

CABINET OFFICE

OMBUDSMAN SCHEMES - GUIDANCE FOR DEPARTMENTS

Scope

1. This guidance does not extend to matters that are the responsibility of the Devolved Administrations, although they may wish to follow the principles set out below.

Introduction

2. Ombudsman schemes (or similar complaint-handling schemes, even if they do not use the title 'Ombudsman') are proving increasingly popular as a free and accessible means of gaining redress for the citizen or consumer, as recipients of public and private sector goods or services.

3. The British and Irish Ombudsman Association (BIOA) (www.bioa.org.uk) is a voluntary organisation to which all of the Ombudsmen in the United Kingdom and the Republic of Ireland belong. It has considerable experience and expertise, gained since its inception in 1993, in the establishment and running of Ombudsman schemes.

4. An effective (and BIOA compliant) Ombudsman scheme can be the hallmark of fair redress. It is important therefore that anyone establishing such a scheme should consult with the Cabinet Office which acts as the Government liaison point on Ombudsman matters, and also provides the channel of communication with BIOA.

5. In considering setting up such a scheme, departments should have regard to BIOA's 'Criteria' for use of the term Ombudsman: independence from those who the Ombudsman has the power to investigate; accessibility; effectiveness; fairness; and public accountability. If these criteria are not met, use of the term Ombudsman must be avoided, and an alternative (Commissioner, Adjudicator, Complaints Examiner, for instance) used.

6. It is also important to have regard to the governance arrangements of new schemes (especially those in the private sector), as this is fundamental to their independence and effectiveness - see BIOA's Guide to Principles of Good Governance at www.bioa.org.uk/docs/BIOAGovernanceGuideOct09.pdf. Certain issues, such as those where a principle of law is involved, may best be resolved through the courts.

7. The Ministry of Justice is able to provide advice on redress policy generally across government.

Context

8. The context within which Ombudsman schemes are developing is one of considerable change and innovation, especially within the private sector. The Government is committed to delivering a world-best consumer protection scheme which is good both for consumers and business. It is also committed to fair redress schemes for public services. Additionally, it has established the Administrative Justice and Tribunals Council which has strategic oversight over the administrative justice landscape, including Ombudsmen.

9. It is important to maintain a proper balance between the development of new Ombudsman schemes (where they are needed), and extending the remit of existing schemes where that is both appropriate and possible. In choosing the best option, Departments will therefore need to:

In the public sector

- consider the reason for additional adjudication and dispute resolution, and how it will add value to existing schemes (eg Parliamentary & Health Service Ombudsman and Local Government Ombudsman), and to the Department's own internal complaints procedures, whilst noting that an independent complaints examiner, internal to the Department, is unlikely to be considered wholly independent.

In the private sector

- avoid multiple redress schemes within individual industry sectors, which may confuse consumers and may introduce uneven practices in investigation and redress, by utilising existing Ombudsman schemes (even existing voluntary ones), or by introducing single new schemes.

Generally

- unless there are overriding reasons to the contrary, use the term 'Ombudsman' for genuinely independent redress schemes, as it has wide and increasing national and international public use and understanding, rather than other names such as 'Commissioner' or 'Adjudicator.'

General characteristics of Ombudsman schemes

10. There is a wide range of Ombudsman schemes in the United Kingdom operating in the public and private sectors. Some of the latter are entirely voluntary, some are statutory and some are 'approved' by Departments or regulators for the statutory compliance of suppliers/providers.

11. Ombudsman schemes are designed to be free to the complainant and user-friendly. Complainants do not need normally legal representation or other assistance to access Ombudsman schemes. Ombudsmen proceed by way of investigation and not by way of adversarial hearings. They provide a level

playing field between the individual complainant and organisations. They often use a number of Alternative Dispute Resolution (ADR) mechanisms and offer advantages over, and sometimes alternatives to, potentially expensive litigation.

12. The term 'Ombudsman' is occasionally used to describe bodies which are internal to those complained about and therefore not wholly independent of them. The term 'Ombudsman' is not legally protected so its use cannot be prevented, but it is essential that Departments assess carefully the relationship between any newly created redress scheme and the Department/organisation over which it has jurisdiction to consider complaints. They should not describe as an 'Ombudsman' scheme any scheme that is not truly independent from the body to be investigated.

