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Thirty years of the Ombudsman: Impact and the future

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The following is the text of the speech given at the conference ‘Held to Account: Responsibility and Accountability in the Public Service’, held on 7 November 2014 by the Institute of Public Administration, in conjunction with the Office of the Ombudsman.

I am delighted to be co-hosting this conference with the Institute of Public Administration on the theme of responsibility and accountability in the public service. The conference is timely following the government’s recent announcement of its plans for civil service reform. I welcome its commitment to improving civil service accountability. My office – the Office of the Ombudsman – and indeed most people in this room also have a key role to play in raising standards of public administration for everyone’s benefit.

The first modern ombudsman institution was created in Sweden more than 200 years ago. It offered an independent safeguard for citizens to ensure that a return to autocratic monarchy would not happen. The concept of the Ombudsman was further developed in Scandinavia and the creation of the Danish Parliamentary Ombudsman’s Office in 1955 created the model which has since spread around the world. The first Ombudsman’s Office outside of Scandinavia was that of the Parliamentary Ombudsman in New

Zealand, and I am delighted we have the current Chief Ombudsman, Dame Beverley A. Wakem, with us today.

The Office of the Ombudsman in Ireland is a relative newcomer, at a mere thirty years old, but has made a very substantial contribution to securing justice for users of public services and driving improvements through learning from complaints. I want to briefly reflect on the contribution the office has made to society in Ireland over the last thirty years before going on to look at how the role of the office can be developed to support an open, accountable public service.

Previous Ombudsmen: 1984–2012

In opening I wish to pay tribute to my three predecessors. Michael Mills was appointed as the first Ombudsman by the President in 1984. As he was a distinguished political journalist, it has been suggested that some well-known politicians of the day thought he would be quieter as an Ombudsman. They were to be disappointed! He faced considerable challenge to his work when his budget was threatened with devastating cuts, which he successfully resisted. By the end of his term as Ombudsman the office was accepted and recognised as an independent and impartial body that examined complaints objectively and worked to provide redress for users of public services who had suffered an injustice.

Kevin Murphy succeeded Michael as Ombudsman in 1994. As a former Secretary General of the Department of Finance, his appointment may have been met with some suspicion that the state had appointed ‘one of their own’. However, nothing was further from the truth. Kevin’s familiarity with public administration and knowledge of how it worked, together with an ability to listen and to sense when the plausible just was not true or was deliberately incomplete, made him a formidable Ombudsman. Significantly, in 1998, Kevin was also appointed as Ireland’s first Information Commissioner and used the introduction of the radical new Freedom of Information (FOI) Act to promote and foster an attitude of openness among public bodies.

My immediate predecessor, Emily O’Reilly, is well known to us all as a high-profile, hard-hitting Ombudsman, who greatly improved the visibility of the office and saw it through many significant developments. As well as taking on the roles of Ombudsman and Information Commissioner, Emily was also appointed as Ireland’s first Commissioner for Environmental Information. During her ten-year

term, Emily instigated many high-profile investigations, some of which I will mention in more detail in a moment. During 2012, her final year as Ombudsman, the Ombudsman Amendment Act was enacted, having been initially proposed as far back as 1987.

Ombudsman Amendment Act

The 2012 Ombudsman Amendment Act marked a major step forward in the development of the office. In 1984 the Ombudsman's remit was confined to civil service bodies only. Later the health boards and local authorities were added, and later again public hospitals. The 2012 Act saw an extension of the office's remit to cover the administrative actions of around 200 additional 'reviewable agencies', which are now subject to examination by the Ombudsman, including all publicly funded third-level education institutions.

Ombudsman investigations

I was anxious in preparing for today to place some stress on the outcomes of the work of the office to show how it has made a real difference for people using and running public services in Ireland. In thirty years the office has examined over 90,000 individual complaints and several hundred thousand queries. Some of these complaints have resulted in key investigations.

