The 2006 Annual Meeting took place in Dublin on 22 and 23 May and was enjoyed and attended by some 140 BIOA members, staff of member schemes, and guests. There was an ‘Irish Day’ on 22 May, focusing on the ‘I’ in BIOA, giving BIOA members in the Republic of Ireland and Northern Ireland an opportunity to inform and update colleagues on their work and discuss with them current issues and developments.

The programme for 22 May, held at the magnificent and recently refurbished Royal College of Physicians of Ireland, consisted of a seminar on current all-Ireland issues and developments.

The session was introduced jointly by Ann Abraham, BIOA Chair, and Emily O’Reilly, Ombudsman for Ireland. The session was chaired by Tom Frawley, the Northern Ireland Ombudsman.

The speakers were:
- Dr Maurice Manning – President, Republic of Ireland Human Rights Commission
- Bob Collins – Chief Commissioner of the Northern Ireland Equality Commission
- Joe Meade – Republic of Ireland Financial Services Ombudsman

In the evening, many of those present attended a reception at Government Buildings, hosted by Tom Kitt, Minister of State at the Department of the Taoiseach.

The formal Annual Meeting of the Association on 23 May was held, by very kind courtesy of the Irish Government, in the impressive Dublin Castle International Conference Centre.

Guest speakers, talking on the theme of Ombudsmen: a perspective from the island of Ireland, were:
- Dermot Ahern TP – Minister for Foreign Affairs, Republic of Ireland
- David Hanson MP – UK Minister of State for Northern Ireland

Unfortunately, due to unavoidable parliamentary business in Westminster, David Hanson was, in the event, unable to be present and his speech was read by Tom Frawley.

The meeting was followed by lunch, after which there was a guided tour of the castle’s splendid State Apartments for those who wished to see them.
New protection for landlords and tenants
From 1 June 2006, the Ombudsman for Estate Agents scheme covers members of the National Association of Estate Agents who deal in lettings but are not members of the Royal Institution of Chartered Surveyors. This is the first time lettings agents have been covered by the Ombudsman. Lettings agents who have signed up to the OEA Code of Practice will have to have a complaints procedure in place which landlords and tenants should use as their first port of call. If they are unable to reach a satisfactory resolution of their complaint, they will be able to complain to the Ombudsman for Estate Agents. The service relates to disputes between landlords or tenants and their agent and does not cover disputes between landlords and tenants themselves.

FOS to cover consumer credit disputes
In June 2006, the Financial Ombudsman Service (FOS) issued, for public consultation, a set of draft complaints rules that will apply to businesses with consumer credit licences who will be covered by the Ombudsman for the first time from April 2007. This follows the announcement last month by the Department of Trade and Industry of plans to implement the new consumer protection framework under the Consumer Credit Act 2006. Under this new legislation, businesses with consumer credit licences – who are not already covered by the Ombudsman service – will be required by law to have formal complaints procedures. These procedures will include telling customers about their new right to take an unresolved dispute to the Ombudsman.

The consultation document:
- introduces the Ombudsman service and the complaints-handling requirements to the consumer credit sector;
- explains the technicalities of the Ombudsman’s remit over consumer credit disputes (officially known as the Ombudsman’s ‘consumer credit jurisdiction’);
- invites feedback on key issues – such as how the Ombudsman service will be funded for this work; and
- includes the draft rules for handling consumer credit complaints (amending the existing rules contained in the ‘DISP’ section of the Financial Services Authority’s Handbook).

The consultation period runs till 11 October 2006 with publication of the final rules planned for January 2007. During this period, the Ombudsman service will be working closely with the consumer credit sector and its trade bodies – as well as other stakeholders – to explain what the new arrangements will mean in practice and how businesses can plan in advance for the changes.

Learning from complaints DVD
During day one of the NHS Complaints Association Scotland (NCAS) conference on positive complaints handling, held in Peebles in early June, Deputy Ombudsman, Eric Drake, and Complaints Investigator, Kerry Barker, facilitated two mini workshops entitled Complaints: Symptoms and Solutions.

The workshops featured the Scottish Public Services Ombudsman’s DVD which was produced following three seminars on clinical governance that were held earlier this year. The events were supported by the Scottish Executive Health Department, the Scottish Health Council, NHS Education for Scotland, NHS Quality Improvement Scotland, the General Medical Council Scotland and NCAS.

Feedback from the events showed that participants had found them relevant and useful and a large number requested that a DVD (used during the events) be made available to a wider audience to maximise learning across the NHS in Scotland. The SPSo combined that DVD with material filmed at the Glasgow seminar and produced a new DVD that includes:
- a complainant interview;
- the dramatised scenario of a complaint;
- the key-note speech given by Dr Kevin Woods (Chief Executive of NHS Scotland);
- edited extracts from a panel discussion.

The DVD is accompanied by a CD-Rom that contains supporting documentation.

Participants in the NCAS workshops were shown a segment of the DVD and asked to discuss its content. They were asked to provide feedback, including ways in which the DVD could form part of an overall training package and any improvements that could be made to enhance its effectiveness as a training tool.

The feedback was very positive, especially on its visual impact, which sparked debate. Participants felt it could be used as a stand-alone training tool, but also in conjunction with other training materials, to explore what leads to complaints, what can be done to reduce their incidence and how valuable lessons can be learned from them. Suggestions for improvement included adding accompanying handouts and widening the scope of the DVD to cover other sectors.

The SPSo is working with NHS Education for Scotland to produce a more structured DVD based on the dramatised scenario.

For further information about the DVD, please contact:
Sarah Bogunovic, Outreach Officer on 0131 240 8849 or at sbogunovic@spso.org.uk

Obituary – Nigel Williams (1955-2006)
Nigel Williams died peacefully on 28 March 2006 at his home in Glenarm, Northern Ireland surrounded by his family and loved ones. Nigel had fought with cancer for over two years and despite his illness had been able to continue in his job as the first Northern Ireland Commissioner for Children and Young People up until February 2006 when he was admitted into Belfast City Hospital. The founder of the London-based charity Childnet International, Nigel earned an international reputation for his work on the impact of the internet on children. His widow, Heather, and their four children survive him.

