' Working Group – has continued to meet with Ros Gardner, BIOA Executive Committee member and former Independent Complaints Mediator for the Criminal Records Bureau, as Chair. The Group, including its consultant, Nick O'Brien, was very pleased with the pilot 'Award' course run on 6 – 9 October at Queen Margaret University (QMU), Edinburgh. This attracted 30 delegates from many BIOA member schemes and was generally considered to be very successful (see report by a delegate and member of the Working Group, on page 16). A full evaluation of the course is currently being carried out. Due to demand, two pilot 'Certificate' courses are expected to run also at QMU in early 2010, on 1 – 5 February and 15 – 19 February. It is hoped that details of the evaluations of both the 'Award' and 'Certificate' courses can be given in the next (April 2010) issue of this newsletter, together with information about the way forward for accredited training.

- 'Governance' Working Group – has continued to meet with Paul Kenny, Pensions Ombudsman for Ireland, as Chair. The Group successfully published the *Guide to principles of good governance* in October and continues to meet to produce complementary material on the subject.

Printed copies of the Guide are available free on request from the Secretary ([secretary@bioa.org.uk](mailto:secretary@bioa.org.uk)) or to download from the BIOA website ([www.bioa.org.uk](http://www.bioa.org.uk)).



- First Contact Interest Group – on 13 November at the Parliamentary & Health Service Ombudsman (PHSO), London, with Carol Neill, Outreach Team Leader with the Scottish Public Services Ombudsman, as Chair. As well as an overview of PHSO, the topics discussed included complaint-handling systems, knowledge management, diversity and accessibility, and a general update of activity within those member schemes represented at the meeting. Attendance at Interest Group meetings is open to any staff member of BIOA member schemes, and new members are always very welcome. Please contact the Secretary ([secretary@bioa.org.uk](mailto:secretary@bioa.org.uk)) if you are interested in joining one or more of these Groups.

Seminars group was held, this time in Dublin at the offices of the Ombudsman for Ireland. The topic was 'Accessibility' and included issues of access to Ombudsman and complaint-handling services by all parts of the community, as well as wider public awareness. The seminar was well attended by over 70 delegates from 36 different organisations, mostly member schemes. Speakers at the seminar were:

- **Fergus Finlay** – Chief Executive, Barnardos, Ireland
- **Tony McQuinn** – Chief Executive, Citizen Information Board, Republic of Ireland
- **Pat Whelan** – Director General, Office of the Ombudsman for Ireland
- **Brian Symington** – Director, RNID Northern Ireland
- **David Millington** – Ombudsman, UK Financial Ombudsman Service
- **Marie Anderson** – Deputy Northern Ireland Ombudsman.

**Seminar**

On 17 November, another of the seminars run by the Operational Management

# Jerry White: Reflections on leaving office

Jerry White left his role as Local Government Ombudsman in September to move into the world of academia. He reflects on his 14 years in office.



I found my time as Ombudsman immensely rewarding and enjoyable. From 1995, when I became the LGO at Coventry, my office was responsible for something like 72,000 decisions on complaints, involving every service area of local government. In around 8,000 of those I made or confirmed the decision myself. It is no exaggeration to say that there was something different and interesting about every case I saw.

I look back on several decisions with particular satisfaction.

In one case, I found that a county council wrongly charged for aftercare when a person was discharged from a compulsory stay in mental hospital. My recommendation led to some £80,000 being paid back to the person in question. But it was clear that other councils had made similar errors, and in a large number of cases. So in 2003 the LGOs issued a special report that advised councils to put in place mechanisms to identify those whose care had not been funded and to reimburse the cost of their care, with interest. We surveyed the relevant councils a year or so later and found that some £82m had been or would be reimbursed as a result of the advice we had given.

I was involved in a number of investigations jointly with the Parliamentary and Health Service Ombudsman. Together we provided justice for a complainant whose longstanding grievance had involved a number of actions in the High Court. The complaint was against a county

council, whose road scheme had effectively caused him financial ruin, and against the Secretary of State who had approved the scheme. Compensation of some £200,000 was paid at our recommendation equally by the council and by the relevant government department.

More recently, in March 2009, the *Six Lives* report into the treatment of people with learning disabilities led to joint recommendations to every health service body and social services authority in England to review urgently their arrangements for delivering services to similar users.

In an entirely different service area, a decision in the House of Lords some years ago gave local authorities relative immunity in respect of claims that economic loss had been caused by the negligence of building control officers. There is, however, no similar immunity in respect of complaints that maladministration or service failure by building control officers has caused a complainant injustice because of economic loss. I upheld such a complaint against a district council that used in its defence the House of Lords judgement, but where I considered the council should pay a third of the cost of rebuilding the structure in question (sharing responsibility with the complainant, who had commissioned the works, and the builder). The council accepted my recommendation, and this formula of requesting councils to share costs in this way has been frequently used since.

Finally, I issued the first report on the use of bankruptcy as a means of recovering council tax. It involved a council tax payer made bankrupt by a city council in order to recover arrears of tax of around £1,000. When he complained to me, the debt had mounted to £40,000 because of the cost of administering the bankruptcy. I felt that the council's procedures for collecting tax arrears were defective and that it needed to do much more to spell out to a debtor the dire consequences of bankruptcy proceedings. Again, the decision in this case has had a wider impact on collection procedures in other local authorities, and the LGOs intend to publish a special report on this issue during 2009-10.

For these and many other reasons it was a privilege to have been an Ombudsman over such an interesting and lengthy period of time. I had unstinting support from my colleagues Tony Redmond, Anne Seex and Ann Abraham, the Parliamentary and Health Service Ombudsman; and from Neville Jones, my Deputy at the Coventry office, and all his splendid staff.

From September 2009 and for the next five years I will be Visiting Professor on the staff at Birkbeck College, University of London, teaching modern London history to MA and PhD students. I hope it's just as enjoyable as the last 14 years or so have been!

# Avoiding ambiguity

A supermarket notice said, 'Our staff are fully trained in credit card fraud', and a *Daily Telegraph* front page proclaimed, 'Act now to beat young thugs, says police chief.' In the last of his three articles on the importance of clear writing, Martin Cutts, research director of Plain Language Commission ([www.clearest.co.uk](http://www.clearest.co.uk)) provides some practice at spotting ambiguities.



Martin Cutts

## Family butcher to become MP

But just how many families did he dismember and why did people vote for such a villain? At the heart of much comedy there's similar ambiguity. "I went window shopping today," the late Tommy Cooper once said, "and I bought four windows."

The *Oxford Companion to the English Language* defines ambiguity as 'actual or potential uncertainty of meaning, especially if a word, phrase or sentence can be understood in two ways'. Most ombudsman writing is meant to have only one meaning. Although many ambiguities arise from incorrect grammar or wording, two types of ambiguity can be present in perfectly correct sentences:

- lexical ambiguity, arising from an individual word with more than one meaning, for example 'bear', 'lead' and 'cleave'
- grammatical ambiguity, arising from a sentence structure with more than one meaning, such as 'They are cooking apples', 'They're running the marathon' and 'They can fish.'