Lost pension arrears

One such investigation involved the refusal of the then Department of Social Welfare to pay arrears in cases where a pension was claimed late. Up to 1997, where a person was late in claiming such a pension, the maximum amount of arrears paid was for the six months immediately prior to the date of claim. This practice resulted in major losses of pension arrears in individual cases – as much as £40,000 in one case the office dealt with.

Another case concerned a widow who had failed to claim the Contributory Widow's Pension on its introduction in 1988. She had Alzheimer's disease and was not able to manage her affairs. Her family eventually applied on her behalf some eight years later and the pension was awarded. Arrears for six months only were paid. The Ombudsman, aware of the widow's inability to manage her affairs, advised the family to claim full arrears on the grounds of equity. The department accepted the argument and paid arrears of about £17,000.

In another outcome of the investigation the department agreed that, in certain situations, it could treat an existing claim for one payment as satisfying the requirement to have claimed some other payment. This is relevant in a situation where a person has been claiming a particular social welfare payment during a period when he or she could have been claiming a different, higher-rate benefit. The department then applied this new approach as a matter of course when such cases came to light. The result was a fairer approach, not just for an individual but for many, many others.

Subventions for nursing home care

In 2001 the Ombudsman investigated the payment of nursing home subventions by the health boards. The investigation identified a failure to allow a 'pocket money' provision in the calculation of the elderly person's means and the erroneous inclusion of family circumstances in the calculation of those means. As a result, fundamental changes, which addressed the Ombudsman's concerns, were made to the Nursing Homes (Subvention) Regulations and appropriate arrears were paid in affected cases.

Redress for taxpayers

The Ombudsman cannot make decisions that are binding on public bodies. However, in the vast majority of cases public bodies accept the Ombudsman's recommendation. In 2002, following an investigation which the Ombudsman carried out into a number of complaints against it, Revenue refused to implement three of the Ombudsman's five recommendations. This was an unprecedented event in the history of the office, and the Ombudsman was left with no option but to bring the issue to the Oireachtas.

The complaints involved two Garda widows, both of whom were in receipt of public service occupational Widow's Pensions. Both women claimed refunds of tax incorrectly deducted from them. To grant their claim would have had wide-ranging implications as it applied not only to Garda widows but also to widows of civil servants, local authority officials and teachers. In the case of all those affected, Revenue refused to allow a full refund of the tax and limited the refund to what it claimed was a statutory limit of five years. The two widows complained to the Ombudsman that they had been wrongly denied full refunds of tax. In addition, six other complainants reported that a tax refund properly owing to them had been wrongly retained by Revenue

for lengthy periods. As a result of the investigation, the Ombudsman made a number of recommendations, including that Revenue should make a compensation payment for loss of purchasing power or loss of interest on the refunds of income tax made in the individual cases. Revenue said that it could not implement the recommendations involving compensatory payments, claiming that it did not have the statutory authority to do so.

Following a stand-off and an appearance before the Oireachtas, the Minister for Finance made provision for a new general entitlement to interest on overpaid taxes in the Finance Bill, 2003. The provision met the requirements of the Ombudsman's recommendations.

The Minister for Finance also announced that compensation payments would be made on an *ex gratia* basis to the taxpayers affected by the Ombudsman's recommendations. At the time, the Ombudsman commented that the minister had affirmed the proud record of the Office of the Ombudsman in having the authority of its recommendations recognised.

Lost at Sea

A second occasion on which a public body did not accept the recommendations of the Ombudsman occurred seven years later, in 2009. The then Department of Communications, Marine and Natural Resources had refused the Byrne family's application for 'replacement capacity' under a scheme called the Lost at Sea scheme. Mr Byrne had been the owner and skipper of a fishing boat which tragically sank off Donegal in October 1981. He and his sixteen-year-old son lost their lives, and his widow was left with a young family.

In a Special Report, the Ombudsman concluded that the design of the scheme and the manner in which it was advertised were contrary to fair and sound administration, and that these shortcomings were factors in the Byrne family not qualifying for assistance under the scheme. As some time had passed and the scheme had closed, the Ombudsman recommended financial compensation. However, the department refused to accept the Ombudsman's recommendations.