Advertising Standards Authority
Lord Borrie intends to stand down from his role as Chairman of the ASA in 2007, and the process of recruiting a new Chair has now begun. Further information can be found at www.odgers.com/10338.

New BIOA website
The Association recently launched its revised website (www.bioa.org.uk). Although containing information similar to that in the original site, it is displayed in a fresher style and conforms to standard web content accessibility guidelines.

Features of the website include:
- a search facility for users to find the appropriate BIOA member scheme;
- a job vacancies section for members to advertise vacant or new positions in their schemes; and
- a content management system to enable the Secretary to make changes to the website content.

Later in the year, it is hoped to launch a ‘members only’ section of the website for members and staff of member schemes, where BIOA information such as presentations and meeting notes can be displayed or downloaded.

New BIOA Executive Committee
The BIOA Executive Committee for the year 2006/07 was elected at the General Meeting on 23 May and comprises:
- Tony Redmond (Chair) – Local Government Ombudsman and...
Chairman of the Commission
- Alice Brown – Scottish Public Services Ombudsman
- Elizabeth France – Telecommunications and Energy Ombudsman
- Caroline Mitchell – Lead Ombudsman, Financial Ombudsman Service
- Representative from the Republic of Ireland. Emily O’Reilly – Ombudsman for Ireland
- Representative of Associate members: Jodi Berg – Independent Complaints Reviewer and Independent Case Examiner
- Ian Pattison (Secretary)

**New BIOA members**
The Association is delighted to welcome the following new members with effect from 1 April 2006:

**Voting members**
- Arlene Brock – Bermuda Ombudsman
- Paulyn Marrinan Quinn – Ombudsman for the Defence Forces, Ireland

**Corporate Associate member**
- Sir John Brigstocke KCB – Judicial Appointments and Conduct Ombudsman

**Changes in member schemes**

**Scottish Legal Services Ombudsman**
Jane Irvine, originally appointed as a temporary replacement for Linda Costelloe Baker, has now been appointed as the new Scottish Legal Services Ombudsman until such time as that office is replaced by the new Scottish Legal Complaints Commission.

Jane is a chartered surveyor who carried out valuations of commercial property for 16 years before re-qualifying to act as a Chartered Arbitrator and Accredited Mediator. Jane was HM Lay Examiner within HM Inspectorate of Constabulary for Scotland from 2001 to 2004 in which capacity she examined complaints lodged against the police in Scotland.

Jane also currently works as an arbitrator and mediator and is a director of Resolutions (Scotland) Limited.

**Commissioner for Public Appointments**
Janet Gaymer was appointed the new Commissioner for Public Appointments for England and Wales on 1 January 2006, on the retirement from that post of Baroness Rennie Fritchie.

Janet has been the Senior Partner of Simmons & Simmons since 2001. Prior to that she spent 30 years in law working in both the public and private sector.

**Energy Supply Ombudsman**
In 2005, Ofgem determined (following the energywatch billing supercomplaint) that energy suppliers should establish a scheme to resolve outstanding billing disputes in a fair and independent way. The energy suppliers who were members of the Energy Retail Association committed to establishing an ADR scheme within 12 months. They felt that such a scheme would further strengthen existing arrangements for complaint resolution within the domestic energy sector. The Energy Supply Ombudsman is this scheme.

Elizabeth France CBE, is the Telecommunications Ombudsman and in addition was appointed as the Energy Supply Ombudsman with effect from 1 July 2006. The Ombudsman Service Ltd (TOSL) administers both the Telecommunications Ombudsman and the Energy Supply Ombudsman, and is a private limited company which operates on a not-for-profit basis. TOSL is funded by its industry members.

**Armed Forces Complaint Commissioner to be appointed**
Armed forces personnel and their families will have access to an independent ‘complaints commissioner’ under proposals announced in June. The announcement was made in the wake of the deaths of four young recruits at the army’s Deepcut barracks in Surrey. According to Adam Ingram, the Armed Forces Minister, the service complaints commissioner will have access to the military chain of command and to ministers and will report annually to Parliament.

**Principles of good complaint handling working group**
As previously reported in Issue 27 of The Ombudsman in November last year, following the Executive Committee’s consultation with members last year, a work programme was drawn up to try and meet the requirements and aspirations of members. It was clear from the consultation that members remained committed to BIOA’s key objectives, which include:

- the formulation and promotion of standards of best practice; and
- the encouragement of efficiency and effectiveness.

In order to underpin these objectives, members felt that BIOA should publish a general statement of good complaint-handling principles and service standards which are common to us all and which publicly represent our collegiate position. To achieve this, the Executive Committee agreed to establish a working group with the aim of identifying and drawing up a statement which can be used as a measure of quality assurance by current and potential BIOA members and other complaint-handling schemes and individuals, as well as those interested in the provision of such services.

The working group brings together BIOA members from public and private sector schemes, both large and small, from both Britain and Ireland, as well as a colleague from the UK’s Council on Tribunals in recognition of our mutual interest in promoting a holistic response to consumer complaints. The members of the working group are:
- Jodi Berg (Chair) – Independent Case Examiner for DWP and Independent Complaints Reviewer
- Mike Biles – Housing Ombudsman

**Continued on page 4**
Continued from page 3

The Conference workshop took 'governance' to mean issues relating to the leadership, direction and control of an organisation and with ensuring that its purpose and objectives were known and achieved. In short, it concerns how the appointment of an ombudsman is handled, the funding and rules of the particular scheme and the arrangements for accountability. These underpin the independence that is necessary for an ombudsman. Effective governance establishes confidence in stakeholders and helps secure more efficient delivery of the service.