As *The Oxford Companion* points out, 'Many statements are ambiguous in isolation, but clear in context or are amenable to logical analysis... In conversation, ambiguity can usually be resolved by asking, 'What do you mean, X or Y?', but in reading there is no one to ask and, unless the term is marked so as to designate the meaning intended, it may be impossible to distinguish one meaning from another.'

Can you spot the ambiguities in these examples from newspapers and official documents?

- 1 'One of the competitors is the reigning ladies hedgelaying champion, whose delicate silver earrings and long dark plait mark her out as unmistakably feminine. Unlike her hands, her fingernails are blackened with bruises and dirt.'

- 2 From a house builder: 'If the thought of moving seems daunting then we urge you not to worry. We have helped over 40,000 people move to one of our apartments.'
- 3 Headline: 'Panda mating fails; vet takes over.'
- 4 Newspaper: 'Sir Edmund, 87, who climbed the world's tallest peak in 1953, is believed to have fallen over the weekend.'
- 5 Newspaper: 'Milan Mandaric, the Portsmouth chairman, said: 'It is business as usual. Alain Perrin is going nowhere. I have heard all about Alain being given five or six games to turn around our results but this is not true.'
- 6 'The query function was identified as a very useful tool for healthcare professionals, however many people are still not aware of the service.'
- 7 From an insurance policy: 'You can't cash in your policy early for a sum of money.'
- 8 From a residential home's brochure: 'We regretfully do not except clients with double incontinence, severe dementia or Alzheimer's disease.'
- 9 'Public bodies should take responsibility for the actions of their staff and those acting on their behalf.'
- 10 'The principles draw on over 30 years' experience and propose a clean framework within which public bodies should seek to work.'
- 11 Jan Moir of the *Daily Mail* on the death of Stephen Gately: 'It is important that the truth comes out about the exact circumstances of his strange and lonely death. As a gay rights champion, I am sure he would want to set an example to any impressionable young men who may want to emulate what they might see as his glamorous routine.'

## For the future

Re-read your letters and reports. Could others misread them? Put yourself in a critical reader's shoes. If a complainant finds your letter ambiguous, it's likely to generate more correspondence and may lead them to the wrong conclusions.

Plain Language Commission provides editing services, training courses on writing skills a free monthly newsletter, *Pikestaff*, on all kinds of language matters. Send an email with 'Pikestaff subscribe' in the subject line to [mail@clearest.co.uk](mailto:mail@clearest.co.uk), and you'll be added to the mailing list.

- Did you notice the ambiguities?
- 1 Seems odd that her hands are clean and 'feminine' but her fingernails are mucky and bruised. Can fingernails, lacking a blood supply, be bruised? Perhaps

the author made a bad sentence break and meant to write: '...unmistakably feminine – unlike her hands, which have bruises and dirty fingernails.' It's also unclear why the writer is so desperate to drag femininity into an article on someone doing farmwork, but that's another story.

- 2 That would be one very crowded flat.
- 3 No wonder some viruses can jump the species barrier.
- 4 More understandable if he'd stumbled over a molehill.
- 5 'Alain Perrin is going nowhere' doesn't sound like a ringing endorsement.
- 6 Ah, the perils of 'however' (see my second article in the series). Without a full stop after 'professionals', the phrase 'however many' attaches itself to 'people' and creates another possible meaning.
- 7 Then what can you cash it in for – a goat?
- 8 From what does the home 'not except' them? Or does it 'not accept' them?
- 9 The second 'their' could refer to the public bodies or the staff.
- 10 'Clean' could mean many things, including fresh and not corrupt.
- 11 As 'champion' agrees with 'I', Jan Moir seems to be describing herself as a gay rights champion. Presumably she meant, 'As a gay rights champion, he would, I am sure...'

## For the future

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## The Removals Industry Ombudsman



Matti Alderson

Fourth in a series that illuminates member schemes

By Matti Alderson,  
*Removals Ombudsman*

The Removals Industry Ombudsman Scheme (RIOS) is unique within BIOA because it's the only wholly voluntary private sector scheme that isn't underpinned by specific legislation.

Set up and funded eight years ago by the National Guild of Removers and Storers (NGRS) whose members represent some of the best-known removals companies in the UK and Ireland, the Ombudsman is independent and the Scheme is free to consumers. It has a two-tier approach to dispute resolution. Dissatisfied customers who have been unable to reach agreement with the remover first employ the NGRS's conciliation service. The Ombudsman steps in when that process has failed to reach a satisfactory conclusion, and aims to resolve complaints swiftly and informally wherever possible.

The Ombudsman deals with a wide range of complaints, from breaches of contract to allegations of unprofessional, inefficient or 'unfitting' conduct, companies that break the comprehensive NGRS Code of Practice or substantial delays in dealing with a customer's complaint. Excluded are insurance

issues, complaints already resolved in court or by another body and those that are frivolous, vexatious or without substance. Other ombudsmen reading these last three will relate to the extensive correspondence that can ensue from dismissing a heart-felt complaint on any of these grounds!

Our complaints dipped by almost 10% in the middle of 2008 but then began to rally and have climbed again to 95 so far this year as the housing market recovers. The Ombudsman deals with both domestic and commercial companies; in some months last year up to 25% of complaints emanated from consumers who used a UK or Irish business to move them abroad and it's on trend to repeat that during 2009.

At the end of an investigation the Ombudsman's Determination and any award made in favour of the customer aims to return the situation as closely as possible to the status quo ante. Over 80% of pursued cases are upheld in favour of the complainant. Very few companies refuse to co-operate. When they do they're expelled by the Guild and lose all the benefits of membership, including the confidence of potential customers of buying into a rigorous

inspection regime with ultimate recourse to an Ombudsman. For removers, this is a convincing selling point in a competitive market. Of course, using the Ombudsman doesn't preclude subsequent action by the customer in court, though this is rare.

Most removers are small businesses. There are rogues, as there are in any industry, but in my experience most removers are hard-working and well intentioned, often extending agreed working hours to accommodate their customers and taking a stoical view of having to negotiate a muddy path – that somehow wasn't mentioned by the customer – at a challenging angle and with heavy furniture!

However when things

do go wrong it can be truly distressing for customers at a time when they're under excessive pressure, and emotions run high – the league table of comparative stresses places moving house near the top. Household goods are insured and can be replaced. But imagine losing all the family photographs or some other sentimental treasure.

Although the Scheme is small in comparison with others in BIOA it prizes its impartiality, independence and effectiveness and values the accessibility, public confidence and ability to strike a balance between care and objectivity that it's cultivated during its pre-teen years.

We may be pint-sized, but we nevertheless pack an effective punch!



Many consumers undertake their own removals ...