13. For the bodies complained against, the advantages of Ombudsman schemes are that they avoid the cost and publicity of litigation while offering effective redress to their users and customers. For private sector schemes, the costs are shared among their members. For public sector schemes, the costs are borne by the taxpayer.

14. Ombudsmen have the further advantage over litigation in that they can and do often advise on systemic change. They can consider all the circumstances which gave rise to the complaint and make recommendations for a change of practice or procedure in a particular institution, Department or across a whole sector of the economy, for the benefit of all future users. Ombudsmen acquire knowledge and experience of good practice and this further informs their recommendations.

15. Ombudsmen investigations are conducted in private. Ombudsmen can examine records, interview witnesses and use professional experts where appropriate. The procedure for investigations can be tailored to the circumstances of the case. Ombudsmen do not normally name complainants but may publish digests of their decided cases. Most publish reports in which they name organisations which are the subject of the complaint.

16. Ombudsmen provide remedies which are fair and reasonable in all the circumstances, and are not necessarily bound by a strict interpretation of the law or precedent. In the public sector and in some private schemes their recommendations are not binding but meet with nearly total compliance. This is secured by a variety of means – by law, by contract, by publicity, by a regulator or by the moral force and the standing of the Ombudsman. There is no appeal against Ombudsman decisions, other than Judicial Review (where applicable) or where schemes (like the Pensions Ombudsman) have an appeal procedure in place.

17. There will be other complaint-handling schemes with Ombudsman characteristics, but they will not be fully-fledged Ombudsman schemes.

Steps to establishing an Ombudsman scheme

18. In considering whether to establish a new Ombudsman scheme, and if so how, you may find it useful to consider the following:

- **Is an Ombudsman scheme appropriate for the service concerned?**

If you are seeking to provide a means of truly independent investigation of complaints about a service, whether in the public or private sector, with the objective of providing a remedy for the complainant for any failure and recommendations for improving the service, an Ombudsman scheme is likely to be appropriate. It will have greater recognition and acceptance if it is set up as 'BIOA compliant'.

If you are seeking to provide a means of appeal against a decision by a body such as a Government department, a tribunal may be in some circumstances more appropriate (contact the Ministry of Justice).

If you are seeking to create a body which will supplement the Department's own internal complaint-handling procedures, but which will carry out its functions internally reporting to the Department, then an independent complaints examiner may be more appropriate.

If you are seeking to create a service whose primary aim is advocacy, such as the Children's Commissioner for England, the title 'Ombudsman' is not appropriate.

- **Have you considered existing Ombudsman schemes?**

Before creating a new Ombudsman scheme, you should consider the role and remit of existing schemes and decide whether a new scheme is necessary. It may, for example, be more appropriate, and more cost effective, to extend the remit of an existing scheme.

- **Has Article 6(1) of the ECHR been taken into account?**

Ombudsmen may need to comply with the requirements of Article 6(1) of the European Convention on Human Rights. Whether a scheme needs to comply and, if so, how it needs to comply, will depend upon the nature of the individual scheme. The following issues will need to be considered:

- is the Ombudsman scheme a 'public authority'?
- if so, is the Ombudsman determining 'civil rights and obligations'?

If the Ombudsman scheme is a public authority determining civil rights and obligations, the following issues will need to be considered:

- fair proceedings

- a reasonable timescale for the process
 - whether an oral hearing is necessary
 - whether the hearing should be held in public
 - whether the judgement should be made public.
- **Do you need to develop a mechanism for dealing with cases that have wider regulatory implications?**

When creating statutory Ombudsmen to work in an area which coincides with that of a regulator, you might need to consider whether cases that have wider regulatory implications will arise, and if so how you will deal with them.

- **Has there been consultation with the Cabinet Office, and if necessary with BIOA?**

The Cabinet Office provides central advice on Ombudsman matters and establishing Ombudsman schemes. BIOA is in a position to advise on the key requirements for an Ombudsman scheme to be granted full membership and voting status.

- **Has there been consultation with the Treasury?**

It is usual for departments to consult the Treasury about proposals to set up any new body. Departments should approach their usual Treasury contact in the first instance.

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Further details

The 'Criteria' of the British and Irish Ombudsman Association (BIOA) sets out in detail the criteria the Association uses for recognition of Ombudsman schemes (full membership), and can serve as a useful guide. <http://www.bioa.org.uk/criteria.php>

The BIOA 'Guide to principles of good complaint handling' and 'Guide to principles of good governance' are both available in hard-copy, free on request from the BIOA Secretary.

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