In order to examine this issue in more depth, the Executive Committee has set up a ‘Governing’ Working Group under Caroline Mitchell to consider what contribution BIOA can make to understanding good practice in this important area. The members of the working group are:

- Caroline Mitchell (Chair) – Lead Ombudsman, Financial Ombudsman Service
- Mike Biles – Housing Ombudsman
- Brian Coulter – Prisoner Ombudsman for Northern Ireland
- Jim Dyer – Scottish Parliamentary Standards Commissioner
- Caroline Gill – Deputy Financial Service Ombudsman, Ireland
- Phil Latus – Case Director, Independent Case Examiner
- Jane Vass – Independent Researcher
- Shelley Radice – Removals Industry Ombudsman
- Ian Pattison (Secretary) – Secretary, British and Irish Ombudsman Association

**BIOA Seminar at Clifford Chance**

On 6 July, BIOA ran a seminar, kindly hosted by Clifford Chance, Solicitors at their Canary Wharf premises in Docklands, London. The seminar, entitled: Trends in consumer redress – emerging ombudsmen in the private sector resulted from an earlier UK Department of Trade and Industry consultation paper: Strengthen and streamline consumer advocacy (consumer representation and redress). It was felt that BIOA could usefully provide a forum for discussing these interesting issues relating to the regulated sectors including energy, water, post, aviation and property.

The seminar was chaired by Tony Redmond, BIOA Chair, and the speakers were:

- Edward Blades – Assistant Director, Economic Regulation Team, Department of Trade and Industry
- Elizabeth France – Telecommunications Ombudsman
- Walter Merricks – Chief Ombudsman, Financial Ombudsman Service
- Duncan Sedgwick – Chief Executive, Energy Retail Association

The seminar was attended by over 100 delegates from ombudsman schemes, relevant industry sectors, regulators and consumer bodies, as well as from four different UK Government departments.

**Summaries of meetings of BIOA Interest Groups**

**Personnel, Training and Development Group**

The Group held its fifth meeting on 20 March 2006 at the offices of the Public Service Ombudsman for Wales in Bridgend which was attended by 16 members. In addition to a roundup from those present of items of interest happening in their schemes, topics discussed included:

- Feedback from the Accreditation working group (see separate item below);
- Feedback from the Principles of good complaint handling working group;
- Freedom of Information and human rights legislation – training for staff; and
- Training plans.

It was agreed that at future meetings, items to be discussed would include staff training in human rights legislation and also in how to deal with unacceptable actions by complainants. The next meeting of the interest group will be on Monday 11 September 2006 at the office of the Immigration Services Commissioner in Tooley Street, London.

**Accreditation Working Group**

This group is a sub-group of the Personnel, Training and Development Interest Group and has met four times. It was set up specifically to investigate the interest in and feasibility of introducing a BIOA member-wide accreditation scheme for complaint-handling investigation staff.

On 4 May, the group reported to the BIOA Executive Committee which considered papers relating to its recommendations. Eric Drake, the chair of the group, introduced the recommendations which essentially were for the Association to employ, on a part-time basis, a consultant or training professional to scope and move forward the accreditation project. The Executive Committee had considerable sympathy for the concept of accreditation and felt that in principle it would be beneficial to members to create a ‘profession for ombudsmen and investigators/casehandlers’ in due course. There was, however, concern about the potential cost to members and the ability to ‘sell’ the idea, especially to the larger schemes which already had substantial training resources in place. It was also thought that BIOA might not be the appropriate body to lead this issue, especially at present. It was suggested that funds might be available from sources other than members’ subscriptions, and that it might be more appropriate for other bodies (eg academic institutions or training organisations) to lead on this.

The Committee decided that the recommendations of the Accreditation working group would not be taken forward at present. They acknowledged the considerable work done by the working group and thanked members for it. They hoped that the working group might continue to explore ideas around accreditation with BIOA members and academics working in the administrative justice area, as well as possible alternative sources of funding.

**Public Relations and Communications Interest Group**

The Group held its eighth meeting on 21 March 2006 at the offices of the Public Services Ombudsman for Wales in Bridgend and was attended by 11 members. In addition to a roundup from those present of items of interest happening in their schemes, topics discussed included:

- Scottish Public Services Ombudsman’s report compendium;
- Feedback from the Principles of good complaint handling working group;
- Contact management systems; and
- Policy on unacceptable actions by complainants.

It was agreed that at future meetings, topics for discussion would include the promotion of schemes by members and briefings for lawyers and courts. The next meeting of the interest group will be on Tuesday 12 September 2006 at the office of the Immigration Services Commissioner in Tooley Street, London.

**Legal Interest Group**

The Group held its ninth meeting on 27 April 2006 at the offices of the Parliamentary and Health Services Ombudsman in Millbank Tower, London and was attended by 18 members. Topics discussed included:

- Human rights legislation and the European Court of
Human Rights;
- compensation and redress;
- reform of the Public Sector Ombudsmen Services in England;
- the use of ADR in schemes;
- ‘hate’ websites;
- judicial review of schemes;
- the Scottish Parliament’s Finance Committee enquiry into governance and accountability of Scotland’s commissioners and ombudsmen; and
- the Law Commission’s report on housing disputes resolution.

The next meeting of the interest group will be on Wednesday 25 October 2006 at the office of the Independent Police Complaints Commission in High Holborn, London.

**Operational Management Interest Group**

This group now holds six-monthly seminars, rather than traditional group meetings, to which any interested BIOA scheme staff member is welcome to attend, depending upon the topic. The seminars, usually held at Millbank Tower, London, are arranged by a small steering group, initially consisting of:

- Elspeth Cooper – from the office of the Independent Case Examiner;
- Nigel Karney (Chair) – from the office of the Local Government Ombudsman;
- Roy Hewlett – from the Financial Ombudsman Service; and
- Ian Pattison – BIOA Secretary; and
- Andrew Walsh – from the office of the Public Services Ombudsman for Wales.

The first such seminar, chaired by Nigel Karney, (reported in Issue 28) was held on 19 October 2005 and was attended by 36 staff of BIOA member schemes. The topic was ‘technology’.

The second seminar, chaired by Elspeth Cooper, was held on 15 May 2006 and was attended by 40 staff of BIOA member schemes. The topic was ‘customer satisfaction surveys’ and there were formal presentations from:

- Michael Brophy – Office of the Ombudsman for Ireland;
- Estelle Clarke – Financial Ombudsman Service;
- Alan Creech – Office of the Local Government Ombudsman;
- Jackie Feeney – Office of the Local Government Ombudsman; and
- Suzanne Wright – Office of the Parliamentary and Health Service Ombudsman.