# Selective to be effective

Richard Thomas CBE was Information Commissioner from November 2002 to June 2009, and he was appointed as Chair of the Administrative Justice Tribunals Council as from September. Editor Emma Gray asked him a series of questions about his role at the helm of both organisations.

## **How do you think the way the public think about data protection and freedom of information has changed over the past six years?**

There has been a complete turnaround. Both subjects are now very much centre-stage.

When I started as Information Commissioner at the end of 2002, freedom of information was largely a subject for the so-called chattering classes and an unknown and rather threatening prospect for those gearing up in the public sector. I knew that implementation of such a wide-ranging and comprehensive law was going to be a major challenge. Data protection – which had been going in the UK for some 18 years – was seen as remote and complicated. The public often saw it as stopping things happening rather than a safeguard for their private information.

I still have my presentation when I was interviewed to be Commissioner. I wrote then that:

*'The Commissioner is charged with promoting two principles that are novel, controversial and threatening. They will assume concrete shape in predictable and many unexpected ways. This task must be accomplished across both public and private sectors, in conformity with a complex web of duties and powers, with limited resources, in dialogue with powerful forces and against a fast-changing backdrop.'*

When I stood down in mid-2009, there was plenty of unfinished business, but I am proud at how far we have come. Transparency is now central in political and media vocabulary and freedom of information is widely recognised as bringing greater accountability and other benefits. The growth of databases and the power of ever-cheaper information technology have brought huge

controversy over data losses and fears about excessive surveillance. They can be few now who can be unaware of the need to control the risks of data abuse.

## **Which particular cases stand out as having been unusual or precedential?**

It's hard to know where to start. Almost every FOI case in the first few years was new. All sides were testing the boundaries of a complicated and culture-changing Act and ICO was on the same steep learning curve as everyone else. There is no doubt that the role of the Act in exposing MPs' expenses ignited public awareness and the consequences still reverberate. It was a strange experience to be told separately by two MPs that I was the most unpopular man in Parliament – and this was before the newspaper leaks. Two big cases involved Iraq – the Attorney General's advice and the Cabinet minutes before the invasion. Other memorable cases ranged from animal experiments to the Sakhalin gas field; from abortion statistics to background advice on the 1997 Budget; and from the 1911 census to local government pension investments in hedge funds. There was so much unfamiliar territory. Thank goodness the ICO staff are such great learners.

The loss of 25 million child benefit records – followed by a horrendous roll-call of government and commercial data losses – marked a turning point for data protection. This has led to stronger powers, sanctions and resources for my successor, Chris Graham. The ICO can also claim credit for putting concerns about surveillance on to the agenda. We produced a major report

in 2006 and hosted an international conference. For a long time I will probably be remembered for asking the question 'Are we sleep-walking into a Surveillance Society?' Along the way, there were plenty of high-profile controversies – ID cards, children's database, the illegal trade in personal data, the retention of police records, the secret construction industry database, social networking and Google Streetview and many more.

## **Are there any particular areas where you think Ombudsman offices may be in danger of non compliance with DPA or FOI?**

That's a difficult question. Both Acts impact on Ombudsman casework. Some complainants have claimed that DPA subject access rights entitle them to see case files or material obtained from the organisations they are complaining about. Most – but not all – Ombudsman schemes are subject to the FOIA (as is the ICO itself). The situation is further complicated where there is an inter-action with governing legislation. Two things were clear to me. First, every Ombudsman scheme works very hard to protect personal data and achieve maximum transparency. Second, it was important to be cautious of an over-literal or over-zealous approach to the interpretation of DPA and FOIA.

### **What was your motivation in taking on the chair of the AJTC?**

It is vital that the administrative justice system, and its component parts, are fit for purpose.

I see myself as a lawyer with a strong commitment to de-mystifying the law and making justice more accessible, as a person with strong roots in the consumer world and someone who enjoys making a difference. I hope that I have a reasonable track record. As a CAB lawyer I was a frequent representative before tribunals. At the NCC I was heavily involved in setting up the original Insurance, Banking and Building Society Ombudsman schemes, worked to improve small claims procedures and pushed the Access to Justice agenda on the Lord Chancellor's Civil Justice Review. I also became a Council member at the Banking Ombudsman Office (OBO) and was then on the Board at FOS. As Information Commissioner, I came across plenty of administrative decision-making and was of course subject to review by the Information Tribunal.

### **What is your vision for the Council?**

The Council as a whole has embarked on a strategic review which will lead to a new Corporate Plan in January. I am clear, however, that the first priority must be to have clear

priorities – 'Selective to be Effective' was a slogan I adopted at ICO and the same must apply to AJTC. We have a very wide remit, focusing on accessibility, fairness and efficiency from the users' perspective. This is challenging enough for tribunals which now deal with over half a million cases a year. We also monitor first-instance decision-making where everyone agrees with the 'Right First Time' message, but there is not always sufficient feedback from redress and complaint schemes.

Our new approach will involve well-defined proactive projects and using other opportunities to be the authoritative and independent voice for the individual citizen. In all cases, I hope we can put forward worthwhile proposals for improvements – whether sectoral or cross-cutting – which have a good chance of being taken seriously.

### **How would you describe the interface between the work of the Council and that of Ombudsmen? Are there ways Ombudsmen and the AJTC could be communicating more effectively?**

There are close linkages and I predict they will get closer. Ann Abraham is an ex-officio Council member, with corresponding arrangements for our Scottish and Welsh Committees. Several Council members have worked in, or closely with, BIOA schemes. The Council has long been interested in ADR and PDR (Proportionate Dispute Resolution) is a key approach which we push. Public sector ombudsman schemes are seen very much as part of the administrative justice system and there are strong arguments that at least the statutory private sector schemes belong there too. One thing is clear – that Tribunals and Ombudsmen can learn a great deal from each other, though I suspect that

the mutual awareness and understanding is not always as strong as it could be. I hope that AJTC can play a role in cross-

fertilising, especially where we can spotlight good practice which other schemes could adopt.

### **What is the potential impact on the work of the AJTC of devolution (the fact that different administrative justice systems operate in different parts of the UK)?**

Our enabling legislation created Scottish and Welsh Committees of the AJTC. The Welsh Committee will soon be publishing an excellent report on Welsh tribunals. You are right to imply that that devolution presents a complex picture for administrative justice. Many tribunals operate at a UK level, the Tribunals Service is essentially an English body, there is a very distinctive Scottish legal system and Justice has not been devolved to Wales. Our Scottish and Welsh Committees operate with considerable autonomy, but we share key values – openness and transparency, fairness and proportionality, impartiality and independence and equality of access to justice. The trick is to promote this approach in each context we deal with – whether geographical or sectoral.

### **It has been mooted that the AJTC may undertake a review of Ombudsmen schemes. Are you able to expand on this, perhaps in terms of its scope and timescales?**

I am very much aware that, over recent years, Ombudsmen have become more prominent across the administrative justice world, though they have proliferated in a somewhat ad hoc fashion. A review of the Ombudsmen landscape is thus a possibility, but equally we may concentrate on lessons to be learnt across different types of redress scheme or look at completely different priorities in the first instance.