The credibility of any Ombudsman depends on his or her ability to deliver adequate and appropriate remedies to people who have been treated unfairly. The investigation of the Byrne family's complaint had been painstaking and forensic. However, in this case the department disputed the findings and recommendations. The only option open to the Ombudsman was to seek the intervention of the Oireachtas.

The matter was ultimately taken up by the Joint Oireachtas Committee on Agriculture, Fisheries and Food for consideration. The committee's report, which recommended rejection of the Ombudsman's Special Report, went to a vote, with the nine government-aligned members voting in favour of rejecting the Ombudsman's recommendation and the other seven members attending voting against a rejection.

It appeared to the Ombudsman that the committee had taken a view based not on an objective and critical analysis of the report but on the basis of the party whip system. The implication of the committee's decision was that the government was allowed to be the judge in its own case.

The outcome prompted a wider public and political debate on the relationship between the Ombudsman and parliament. I am pleased to say that the ensuing debate resulted in the setting up of a dedicated Oireachtas Committee – the Committee on Public Service Oversight and Petitions (PSOP) – as a formal channel of consultation and collaboration between the Oireachtas and Ombudsmen. Just as the Public Accounts Committee has a key role in ensuring financial accountability, the PSOP Committee should evolve into playing a key role in administrative accountability. Both my predecessor and I have had constructive engagement with the committee on a number of occasions and I look forward to working with the committee in the future.

Simple complaints

Not all complaints result in investigation and many complaints we have dealt with may on the face of it seem relatively trivial. However, the outcomes can have a profound impact on the complainant's circumstances.

In one case, for example, I received a complaint from a woman who applied for Domiciliary Care Allowance (DCA) for her son but was refused. Later she applied for DCA for her older son, who has a similar condition to his brother, and this was eventually granted. She was thus left in a situation where she had two children with a similar condition, where one of them was regarded as being eligible for DCA while the other son was not.

My office discovered that some of the medical records for her son had not been sent to a medical examiner for review before an appeal was heard. The department agreed to review the case and revised its decision, awarding DCA to the woman together with an arrears

payment of €12,000. This was a simple case, but one that will have a significant, beneficial effect on the family.

First year as Ombudsman

In December 2013 I was honoured to be appointed as Ombudsman by President Higgins. As I approach the end of my first year I can honestly say I am enjoying the experience. My experience as Public Sector Ombudsman in Wales has shown me the benefit of working with public bodies, people such as you, who have such a significant impact on people's daily lives. I have already met with many of you who work in key areas that impact on people's lives, such as the health sector. I strongly believe that complaints should not be regarded negatively but should be used to highlight areas where improvement is necessary and desirable. As part of my objective to 'share the learning' from complaints, I issued my first *Ombudsman's Casebook* in October 2014. The *Casebook* contains summaries of cases we have dealt with and is aimed at public bodies so that they may learn both from the good practice and the mistakes of others. The *Casebook* will be issued quarterly and I would like to thank those of you who have complimented my office on the first edition.

Another initiative to support learning resulted in the publication of a report called *A Good Death*. Launched in association with the Irish Hospice Foundation, the report reflects on complaints my office has dealt with around 'end-of-life' care in hospitals. The report is written in simple terms, with simple stories, and provides examples where better communication, respect for patients or better planning will help make something that we will all go through a better experience in Irish hospitals.

Shortly after I took office I noticed that, compared with other jurisdictions, complaints about the health service, and to my office, are very low in Ireland. I want to find out the reason for this. I want to ensure that people have access to an efficient and effective complaint-handling service, and to be confident that where poor practice is found, the health service is learning from its mistakes and preventing recurrence. I have therefore launched an own-initiative investigation into how complaints are handled by public hospitals in Ireland, the results of which will be published early next year.

It is the role of an Ombudsman to help identify areas for improvement and best practice in delivering public services. These and other initiatives will help me do that. However, it is up to government and its agencies, led by people like you, to carry them through.