Copies of the presentations are available on request from the BIOA Secretary: secretary@bioa.org.uk.

**Autumn seminar**

During the years between BIOA conferences, the Operational Management Interest Group traditionally holds an all-day seminar for BIOA members and staff of member schemes. This year is no exception, and this year’s Autumn seminar is being held on Tuesday, 3 October at the premises of Lawrence Graham, Solicitors, 190 Strand, London WC2R 1JN. We are grateful for the use of their facilities once again.

There will be two topics discussed at the seminar, as follows:

- **Morning session:**
  - First Contact – looking at the issues around how complainants could and should expect to be treated and handled on first contacting a complaint-handling scheme.
- **Afternoon session:**
  - Accessibility – exploring the issues around how accessible schemes should be to potential complainants, and especially to those with special accessibility needs.

It is intended that there will be up to three speakers for each session, two external speakers and one from a member scheme. It is expected that the speakers will include:

- Paul Kendal – Head of Customer Contact Division at the Financial Ombudsman Service;
- Jan Smith – Head of External Affairs at the Consumer Credit Counselling Service;
- James Sandbach – Social Policy Officer at Citizens Advice;
- Dr Christina Julios – Director of Policy and External Affairs at the Ethnic Minority Foundation;
- Nick O’Brien – Director of Legal Services at the Disability Rights Commission;
- Andrew Bradley – Communication Manager at the Ombudsman Service Ltd; and
- Nigel Karney – Secretary of the Commission for Local Administration in England.

There are vacancies for up to 100 delegates. Although there has been very good take-up so far, at the time of publication there are still places left. If you wish to attend and have not already registered, please contact Ian Pattison (secretary@bioa.org.uk) as soon as possible. A modest charge is made for the seminar, to cover costs. It is £35 for the whole day, or £35 for a half day (both amounts include lunch).

**Ombudsman for Estate Agents to retire**

The Ombudsman for Estate Agents, Stephen Carr-Smith, is to retire at the end of this year. He has held the post since 1998 when he succeeded David Quayle.

**From Guardian Unlimited**

“Emails objecting to a house extension failed to reach a council planning department because their computer system blocked the word ‘erection’.

Commercial lawyer Ray Kennedy, from Middleton, Greater Manchester, claims he sent three emails to Rochdale council complaining about his neighbour’s plans. But the first two messages, which contained the word ‘erection’, failed to reach the planning department because the software on the town hall’s computer system deemed them offensive. When his third email, containing the same word, somehow squeezed through it was too late. A planning officer told Mr Kennedy that his next-door neighbour’s proposals had already been given the go ahead.

The software used by Rochdale council is designed to filter out any obscene material and thought the word ‘erection’ – used by Mr Kennedy in the context of building an extension – was a sexual term. Now the lawyer, who lives on Sunny Brow Road, is considering complaining to the local government ombudsman over the blunder.”

From an article entitled Computer cock-up finds erection hard to handle by Hélène Mulholland, 30 May 2008.
The Surveyors’ Ombudsman Scheme in Scotland

Stephen Gould outlines the background to the establishment of the pilot Surveyors’ Ombudsman Scheme (SOS) in Scotland.

It is almost four years since the genesis of an idea that subsequently became the pilot Surveyors’ Ombudsman Scheme (SOS) in Scotland. In this article I look both backwards and forwards to explain why RICS set up the pilot scheme, where it is going next and, finally, what the landscape looks like for redress in the property sector in the future.

To complete the current picture, Ian Smith, the Surveyor’s Ombudsman, has also written about his experience as Ombudsman over the last two years.

Redress structures in the residential property sector are hardly systematic. While buying a house involves for most people the largest expenditure of their lifetime, they have no redress on many elements of the process other than through the courts. Unlike, say, banking or telephony there is little or no specific legislation requiring alternative dispute resolution here. If something goes wrong with your bank account containing £200, then ultimately as a consumer you have access to the Financial Ombudsman Service. If something goes wrong with your new house, that costs maybe £250,000, you face an incomplete patchwork of options.

The property sector is complex with little by way of specific consumer protection that is fixed through statute. Therefore, the ombudsman model that has worked elsewhere in other private sector service areas, simply doesn’t apply here. Without statute there is no compulsion or inclusivity. And without those there are opportunities for consumer confusion and detriment.

In 2002, a property transaction that went wrong offered various options for a consumer. If there was a dispute with the estate agent, you could go to the Ombudsman for Estate Agents (OEA) – but only if the firm belonged to that voluntary private sector scheme. If your agent was also a Chartered Surveyor but not an OEA member, you had access to an arbitration scheme run for RICS by Chartered Institute of Arbitrators – but this had a registration fee. If your agent belonged to neither you were stuck with the law or nothing.

If your problem was with a survey by an RICS member you could also use the arbitration scheme. Consumers would also sometimes report surveyors to our Conduct Department only to find that we could deal with professional conduct; we cannot make monetary awards, which created a fair number of angry consumers. Elsewhere in the market, any consumer problem with a new house that the builder failed to deal with could go to NHBC which operates a resolution service for people covered by the NHBC warranty. Meanwhile private rentals and lettings were and remain a minefield of dispute, consumer detriment and good fodder for consumer journalists, although the statutory Housing Ombudsman Scheme has extended its scope to include some of these.

RICS began by looking at the way its arbitration scheme operated to resolve the complaints it received about chartered surveyors. It was soon apparent that there was a clear mismatch, with the arbitration scheme registration fee acting as a barrier to consumers with relatively small problems. In addition, while arbitration seemed attractive for resolving business to business disputes, consumers didn’t like it. As a Royal Chartered body, and with its public interest role in mind, RICS’ Governing Council decided to act. After a full consultation both inside and outside the organisation SOS was created as a pilot in Scotland – initially for a year, currently extended for a further year.