The AJTC's Corporate Plan due in January will outline our priorities for the three years 2010–13. This will be followed by a one-year Action Plan covering about five specific projects for 2010–11 in more detail. But we genuinely have not yet decided what they will be. It is frustrating that we must be selective, but it is essential that we are good at saying No to activities that are not top priority.

So, I am sorry I cannot yet answer this question, but keep an eye on our website ([www.ajtc.gov.uk](http://www.ajtc.gov.uk)) and our Adjust Newsletter.



# Researching Impact

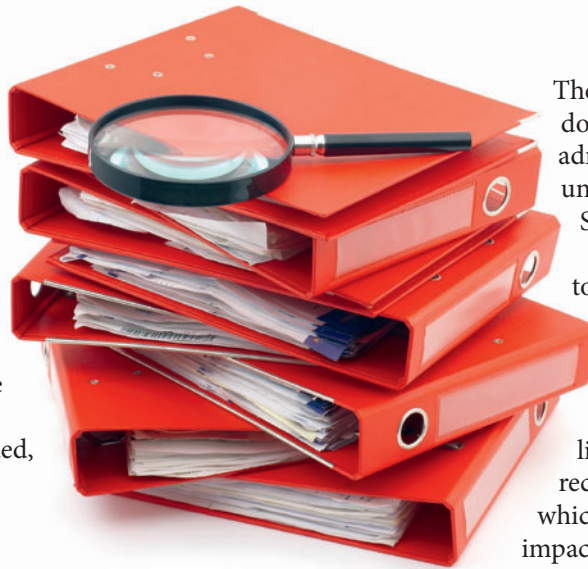
By Chris Gill, Complaints Investigator, SPSO

In the previous edition of this magazine (issue 38, August 2009), Brian Thompson, Richard Kirkham and Trevor Buck reported on the outcome of their research on public sector ombudsmen. They highlighted the absence of contemporary research on the institution and recommended, amongst other things, that 'all UK ombudsmen should devote more resources to researching and developing the link between 'putting individual complaints right' and 'getting decision-making right first time around'.

The Scottish Public Services Ombudsman (SPSO) has recently supported a small-scale, independent study<sup>1</sup> that addressed these points by investigating the impact ombudsmen have on the administrative decision-making of organisations under their jurisdiction. A key question for the study was: to what extent does the work of ombudsmen ('putting individual complaints right') contribute to improving the practices of administrators in the public sector ('getting decision-making right first time around')? The study focused on the SPSO's impact on Local Authority Housing Departments in Scotland.

The conceptual foundation for the study was an analytic framework developed by Simon Halliday to investigate the impact of judicial review.<sup>2</sup> The framework sets out a number of conditions which need to be satisfied for judicial review to have an impact and this was adapted to the ombudsmen context. The adapted framework comprises four elements as follows:

- The messages about good administration that ombudsmen send out to administrators must be clear and consistent;
- Administrators must be aware of ombudsmen's messages;
- Administrators must be committed to applying the administrative



principles contained in ombudsmen's messages; and

- Administrators must have no difficulty in learning from ombudsmen's messages.

It is important to note that, rather than assessing the impact of particular investigations on the authority subject to investigation, the study sought to assess the generalised effect of ombudsmen decisions on local authority decision-making.

At the outset, expectations about what the research would uncover were mixed. Although literature on the impact of judicial review is sceptical about the courts' influence, there were grounds for optimism about the potential impact of ombudsmen.

Many of the findings were positive, particularly given that improving administrative decision-making was only a secondary goal for the SPSO. Indeed, a very high degree of clarity and consistency was found in the messages being sent to administrators by the SPSO. There was also evidence of pockets of well-informed and committed administrators over whom the SPSO appeared to have significant influence.

Overall, however, the findings did not justify the initial optimism. Awareness and commitment were generally low, with a lack of systematic measures in place to learn from the work of the SPSO and a complete lack of knowledge about the SPSO below management level.

The findings revealed significant doubt about the extent to which administrators were able to understand and implement the SPSO's messages.

Taken together, the findings led to the conclusion that the SPSO had a fairly limited impact on administrative decision-making in Local Authority Housing Departments. In light of this conclusion, the study recommended two main ways in which the SPSO could increase its impact:

- **Shift in operational focus.** If ombudsmen are to have a greater impact on 'getting decision-making right first time', their focus should shift from the resolution of all individual complaints to a more strategic focus concentrating on the small number of complaints that are of significance to parties beyond those in dispute and that appear to involve systemic failures. Resources freed up as a result should be used to bolster policy, analytic and communication functions. Ombudsmen should move from predominantly facing the public, to predominantly facing administrators.
- **Improvements in communication.** This should include increasing personal contact with administrators (such as through training) and publications that:
  - Focus on sectors and professional groups;
  - Draw out principles or learning points; and
  - Target frontline staff.

It is hoped that the outcomes of this study will generate debate about the role of ombudsmen in improving the quality of public administration and provide a basis for thinking about how greater impact might be secured in future. For further information, please email [cgill@spsso.org.uk](mailto:cgill@spsso.org.uk).

#### References

- 1 The study was conducted by the author as part of an MSc in Policy Studies at the University of Edinburgh.
- 2 Halliday, Simon. 2004. *Judicial Review and Compliance with Administrative Law*. Oxford: Hart publishing.

## Judy Clements OBE

### The Adjudicator (Revenue and Customs)

Judy Clements was appointed to the office of Adjudicator for Her Majesty's Revenue and Customs in April 2009. Judy is the Department's third adjudicator in the role's 16-year history. Her remit is to investigate complaints against the Department where they have failed to resolve them satisfactorily with the complainant. Examples of the types of complaints Judy deals with include Tax Credits, Personal Tax, Business Tax, Stamp Office, Insolvency Service and the Office of the Public Guardianship.

Prior to this Judy was a Director at the Independent Police Complaints Commission (IPCC). She spent the previous four years at HM Prison Service as Head of Diversity and Equality. Judy was a Member of the Home Secretary's Lawrence Steering Group. A former Chief Executive of Birmingham Partnership for Change 1995–1999, Judy was also Chair of The Diana Princess of Wales NHS Children's Hospital Trust in Birmingham (1997–1999). Judy is a former member of the BBC's Regional Advisory Council for the West Midlands, and the first Chairman of the West Midlands National

Lotteries Board. She co-ordinated the UK's largest Crime Prevention Project under the Government's Safer Cities Programme (1989–1994). Judy has also worked with the Judicial Studies Board delivering equality training for newly appointed judges and is a former member of the Judicial Studies Board Equal Treatment Committee. Judy served as a Police Officer in West Midlands Police 1978–1989.

