

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 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 Ombudsman Association (OA) (www.ombudsmanassociation.org) is a voluntary organisation to which all of the ombudsman schemes in the United Kingdom, the Republic of Ireland, the Crown Dependencies, and the British Overseas Territories belong. It has considerable experience and expertise, gained since its inception in 1993, in the establishment and running of Ombudsman schemes.

4. An effective 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 the OA.

5. In considering setting up such a scheme, departments should have regard to OA's '[Criteria](#)' for use of the term Ombudsman: independence; fairness; effectiveness; openness and transparency; and 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

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.

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 (for example Parliamentary and Health Service Ombudsman and Local Government and Social Care 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 normally need legal representation or other assistance to access Ombudsman schemes. Ombudsmen are inquisitorial and 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' has occasionally been used to describe bodies which are internal to those complained about and therefore not wholly independent of them. The term 'Ombudsman' is legally protected via Companies House so 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 does not meet the OA's criteria and 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. Ombudsman schemes have the further advantage over litigation in that one of their key roles is to drive service improvements and 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. Ombudsman schemes acquire knowledge and experience of good practice and this further informs their recommendations. Increasingly they publish standards for how organisations should handle complaints within that sector.

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

16. Ombudsman schemes provide remedies which are fair and reasonable in all the circumstances, and are not bound by a strict interpretation of the law or precedent. In the public sector their recommendations are not binding but are normally complied with. In the private sector their decisions are binding on the organisation if the complainant accepts it. Compliance 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. In the private sector, if the complainant does not accept the ombudsman's decision, they can pursue the matter in Court instead.

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 'Ombudsman Association 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?

Ombudsman schemes 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 a statutory Ombudsman 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 with the Ombudsman Association?

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

If you propose to establish a new ombudsman as a central government body (rather than in the private sector), you must seek Cabinet Office and HM Treasury ministerial approval before taking steps to deliver the proposed change.

Guidance is available on the approvals process for establishing new bodies. It is HM Government policy not to create new central government bodies, unless absolutely necessary.¹

Has there been consultation with HM Treasury?

Departments require the consent of the Treasury to establish new bodies and should also consult HM Treasury about proposals which have cost implications that exceed their delegated authorities, where expenditure is novel, contentious or repercussive, or which deliver new services ([Managing Public Money, Chapter 2](#)). Departments should approach their usual Treasury contact in the first instance.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686716/The_Approvals_Process_for_the_Creation_of_New_Arms-Length_Bodies.pdf

CONTACT DETAILS

Cabinet Office Ombudsman policy team:

ombudsman@cabinetoffice.gov.uk

Cabinet Office public bodies team:

publicbodiesreform@cabinetoffice.gov.uk

HM Treasury:

The best way to get in touch with HM Treasury is through your spending team. If you do not have contact details, your departmental finance team should be able to advise.

Ministry of Justice:

Contact the Cabinet Office team to find a suitable contact in MoJ.

Ombudsman Association:

oasupport@ombudsmanassociation.org

The Cabinet Office
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