Governing Council has now agreed that the Scheme is made permanent and extended to the rest of the UK. This will happen but has been delayed by other events both inside and outside RICS.

The extension of SOS to all UK Chartered Surveyors has become one part of a much wider look at RICS’ regulatory framework. Last year, Sir Bryan Carsberg reviewed RICS regulation in the round and we are currently developing his recommendations. Delivering independent redress is part of this task.

The other complicating factor is Government. From a position where the Government took very little interest in the consumer property sector, other than from a broad planning perspective, it has now become greatly interested in both regulation and redress. This new approach culminated in the Housing Act 2004 and the Government response to the Barker report, both of which deal with redress in the residential housing market. The Housing Act not only creates by statute a whole new class of Home Inspectors, and other groupings to prepare home inspection, to carry out home condition reports for the new Home Information Packs (HIPs), but also requires those inspectors to have an independent redress mechanism. It also requires independent redress for pack providers and estate agents working in an HIP environment. Finally, it seems, the Government is moving towards requiring all estate agents to sign up to independent redress. For years the industry has been calling for statutory licensing but Government resisted. This may finally arrive through the back door of compulsory redress. Redress without any regulation is an interesting concept though. I’m not sure that dealing with complaints rather than preventing them sits well with Government policy in other sectors.

As we go to press, it is uncertain where Home Inspectors are going. Recent policy changes have delayed or perhaps scuppered the home inspection bits of the Housing Act for good – although mandatory energy certification remains. We shall have to see how all this comes together. Meanwhile, the Barker recommendations remain on the table for the new build sector independent redress for new property – something the Home Builders Federation is currently looking at.

RICS is looking to develop and implement its own scheme in this hugely complex landscape by the middle of 2007. That also is the date by which many of the other schemes need to be introduced, so we are already looking at how to integrate the
development work and produce a simple entry for consumers of property services. It cannot serve anyone to have up to five entry points and schemes covering different aspects of a single transaction. At the end of last year a number of service providers and existing redress providers met to see how they could move forward together. We have agreed that, while we need to work on our individual building blocks, a united approach would also be hugely useful. So watch this space.

Ian Smith, the Surveyor’s Ombudsman writes

Steven Gould has described the reasoning which led to my appointment as Surveyor Ombudsman in Scotland. I shall give a flavour of what it has been like to do the job.

First – the good. With any new scheme it has taken time to be known and understood. In my first year I handled 50 or so complaints and this number has risen to over 100 in the second year. That is a measure of the level of public awareness, not an indictment of surveying practices in Scotland. My arrival seems to have encouraged Scottish surveyors to take a fresh look at their systems and their complaints procedures. Many firms now make strenuous efforts to resolve complaints without my formal intervention, and one managing partner is using my determinations as a rough tariff for ex gratia payments. Firms seem to have seen the merit in deciding when they have reached deadlock earlier than before my appointment, referring the client to me without spending too much senior management time on finding an in-house solution.

Next – the bad. Many Scottish firms were very wary of the scheme and felt that only a surveyor could understand residential practice. Most seem to have accepted me and what I am there to do, but there is a stubborn element which struggles to recognize the need for independent redress, let alone a formal complaints procedure. It comes as a surprise when I seek an apology for poor customer and professional service, even when the firm accepts that it has been at fault. Those with stronger commercial instincts have not been slow to see how independent scrutiny helps them manage their businesses better. An improving picture, therefore, but with much to do.

There is real confusion about what surveyors do and what the products offered by them are for. The RICS try to inform house buyers and the general public, but the basic messages are often left to intermediaries. The banks, mortgage brokers, building societies, estate agents and solicitors have the key client contacts. It is only too easy for the surveyor to be remote from their client with potential for communication failures and barriers to understanding. This prompted me to highlight the importance of clear terms of engagement by firms and the RICS has given its members best practice advice as a result.

It is often the tradesman called in to fix a problem who makes a householder question the competence of his surveyor. The surveyor is immediately at a disadvantage if the nature of the service given is not understood, and much of my time has been spent explaining what different levels of service mean in practice.

Lastly – the ugly. Or at least an indication of the variety of complaints I have considered. Most have been about defects in houses which were only discovered sometime after moving in. Timber decay, structural instability, inadequate services, flawed wiring, unsound roofs and windows are all matters in which I, and my caseworker

Helen Cumming, are becoming quite expert. It helps that Helen is a Chartered Surveyor. Beyond those predictable areas of work, I have considered complaints about mutual repairs and improvements in city centre improvement schemes, compulsory purchase representation which went badly wrong, a complex complaint about a surveyor’s alleged failure to spot that a very substantial loft extension did not meet building standards and a fraught situation where residents in a flatted development did not get the management services for which they paid a large firm of surveyors a very significant monthly fee. It will not be surprise for those working in established schemes that mastering the complexities of professional practice has been the easy bit. Developing our own customer care and diplomatic skills has been much harder. It will also be no surprise to learn that most poor service is rooted in poor communication, inordinate delay, lack of attention to detail, poor or non-existing notes and unwillingness to explain in terms which the client might understand. The scheme has an award limit of £25,000. My awards have usually involved return of the professional fee, something for time, trouble and expense and a modest award to reflect the additional expense as a result of inadequate service. Some firms have made much more significant payments, within the boundaries of their insurance excess, without the need for formal investigation. I understand that is a clear sign that the scheme is beginning to do what it was designed to do. As the scheme develops, I hope that the policies of more surveyors are adjusted to make complaining and redress easier.

The property world will see major change in the next few years. I hope that Surveyor Ombudsman scheme in Scotland has made a contribution to thinking about consumer redress in the sector.
On leaving office

In July 2005, Joseph Sammut’s term of office as Malta’s Ombudsman ended. Here he reflects on his period of time in office.

Tenth anniversary
As my stepping down as Ombudsman coincides with the tenth anniversary of the Maltese Ombudsman institution, this is an opportune moment to recall achievements, look at shortcomings and consider the future of the Office.

The Office has achieved a great deal in its first decade. It provides an assurance to Maltese citizens that there is someone who will deal with their grievances about public administration in an impartial and efficient manner, free of charge.