Judy is a member of the Women in Public Policy, Whitehall network. She is deeply committed to public service and promoting high quality standards to ensure customers are treated fairly and listened to. She is a former Trustee of Turning Point, one of the UK's leading social care charities. Judy has had a life-long interest in the health and social welfare of children and young people.

She is one of the original trustees and a founder member of Acorns Children's Hospice in Birmingham, having helped to raise some of the initial funding to build it. She is a current trustee for Barnardo's Children's charity, where she serves as a Governor for one of the charity's schools



– Meadows in Kent. Judy was awarded the OBE in Her Majesty's New Year's Honours in 2000 for outstanding work to the West Midlands Community.

## Adam Sampson

### Ombudsman and Chief Executive, Office for Legal Complaints

Adam Sampson's role in setting up the new Ombudsman's scheme to cover complaints about legal practitioners will not be the first time he has been in on the start of a new enterprise. Back in 1994, he was appointed as Assistant Ombudsman for the then still-in-planning Prison Ombudsman's office, helping with the (tortuous) negotiations with the Home Office and staying for three years to see the new

scheme well into operation. So his second stint in the world of Ombudsmanry should not come as too much of a shock.

Adam came to his Prisons Ombudsman role following a long period spent in social work and criminal justice. Following a period in academia – he had been Junior Dean at Brasenose College, Oxford – he joined the probation service. It was his involvement in the aftermath of the



Tottenham riots (he was the probation officer for Winston Silcott, later cleared of the murder of PC Keith Blakelock) that led him to join the Prison Reform Trust. Here, by coincidence, he spent five years working as Deputy Director to Stephen Shaw, now Prisons and Probation Ombudsman.

The period between his first and second stints in the Ombudsman area took him first to the drugs field, where he ran

RAPt, a medium-sized addictions charity, and then to Shelter, where he spent nearly seven years leading the campaign for more affordable housing and managing the modernisation of one of the country's leading voluntary sector organisations. It was the chance to set up the new Office for Legal Complaints and become Chief Ombudsman which tempted him back. And he is clearly relishing the challenge.

# Reflections

By Walter Merricks, former Ombudsman at the Financial Ombudsman Service

Ten years ago private sector ombudsman schemes were seen as something of a backwater in the mainstream of public life. Apart from those of us in the financial sector, there was the estate agents scheme – and the funerals scheme that was doomed to cease operations two years later. Hardly a solid foundation.

A decade on I think we can say that we are here to stay. But for how long? And how strong a place have we secured?

In the past decade Parliament has approved the establishment of a number of schemes. The Financial Services and Markets Act 2000 set up the Financial Ombudsman Service; the Telecommunications Act 2003 provided for the formal recognition of Otelco; the Higher Education Act of 2004 provided for a scheme for students; the Consumers, Estate Agents and Redress Act 2007 for that of the surveyors scheme and the estate agents scheme (now the property ombudsman), and also that for energy providers; and the Legal Services Act 2007 for the law professionals scheme. In addition the 2007 Tribunals Courts and Enforcement Act brought within the oversight of the Administrative Justice and Tribunals Council all ombudsman schemes, public and private.

This model of service – the offer of free independent dispute resolution to customers paid for by providers as an alternative to court – started 28 years ago as something of an experiment and until 10 years ago ombudsman schemes were cottage industry size.

The ombudsman himself (it was virtually an all male business then) saw all the cases and made all the decisions. There were some misgivings about whether what seemed like a massive organisation with 350 staff dealing with 25,000 complaints annually (that was how the Financial Ombudsman Service started) could maintain the ethos and function of *ombudsmanry* in what was inevitably going to be something of an industrialised bureaucracy.

This year with a workforce of 1,300 dealing with nearly 800,000 enquiries, upwards of 170,000 cases with a budget of over £90 million, I hope we can say that the key elements of the model can still work, and that the values of fairness, speed, reasonableness and informality can be maintained at much larger volumes. But this can only be done with the help of high level management skills and systems – for business planning and budgeting, advanced IT, personnel training, quality audit and customer service delivery.

And we can say that the model still works for consumers. Of the people the Service will help this year, I would argue that few would dare to go to court, and if they did the outcomes would be inconsistent to say the least, huge amounts of money would be wasted on court time and lawyers fees, and there is a real question of whether just outcomes would be achieved. The offer of a free service levels the playing field for the consumer. In additional pooling all the cases in one place can be said to generate benefits of scale – in terms of accumulated



Walter Merricks

expertise, consistency of decisions, dedicated customer service, industry feedback, and operational economies. Unlike the court system where costs pressures force most cases to be reluctantly settled without a judicial opinion, the ombudsman service offers a reasoned view on the merits of all the disputes brought before it at a far lower unit cost.

Despite what one can enumerate as our successes, we should be cautious in assuming that private sector ombudsman schemes are all safe. That which parliament has put in place, parliament can just as easily take away. Most government departments see their schemes as just that – theirs to amend, merge, contract or abolish should their own policy or political pressures dictate – and parliamentary time allow. In the financial world there have been calls from some providers to alter the free access nature of our scheme: why, it is argued, shouldn't consumers at least make a down-payment, returnable if their complaint succeeds? The fact that free access is a fundamental requirement of BIOA recognition would not be seen as the slightest obstacle to reform by civil servants or politicians – even if they knew

it existed. Few MPs or peers would take a holistic view of the ombudsman sector or of the damage that might be done to the model by an ill-judged reform to a single scheme.

The Administrative Justice and Tribunals Council, we may hope, might offer some protection. But what we may need are some better ways of demonstrating our added value in economic and social policy terms, both within and outside the sectors in which we operate. In return for our operational cost, what benefits can we show – against a counter-factual scenario assuming either that we were not here or that something different was. Where would additional costs or social disadvantages be felt in our absence? What are the essential elements of the ombudsman brand? Mere assertions will not be enough. All public institutions will be required to evaluate themselves – or it will be done for them. A challenge for BIOA and for the AJTC would be to commission some critical evidence based analysis that would either support our right to a permanent place in the administrative justice system – or show if and where the claims we make have less substance than we may like to think.

# Data Publication

By Caroline Wayman – lead ombudsman FOS

Earlier this year, the board of the Financial Ombudsman Service unanimously took the decision – following public consultation – to make information about named individual businesses publicly available, to encourage businesses to:

- benchmark their standards of complaints-handling against other firms;
- learn from businesses who are handling complaints better; and
- reduce the number of unresolved complaints referred to the ombudsman service.

For the last five years the ombudsman service has already been making this information available *privately* to the largest financial services groups. By putting this information into the open, we now hope to encourage those businesses that can be seen to be handling complaints *less well* to learn from those businesses that are clearly doing a better job.

We consulted widely over the past year on how we planned to do this – following a recommendation from Lord Hunt who carried out an independent review of the ombudsman service in 2007/08.