The future

I want now to look forward to a number of areas where I believe there is potential for improvement. These include the extension of the Ombudsman's jurisdiction to include more public services provided by private bodies, and in particular the opportunities offered by the European Directive on Alternative Dispute Resolution (ADR), the benefits of adopting a standardised approach to complaint handling across the public sector and the development of a single portal for complaints.

Alternative Dispute Resolution

In April 2013 the European Council adopted a Directive on ADR. The ADR Directive imposes a requirement on EU member states to offer effective access to ADR services for resolving contractual disputes between consumers and businesses concerning the sale of products and services. Over the years many services formerly in the public sector have been privatised, including, for example, energy supply and telecoms. These often fall into the category of networked services.

'What has this got to do with the Ombudsman?' you might ask. Well, where services are provided by the state, there is little issue about access to redress. However, when services are privatised, then access to redress can be lost. In some ways, you can argue, that it begs a question: if the railways, for example, were to be run by a private company, would they stop being a public service?

The changes in the way public services are delivered have had a variable effect on access to redress. Some companies, such as Irish Water, provide services that were once within the jurisdiction of the Ombudsman but no longer are. Under the ADR Directive, all of the networked services, including post, electricity, gas, public transport and telecoms, will have to come within the jurisdiction of an ADR entity. I believe they should come within the jurisdiction of the Ombudsman, to offer a one-stop-shop approach to redress for public services. I was very pleased when the minister brought Irish Water within the FOI regime. It would be good to also see complaints back in the Ombudsman's jurisdiction.

Standard complaint handling

Often, complaints considered by my office about the services provided by public bodies have been compounded by very poor complaint

handling. People face delays, a lack of information, incomplete answers, defensive attitudes and a lack of effective redress. Widely varying approaches to complaint handling abound, with no obvious rationale for the differences.

Introducing a standard approach to complaint handling across the public sector and setting out clear timescales, standards for responses, a common approach to redress and, above all, a focus on tackling most dissatisfaction at the time it arises can bring real dividends. I want to work with government and public service providers to introduce a common complaints policy to be used across all public services in Ireland. This has the potential to lead to greatly improved complaint handling. It allows for standardised complaint training for staff of all public service providers. It gives complainants certainty about what they should expect. A model system would be streamlined and based on an 'investigate once, investigate well' approach. It would eliminate multiple-stage processes, which create work and delay resolution.

A standardised public sector complaint process would also make it easier for the agencies within jurisdiction, with no need to reinvent the wheel and ready access to validated training modules, for example.

Single public sector complaint portal

The complex pattern of public service delivery can also serve to confuse people who want to complain. They are not always sure where they should go and how they should make a complaint. One way to address this confusion is to provide a single portal for all public sector complaints. The website www.healthcomplaints.ie, which was developed by my office in partnership with other bodies, is a useful building block towards a telephone and online service that can signpost people who want to make a complaint about any public service, or capture that complaint and send it on their behalf. My office already signposts complainants to the appropriate agency or Ombudsman. Extending this service would cost money, and would need to be funded, but it is an idea we plan to develop for the future.

Finally, recent events, such as the controversy involving the Garda Síochána Ombudsman Commission, have highlighted the importance of Ombudsman institutions being accountable to the Oireachtas, and not to the administration. One way to guarantee this relationship would be for the Ombudsman to become a constitutional office, in the same way as the Comptroller and Auditor General. At the moment, the Ombudsman is appointed by the President on the recommendation of the Oireachtas and has access to the PSOP Committee.

Public confidence in oversight institutions is enhanced when they are clearly independent of the bodies in their jurisdiction. Constitutional status would serve to reinforce the independence and offer a further reassurance to members of the public that their complaint will be dealt with properly on its merits, and that the people making disputed decisions will not themselves be able to dictate or influence the outcome.

In its thirty years the office has developed an enviable reputation for doing what Ombudsmen the world over do – speaking truth to power – and during my term of office I plan to build on its successful track record by working with you and people in public sector organisations to continue to put things right for individuals while driving improvement in our public services.