Merits of and risks to the Office
The experience I have gained during my time as Ombudsman places me in a good position to reflect upon issues that might affect the future direction of the institution. While I believe the Office has been a great success, it needs the ongoing support of Government and citizens alike, to maintain that success.

The Office has enjoyed a strong measure of credibility in assisting citizens and Government bodies to resolve differences that arise between them. The Ombudsman process has been successful in ensuring access to substantive justice for citizens at less cost and more quickly than by recourse to a judicial solution.

I believe the major risks to the continued existence of an effective ombudsman service are:

- losing support and respect through being taken for granted;
- the politicising of the office, including political appointments;
- failure to act on the Ombudsman’s recommendations on investigations; and
- failure to maintain full independence from the executive government.

Apart from the persistent failure of Government to fully recognise the Ombudsman’s official status – in deeds as well as words – these risks have so far been avoided.

The State and the citizen
The power of the State in a modern democracy can be overwhelming when seen from individual citizen’s viewpoint, particularly one in dispute with a government agency. The Ombudsman’s presence serves to balance this relationship.

The level of demand by citizens is, however, not the sole measure of the need for an ombudsman service. The very fact that an ombudsman exists is a powerful stimulus to State bureaucracy to conduct itself fairly and reasonably.

Public administration
Things will frequently go wrong in public administration, but what matters is that any such wrongs are quickly put right. The Ombudsman can help by establishing what happened and, where things have gone wrong, making recommendations to put the complainant back in the position he or she would have been in but for that wrongdoing.

Normally the Ombudsman’s intervention provides an opportunity to make recommendations for redress without the need to embarrass the public authorities involved. But sometimes the wider public interest is better served by a report to Parliament or even recourse to the media when other means prove ineffective.

Throughout my time as Ombudsman, public authorities have generally been willing to work with me for the benefit of citizens. This attitude is key to building wider confidence in the ombudsman institution. Conversely, I have been firm with citizens with spurious claims and kite-flying allegations; and while this might disappoint complainants with dubious motives, it serves to gain the confidence of public officials.

Although Malta has been reforming its public administration during the last 15 years, in some ways it clings to old traditions that contribute to the failure to meet citizens’ expectations.
from public authorities; that they expect to get individual service; that they are entitled to be treated with respect and get adequate and reasonable explanations to decisions made that affect them, or when things go wrong.

Although Malta has been reforming its public administration during the last 15 years, in some ways it clings to old traditions that contribute to the failure to meet citizens’ expectations.

At times, the strident attitude expressed in responses to the Ombudsman’s findings from political members of the executive is at odds with the openness, accountability and equity which should be the basis on which decisions that affect citizens are taken.

It is my view that offering politically motivated appointments to people who lack proper qualifications and experience should be avoided. In this connection it might be worthwhile to consider assigning all appointments to boards of directors to public institutions and agencies to the Public Service Commission, as is the case for public officers who fall under the definition that appears in the Constitution of Malta.

Looking to the future
The following are my suggestions for guiding decisions on the future direction of the Ombudsman’s Office.

- The office holder should be appointed by a unanimous vote of Parliament, after selection from a public advertisement.
- Bodies within the Ombudsman’s jurisdiction should accept the outcome of his investigations and implement his recommendations.
- MPs should show stronger commitment to the Ombudsman’s ad hoc reports presented to the House of Representatives, and so help Parliament fulfil its function of holding the executive arm of government accountable.
- The ombudsman function may increasingly need to look at systemic problems that reflect badly on the overall quality of public service.
- There should be wider use (with due caution) of the Ombudsman’s own motion initiative.
- Resort should be made to section 13 of the Ombudsman Act (which has not been used to date), allowing the Ombudsman to launch investigations into matters of public concern without a direct complaint being made.
- Bodies within jurisdiction which don’t have an effective internal complaints system should be urged to put things right as a matter of urgency.
- The Official Secrets Act should be substituted by a modern Official Information Act – promoting good governance by allowing citizens access to official information, with the Ombudsman assigned as Information Commissioner.
- The Ombudsman institution should be entrenched into the Constitution of Malta.

Parting comments
During my ten years in office, over 12,000 people have come to me for help; I have handled 7,300 written complaints of which 76% fell within my mandate. Of these, 3,500 were covered by a full report.

There were a total of over 2,000 justified complaints, with an appropriate remedy put in place in accordance with my recommendations, or an amicable settlement reached as a result of my intervention. Almost as many people were assisted without a formal investigation.

There were only six cases, involving 14 individuals, where the authorities involved did not comply with my recommendations. Even then, following my critical comments, changes in policy and in the law were eventually effected so as to avoid a recurrence of similar grievances.

I also carried out a number of ‘own initiative’ investigations, which ranged from hospitalised mental patients to women prisoners, abuse of planning regulations to the state of public gardens in Valletta. I am pleased to note that these own motion reports raised public awareness on these issues and resulted in action being taken to correct administrative shortcomings.

I consider the time I spent as Ombudsman as the most rewarding in over 50 years in public service. I am encouraged by the growing willingness of Maltese citizens to question and to challenge decisions made by those who hold positions of authority.

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Annual Meeting
May 2006
Sir,

When I was a member of BIOA’s Executive, I remember us agonising over the lack of appeal of the Association’s journal to the majority of our staff. The general lack of appeal of ombudsman services to anyone under 50 caused us even more concern.

Imagine then my dismay to find space being provided in the April issue of the magazine to a letter from Chris Eadie sharing his oh-so-funny objections to the modern usage of the word chair to denote a postholder. I am sure my younger colleagues will be tickled to learn that the former head of the Council of the Banking Ombudsman Scheme disliked being referred to as ‘the Chair’ as she did not wish to be compared with ‘a piece of furniture’. I wonder if she had the same objection to being a member of ‘the Board’?

A further contribution to the April edition noted that passion was not a word often associated with ombudsmen. Well in my office we are indeed passionate about what we do. And unlike some parts of the ombudsmen family, we have also moved on from the 1970s.