The data was published on our website in September 2009. It shows both good and bad complaints handling by the 142 financial businesses that together make up 90% of the ombudsman service's workload. The data is available for anyone to download from our website at: [www.financial-ombudsman.org.uk/publications/complaints-data](http://www.financial-ombudsman.org.uk/publications/complaints-data)

It shows how many complaints the ombudsman service received between 1 January and 30 June 2009. The data breaks down the total figure for each individual business into the reporting groups used by the Financial Service Authority (FSA), such as banking & credit and general insurance.

The data also shows the percentage of complaints we resolved in favour of consumers between 1 January and 30 June 2009 (giving a total figure for each of the 142 businesses, similarly broken down into the five FSA product-groups).

The data is in tables that you can search in various ways including:

- alphabetically by the name of the business; *or*
- by the number of new complaints referred to us; *or*
- by the percentage of complaints we upheld in favour of consumers.

We will be publishing data every six months going forward and we will continue to listen to views from interested stakeholders about how we might improve or amend this going forward.



## Managing high volumes of casework

By Roy Hewlett, Operations Director, FOS

It is inevitable that on such a wide-ranging subject such as this, an article of 700 words will raise more questions than provide answers.

Different schemes will have different challenges and will be at different stages with regards to their decision making. I have, therefore, broken down the challenge of managing high volumes of casework into four inter-relating components – forecasting; casework; coping and lessons learnt, with the focus on the coping strategies.

Forecasting is vital and should take account of all information that is available, including trend analysis – time and seasonal variations; the experience and expectations of your key stakeholders; and market intelligence. The golden rule is do not ignore the warning signs!

Having a good understanding of the make-up of your casework will help with determining how to cope. Things that should be considered include whether the high volumes are likely to be a short-term blip or a long-term structural change in your business model; is it due to a regulatory change of some other cause; is the increased volume more of the same type of issue that you currently deal with or is it a new

type of casework; was it expected or unexpected?

How to deal with the increased volume of casework will largely depend on the above factors. For example, the action you take would probably be different if you viewed the challenge as a short-term blip rather than a long-term structural change.

There is a wide choice of coping strategies available to you. Each has benefits and potential drawbacks and it is important to fully consider their knock-on effects - the financial implications, service and quality issues and the like. The list below will demonstrate the variety of choices that you have in managing high volumes of casework:

- recruitment - should this be the recruitment of permanent staff or contract staff; should the advertising media be direct or through agencies?
- existing staff – could you increase casework capacity from your existing workforce, perhaps introduce a targeted incentive scheme, overtime payments, increasing the hours of part-time staff?
- outsourcing – could some of your casework – in part or in full – be outsourced?

*Continued on page 16*

Continued from page 15

- secondments – are there opportunities to use the staff of other complaint resolution schemes for a limited period?
- process review – where are the bottlenecks in your processes, what are the things that are being done because they have always been done that way; what would happen if you stopped doing them?
- service standards – can your casework be separated into cases that have to be processed as a priority and those where the service standards can be relaxed temporarily?



Whatever course of action you decide on it is important to fully consider your strategies and mitigate the law of unintended consequences. An example will be helpful to illustrate this point. If introducing an incentive scheme, or enhancing an existing scheme, to increase capacity, appropriate controls need to be in place to prevent the unwanted effects of a deterioration in the quality of your casework. In reality it is unlikely that there will be a single solution to your challenge and more often than not a basket of measures will be more effective.

At all times, but probably even more important at times of increasing volumes of work, it is essential that strong leadership is present, and perceived as such by the staff; communications – internal and external - are

timely and appropriate; and staff are fully engaged. Whatever coping strategy you decide on, to be successful it will need your existing staff to support and embrace it.

Managing high volumes of casework should not be seen as purely negative; it also opens up a number of opportunities. With large volumes of casework you often benefit from economies of scale which may have a positive effect on your unit costings both in the short and long-term. Large volumes force you to think about what you do and the way that you do it. Processes can always be improved and increasing casework volumes can act as the 'wake-up call' for you to review the way you operate, identifying the business critical things that simply have to be done come what may and those nice-to-do things that can wait a little longer if necessary.

Whatever course of action you decide upon will be determined by your specific needs but, above all, it is important to learn from your experiences so that when the next challenge comes along you have a good idea of what has worked for you previously.

As mentioned in the opening paragraph, this article poses rather more questions than provides answers. We at the Financial Ombudsman Service have seen an eight fold increase in our caseload and our staff has almost quadrupled since we were formed in 2000. We do not always get it right first time but we have learnt a lot over the last nine years and should you wish to discuss how our experience may help you overcome your challenges please do not hesitate to contact me at [roy.hewlett@financial-ombudsman-service.org.uk](mailto:roy.hewlett@financial-ombudsman-service.org.uk)

# The Professional Award in Ombudsman and Complaint Handling Practice

By Michael McMahon, HR manager, FOS

I was fortunate enough to attend the inaugural BIOA accreditation course at Queen Margaret University (QMU) in October. This course has, I am sure, been eagerly anticipated by BIOA members and represents a bold step for the association. I'm pleased to say that, from my perspective, the early indications are very positive indeed – with the Professional Certificate course to be run in February 2010.

It was never going to be easy designing a course that encapsulated the generic skills required for the numerous schemes that make up BIOA. With delegates from the UK, Ireland and Gibraltar, in the public and private sectors and with well established working practices and myriad jurisdictions, the task was immense. Whilst time had to be spent determining the parameters of the various delegates' schemes and there was the inevitable administration to take care off – logging onto the QMU database, traversing the library facilities – a homogenous and considered course emerged.

The success of the course lay with the trainers. Carolyn Hirst, Eric Drake and Carol Brennan designed and delivered a course that was able to marry the key skills required of a second tier investigator and did so in an informative and enjoyable way. Crucially, all delegates were given ample opportunity to discuss how we would do it and soon found that we weren't so different after all. Knowing that the various schemes share common approaches (often) and see common issues (very often) was reassuring and helpful.

With modules on a wide range of topics – from dealing with evidence, communicating effectively and jurisdiction to name but three – the trainers and delegates were able to impart their knowledge in a way that reinforced and enlightened in equal measure.

And it wasn't all work. Our hosts treated us in fine style with Edinburgh as our impressive – seven minutes on a train away – backdrop. Opportunities to socialise (should that be network?) were many. Just don't ask me to stay on campus again!



(L-R) Trainers Carolyn Hirst, Eric Drake and Carol Brennan with course delegates



# No cause for complaint

## The story of PAI's ombudsman study programme

By Professor Gavin Drewry  
and Claire Cameron

In May 2009, Public Administration International (PAI) ran, for the eighteenth time, its two-week international study programme for ombudsmen and their staff – ‘When Citizens Complain: The Role of the Ombudsman in Improving Public Services’. This year’s programme, the financial consequences of the international economic crisis notwithstanding, attracted ten participants – from Gambia, Ghana (two), Kenya, Lesotho, Nigeria (two), South Africa (two) and Trinidad and Tobago. In total, over the thirteen years that the programme has been running, 282 people, from over seventy countries, have attended it. Ombudsmen and their deputies, investigators and managers in ombudsman offices, human rights commissioners and lawyers, even the occasional judge – have signed up. The feedback has been uniformly excellent; many countries have sent participants year after year. Another programme will run in May 2010. This article tells the story of this remarkably successful and popular programme.

The story begins in 1995, with the establishment of Public Administration International as a small training and consultancy company, based in London. The story of PAI’s origins and development is too long and complicated to be told here. Suffice it to say that, in its early days, this fledgling company was striving hard to attract business in a cut-throat international market – and one obvious potential area for development was to offer short London-based study programmes in public administration reform for officials from overseas. But what could PAI offer by way of appetising programmes that other providers were not already offering?

At this point, fate took a hand, as it so often does. Belgian ‘Trappist’ beer also had a big part to play, as beer sometimes does. Professor Gavin Drewry, who had been giving advice and support to



First international Ombudsman programme in May 1997



Claire Cameron, Director,  
Public Administration International



Professor Gavin Drewry, Professor in Public  
Administration, Royal Holloway, University of London

PAI in the early years of its existence, was in Brussels in 1996, taking part in an international working group on ombudsmen. This group was convened, under the auspices of the International Institute of Administrative Sciences,

by the UK’s two leading ombudsman scholars, Professor Roy Gregory and Dr Philip Giddings. Claire Cameron, one of PAI’s Directors, was in Brussels too, and she, Roy, Philip and Gavin met for an early-evening drink in the Bar Florence, just off the Avenue Louise. Halfway through a refreshing glass of Chimay

Bleue (or maybe it was the second one) Gavin looked over the rim of his glass and saw, sitting opposite him, his three good friends and colleagues – one looking for an attractive project for her new company, the other two experts in a subject that might just prove to be the basis of such a project.

And so it came to pass. The first PAI ombudsman study programme took place in May 1997 – and its principal presenters were (as you may have guessed!) Roy Gregory, Philip Giddings and Gavin Drewry. From the outset, the programme had the valued support of the Commonwealth Secretariat which has, over the years, funded quite a few of the participants. From 1998 to 2006, PAI was delighted to welcome Judge Anand Satyanand, then one of the New Zealand Ombudsmen, each year to share his wealth of experience as a practising ombudsman. And in 2006, when Anand was appointed Governor-General of New Zealand, Beverley Wakem, now Chief Ombudsman for New Zealand, took up the reins as one of the programme’s key contributors.

Another key ingredient in the success of the programme has been the excellent access to UK ombudsman and complaint handling offices, generously offered by Ann Abraham at the Parliamentary and Health Service Ombudsman’s Office, Tony Redmond at the Local Government Ombudsman’s Office, Mike Biles and Rafael Runco at the Housing Ombudsman Service, Graham Massie at the Centre for Effective Dispute Resolution, Judy Clements and Simon Oakes from the Adjudicator’s Office, and by visit hosts at the Independent Police Complaints Commission, the Financial Ombudsman Service, the Prisons and Probation Ombudsman for England and Wales and the Public Administration Select Committee.

Their advice and expertise, as well as that of PAI’s wonderful range of visiting speakers, has been invaluable. And to those Trappist brewers of Chimay, santé.

# A veteran of 25 years writes...

By Maureen Behan

I retired from the Office of the Ombudsman for Ireland in September after 25 years, most of which was spent in the role of Senior Investigator. During that time I have had the privilege of working with three Ombudsmen and, as part of the management structure, contributing to the development of the Office which is now enlarged, experienced, respected and robust.

The beginnings in 1983/4 were exciting because the concept of an ombudsman in Ireland was new. It took a while before the public and the bodies under its jurisdiction grew accustomed to this new body that now asked questions nobody dared ask before. The appointment of Michael Mills, a political journalist, as Ireland's first Ombudsman was a wise decision because he was very well known throughout the country and was also well respected by the body politic. Nevertheless, his authority was challenged by a number of public bodies but he dealt with them all head on. He also had to deal with a situation similar to the financial environment in which the Office finds itself today i.e. cuts in the budget of the Office. In the 1980s the fledgling Office could not absorb the cuts imposed and staff were redeployed as a consequence. That period was probably the lowest in the history of the Office but thankfully

the Office had recovered by the early 1990s. Michael Mills retired in 1994 and Kevin Murphy, a senior civil servant, was appointed Ireland's second Ombudsman.

Kevin Murphy's period as Ombudsman was characterised by growth and expansion into the organisation it is today; an organisation of three Offices: the Office of the Ombudsman, Office of the Information Commissioner and Standards in Public Offices Commission. With this expansion came increased staff, workloads and responsibilities. The Office enjoyed a period of challenge, change and development that was sometimes breathtaking with new boundaries being set and the status quo disturbed both within the Office and among the bodies under jurisdiction. One of the organisations whose feathers was ruffled was the Revenue Commissioners who, having refused to accept a recommendation

of the Ombudsman, found themselves before a Committee of the Oireachtas (Parliament) where its Chairman was torn to shreds by the members not just because of the refusal but because of the attitude displayed to the Office. This event and other similar reports by the Ombudsman sent shock waves through the administrative system to the extent that by the end of Kevin Murphy's second term there was a view that the Office had become too powerful.

When Emily O'Reilly was appointed Ombudsman in 2003 she faced a formidable challenge. It was now an organisation rather than an office with an increased and confident workforce and the 'powers that be' waiting for an opportunity to clip its wings. The opportunity arose when, in the context of a review of operation of the Freedom of Information Act, fees for certain types of information which up to then had been free,

were introduced. There was an outcry but all protests and comments by the Information Commissioner and others have fallen on deaf ears.

Emily O'Reilly has also been appointed Commissioner for Environmental Information and has taken a keen interest in the progress of a Bill to amend the Ombudsman Act which would, among other things, extend the jurisdiction of the Ombudsman. Hopefully, the Bill will be enacted in the near future.

Looking back over my time in the Office, my experience has been a very happy one. The nature of the work done has been a source of great satisfaction and fulfilment. The Office is very fortunate to have a competent staff dedicated to serving the public with kindness and patience. Times, however, are changing and the Office faces new challenges both internally and externally. The public has become more demanding and expects quick responses and results with no excuses. There has been a proliferation of ombudsman offices in Ireland in recent years and although a degree of rationalisation may take place in the future, a review of relevance and impact is likely to form part of the future strategy of the Office. I look forward to observing progress from the sideline in my new role as a retired Senior Investigator.



Emily O'Reilly, Ombudsman, with the author (far right)

# Conducting Administrative, Oversight & Ombudsman Investigations

*Book review by Mike Reddy, Former Deputy Banking Ombudsman and former Deputy Independent Adjudicator for Higher Education*

The author, Gareth Jones, is the director of the Special Ombudsman Response Team (SORT) at the Ontario Ombudsman's office. He also runs the well known Sharpening your Teeth training programme for investigators. Using his substantial experience of managing investigations (including a number of years at the London Metropolitan police) he takes us through the practical steps of planning, examining evidence, interviewing, report writing and making recommendations. There is also a useful chapter about investigators and the media.