Yours
Stephen Shaw
Prison and Probation Ombudsman

Sir,

I admire and applaud the healthy respect that Chris Eadie (the Ombudsman April 2006) displays for the Swedish language in his comment on Ian Pattison’s piece (November 2005) on the origin and etymology of the title ‘ombudsman’.

As a female ombudsman, I have accepted, somewhat reluctantly, that it is a gender neutral title, with ‘man’ meaning ‘mankind’ or ‘humans’, etc, but I would welcome some consistency in the zeal to protect the integrity of the Swedish language.

On page 9 of the same (April) issue, there is a headline about ombudsmen and the Equality Act. Now, from my admittedly limited research of the language I have found that the plural of ombudsman in Swedish, is ombudsmän, with a diaeresis over the A, which may mean that it is pronounced ‘men’ but even if that is so, why don’t we go the whole hog and spell the plural as the Swedes do as well?

I have often, in any event, wondered why, if ombudsman, roughly speaking, means representative of the people, or of ‘man’, then why doesn’t the ‘representative’ part change in the plural, and not the ‘man’ part? How, after all, can you ‘plural’ the word ‘mankind’ or indeed ‘people’ when the words themselves mean more than one person? I have yet to meet a Swedish person who can answer that.

I am amused that so many people – while anxious not to have the title changed in the singular – (thereby preventing the obviously very sensitive and controversial word ‘woman’ from encroaching on its etymological purity) – have no difficulty in mangling the language when it comes to describing more than one of us.

Coincidentally, I was recently reading from a parliamentary debate in this country on the original Ombudsman legislation in 1980. I noted that several women Senators, notably our former President Mary Robinson (who later served as UN Commissioner for Human Rights) and a former Cabinet Minister, Gemma Hussey, expressed concern about the ‘man’ part of the new title. Some others wondered at the introduction of such a strange sounding name, concerned that it might be off-putting for potential users of the service.

Yours,
Emily O’Reilly
Ombudsman
I have been Director of Investigations with Northern Ireland Ombudsman for just over eight months. In that time I have not only come to understand my new role, but also to recognise how much I still need to learn.

My two early impressions of the Office were the professionalism of the service and its value to the community it serves. I have found that the work of the Office of the Northern Ireland Ombudsman is viewed less as a bureaucratic process than a genuine dialogue with stakeholders, those who provide and those who are provided with public services. My contacts with complainants, public bodies and public representatives confirm that the Ombudsman is responding in a genuine way to the issues raised by complainants.

If public services did not matter to the everyday lives of citizens then the work of the Ombudsman would be irrelevant. The Ombudsman Service, however, has a proven track record in making a real difference to the developing relationship between citizens and public bodies in Northern Ireland.

I have learnt in the short time in the Office that the Ombudsman Service is valued by the many people who contact us. Consumer advice bodies in particular recognise the important and impartial role played by the Ombudsman.

As John Milton, the 17th Century English author wrote: "When complaints are freely heard, deeply considered and speedily reformed, then is the utmost bound of civil liberty attained that wise men look for."

Already I have evidence that public sector bodies view the involvement of the Ombudsman more as a way of providing valuable feedback on how services are being delivered than an unwelcome intrusion. The Office provides, therefore, an essential interface between public bodies and complainants.

Any new job presents challenges: getting to know the people, processes, procedures and jargon. The most important task I faced, however, was to understand the culture of the Office: how things are done around here.

As well as speaking to colleagues, a good source of information was the annual reports published by the Office. They demonstrate what the Office sets out to achieve and the wide range of issues raised by complainants each year.

Looking further afield, I noted that the mission statements and annual reports for the many Ombudsman Services in Europe demonstrate many similarities. In particular they emphasise the common features of transparency, accessibility, impartiality and independence.

I have noticed, through conversations with my new colleagues and those who contacted the Office in the last two months, how the Northern Ireland Ombudsman Service is also underpinned by an admiration for the public sector ethos and a respect for the rights of the individual citizen.

I am also aware of the pressure facing public bodies. The public sector is delivering services to an ever more demanding public. Many public sector organisations also operate with limited resources. I am, however, also conscious that over fifty per cent of expenditure in Northern Ireland is accounted for by the public sector. This is a further reason for ensuring that public sector organisations avoid maladministration and seek to put things right when they fall short of acceptable standards. The Ombudsman is a key figure in ensuring that standards of public services are maintained at a high level.

Setting in as Director has been made much easier due to the professionalism of the Ombudsman and his staff. I have been particularly impressed by the quality of Investigating Officers who assist the Ombudsman.

I recognise that the role of an Investigating Officer is a demanding one. It encompasses a wide and varied set of competencies. The skills needed to perform the job mirror those of a counsellor, investigative journalist, and a diplomat, to steer a path through the many complex issues which the Office deals with. This underlines the need for continuous training to keep up-to-date with the latest investigative techniques. I have been heartened by the attention to detail and focus on achieving results evident throughout the Office.

Finally, I wish to say that I have found the work very interesting, varied and satisfying. I hope, in my own way, to complement the skills and knowledge already apparent in the Ombudsman’s Office. I also hope to develop a greater sense of teamwork throughout the Office.

Above all I will continue to listen and learn.

You can contact Gerry at: ombudsman@ni-ombudsman.org.uk

From The Times

“"To paraphrase Abraham Lincoln, I’m flattered to be considered for a job I haven’t applied for,” she said. “The mayor knows I talk to people in Ireland all the time. But I’m very happy here. I’m not looking to leave.”

From an article entitled Boston’s top cop may join Dublin’s finest by Richard Oakley, on 7 May 2006, quoting Boston’s first female police commissioner Kathleen M O’Toole, when her name emerged as a leading candidate for the job as head of the new Garda Inspectorate. Ms O’Toole was subsequently appointed to the post.
Case studies

Otelo

Switching service providers to pay less makes good sense – but only when the service provided is up to the mark!

A customer was approached by a service provider and advised that they would pay significantly less for their telephone service by switching to them. The customer agreed.