The book is laced with interesting case studies and amusing anecdotes and comments. Nothing is more persuasive than a good story, and many of the cases he refers to illustrate well his 'eight principles of excellent investigation' (essentially these relate to: independence, training, neutrality, resourcing, interviewing and the handling of evidence).

The Wheeler case is particularly tragic and memorable - an investigation carried out by the Canadian Military Ombudsman into the handling of the death of a master corporal during a military exercise. The Ombudsman made 34 recommendations which resulted in a radical overhaul of how the Canadian Forces investigate unexpected death and treat bereaved families. The case demonstrates the importance of applying the ombudsman's stock-in-trade - the test of 'fairness'.

Most ombudsmen will find something to identify with. The book's emphasis is on investigations into government agencies but those schemes that grapple with hundreds of consumer complaints a week about private service providers will find plenty of food for thought.

To my mind the most thought-provoking chapter is on the subject of systemic investigations which Gareth Jones defines as 'one which goes beyond the immediate issue raised by a given complaint and looks at the underlying causes'. The advantages, he says, are that they tackle root causes - improving public policy, galvanising a bureaucracy and resolving thousands of complaints in one fell swoop. He explains that SORT was established to undertake a limited number of systemic issue investigations each year. An investigation into the way Ontario's Disability Adjudication Unit handled certain benefit payments is given as an example. He describes in some depth how to undertake systemic investigations, noting

that there may be resistance!

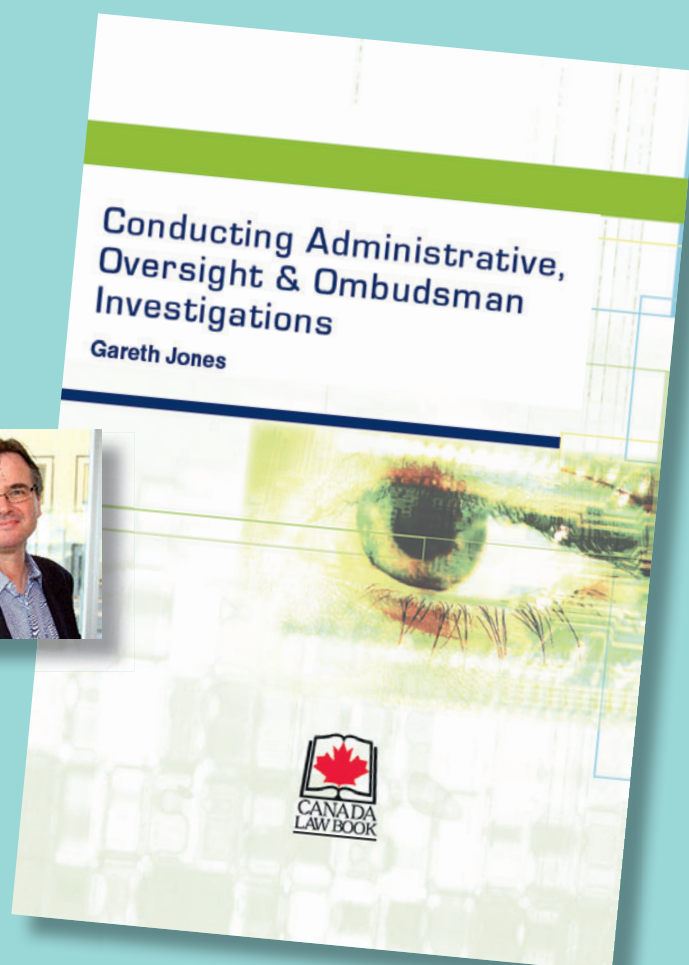
I dare say that there are a number of ombudsmen schemes in the UK and Ireland that would love to have the remit to undertake systemic investigations as an alternative to processing thousands of complaints on the same issue!

I would have preferred the book to say a little more about the beginning and end stages of investigations; that is, early resolution techniques and implementing lessons learnt from complaints. However, it is already more than 400 pages long so perhaps this should wait for another day! Some content could also have benefited from legal observations, although the author explains at the outset that he is neither a lawyer nor an academic. All in all, this book is an excellent practical guide to investigatory processes and makes a first-rate training tool.

*Conducting Administrative, Oversight & Ombudsman Investigations*  
by Gareth Jones, *Canada Law Book*, 2009



Mike Reddy





(L-R) Dr Maurice Hays (former NI Ombudsman), Derek Alcorn (Chief Executive, NI Citizens Advice), Les Allamby (Director of Law Centre NI), Sir Declan Morgan, Lord Chief Justice of NI, Emily O'Reilly (Ombudsman, Republic of Ireland), Dr Tom Frawley (NI Ombudsman), Ann Abraham (Parliamentary and Health Service Ombudsman)

## Forty years of Administrative Justice in Northern Ireland

Continued from page 1

postholder, Dr Tom Frawley CBE, who has a career background in health and social care management, was appointed to the post through such a competition.

For forty years the NI Ombudsman's Office has played a significant role in addressing citizens' grievances against a background of civil, political and constitutional uncertainty. Amidst this social upheaval, including the constitutional changes introduced by the Good Friday Agreement and the newly created NI Assembly, the Ombudsman has maintained his scrutiny

of the NI public sector. A recent survey has revealed that awareness of the NI Ombudsman is high but that this awareness is mainly as a result of media attention generated by individual cases reported on by the local press.

Despite its success in the forty years since its inception, there is a need to modernise the legislation under which the Office operates to equip it for the significantly changed and much more demanding environment of today. To this end, a major independent review has been prepared by the devolved Assembly. The review's aims were to develop a

public sector Ombudsman equipped to meet the challenges of a modernised and reformed public sector in NI. The consultation on the review will be used by the Assembly to inform decisions on the jurisdiction of the Office and the legislation under which it will operate. The review will be consulted on in the coming months.

Dr Frawley also used the 40th Anniversary event to launch a framework document for handling complaints. The booklet *Rights, Responsibilities and Redress* outlines how complaints in the public sector should be dealt with by complaints handlers in government departments and public bodies. In addition, it reminds complainants of their particular responsibilities when pursuing a complaint.

The 40th Anniversary event was attended by representatives of government departments, their agencies and public bodies in Northern Ireland as well as advocacy groups. The principal themes of the event were:

- countering the potential for 'accountability fatigue', by acknowledging the danger that excessive accountability can reduce the quality of public services, rather than improving them
  - the role of effective management of complaints in improving public services
  - complaints can enhance governance (BIOA's *Guide to Principles of Good Governance*)
  - the value of ICT in promoting the service offered by the Ombudsman.
- The real challenge will lie in continuing to deliver a citizen-centred service that demonstrably supports continuing improvement in public service in what will clearly be a challenging period for the public finances.

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