After a couple of months the customer became concerned that the stated minimum contract term was ambiguous and clarification on this was sought. Correspondence from the service provider indicated that the contract was to run for 60 months, but a discussion with the service provider gave an assurance that the contract was to run for only 12 months.

A short time later the company contacted the customer to offer the benefit of a new special offer which would allow the customer to reduce call and line rental charges in exchange for a ‘one-off’ payment. The customer refused this new offer but soon after received the same offer in writing, expressed in terms that indicated that the service provider would understand the new offer to have been accepted unless the customer indicated otherwise, before a certain date. This date had already passed.

The customer immediately wrote to the service provider to indicate that they did not wish to accept the new special offer. No reply to this letter was received. The customer did receive a letter some time later indicating that unless the account was paid in full, the service would be disconnected. The customer paid the outstanding bill then contacted the company to cease the service. The service provider indicated that early termination of the contract would result in a charge of £300. The customer made several attempts to talk about the account with the service provider but found the service provider’s complaints process difficult to use. The customer contacted the Ombudsman after making every effort to resolve the complaint with the company.

The Ombudsman found that the service provider had delivered a quality of customer service that was far below the standard that could reasonably be expected. After consideration, the Ombudsman decided that the customer should be released from the contract without penalty. The Ombudsman also required the service provider to make a payment to the customer to reflect the poor service given. The service provider was also required to ensure that potential customers were given accurate, comprehensive and unambiguous information about the service offered. This information should include the minimum length of time for contracts. In addition, the Ombudsman recommended that the service provider should make every effort to ensure that all of its customers had access to an easy to use complaints procedure.

Financial Services Ombudsman, Ireland

Mistaken identity causes embarrassment when loan is refused

A customer who applied for a finance loan to buy a new car was refused a loan and was advised that there was a problem with his credit rating. This surprised him, as he was not aware of any default on his part. Having enquired at the Irish Credit Bureau, he discovered that he was recorded by the Bank as having defaulted on a loan, when in fact he had never had, or sought, any borrowing from this Bank previously. Further enquiries revealed that the loan which had been defaulted on had been a joint loan taken out by the complainant’s father and his brother. The complainant had had nothing to do with it.

The Ombudsman’s investigations revealed that the brother who had taken out the loan had the same date of birth as the complainant as they were twins. It turned out that the Bank, on processing the loan application, confused the complainant’s records with that of his twin brother.

The Ombudsman found that the Bank had been negligent in furnishing information to the Irish Credit Bureau which was untrue and defamatory of the complainant, and had thereby caused him considerable embarrassment when he was refused finance for his proposed car purchase.

The Ombudsman directed that the relevant entry at the Irish Credit Bureau be amended by the Bank so as to show the true position. He also awarded €2,000 in compensation as a person’s credit rating is an important personal attribute.

From The Canberra Times

“It is often the case that the most difficult and demanding complainants derive little joy from a thorough investigation of their complaint. Generally, the longer it takes to investigate a matter the less likely that a satisfactory outcome will be reached. Attitudes become hardened and expectations become inflated.

As a practical matter, the longer a complaint agency holds on to a case, the more likely the file will pass from one investigator’s desk to another. This is inefficient, and can create more delay while the new investigator gets on top of the case. As often they are accused by the complainant of not having an adequate grasp of the details of the complaint.”

From an article entitled Dealing with difficult complainants by Professor John McMillan, 4 July 2006.
Profiles

Arlene Brock
Bermuda Ombudsman

Arlene Brock was appointed as Bermuda’s first National Ombudsman with effect from 1 August 2005. Her office opened for business in Hamilton on 1 September. She was elected as a Voting member of BIOA from 1 April this year. Bermuda, like Gibraltar – whose Ombudsman is also a BIOA member – is one of the British Overseas Territories. The office of the Ombudsman is a statutory one, having been established into the Bermuda Constitution and governed by an Ombudsman Act.

Arlene was actually born in Canada but grew up in Bermuda by virtue of Bermudian father! A lawyer by training, she practised in both Canada (in insolvency) and Bermuda (in reinsurance). She has a LLB from York University, Toronto and a LLM from the Harvard Law School. Arlene has been a magistrate in the family court, an employment law lecturer at Webster University and advisor and consultant to Government departments in Bermuda. She chaired the Police Complaints Authority and the Permanent Arbitration Tribunal. She was also on the Boards of Butterfield Bank and the Bermuda Electric Light Company.

Arlene is the proud mother of a 13-year-old daughter. Recently, she was elected to the Council of the Caribbean Ombudsman Association.

Ian Pattison
BIOA Secretary

After a childhood spent in Kent and Gloucestershire, Ian Pattison left school at 18 and went straight into the Army via Sandhurst where he spent two years as an Officer Cadet. Commissioned in 1966 into the Royal Corps of Signals, Ian spent the next few years in Germany roaming the hills and beechwoods of the Weser valley in Land Rovers and armoured vehicles, ostensibly helping to protect the West from the perceived Soviet threat during the Cold War. He then spent the next five years flying Army helicopters, also mainly in Germany (in an antitank role), once again as a very small cog in NATO’s defences. However, he does not entirely attribute to his presence there the eventual collapse of communism and the break-up of the Soviet Union! During his time as a pilot, Ian also spent a fascinating and exciting six months in Alberta, Canada, and several obligatory tours of duty in Northern Ireland.

Ian left the Army in 1984. He spent several years as a practice manager with a Kent-based firm of solicitors and also as the Facilities Manager for PA Consulting Group, before joining the Office of the Banking Ombudsman (OBO) in 1993 as its Administration Manager. Towards the end of his seven years in that job, OBO was assimilated into the present Financial Ombudsman Service (FOS) and Ian assisted with the fit-out of the new Docklands office and the relocation there of all the constituent parts of the present FOS.

Ian left the FOS in mid-2000 and spent time as Operations Director at Boodle Hatfield, Solicitors in Mayfair and also in an identical role at St Paul’s School in Barnes, London before being offered the position as BIOA Secretary in May 2005. He is hoping to emulate his very distinguished predecessor, Gordon Adams, by remaining in this role for a long, challenging but very fulfilling time. Ian lives in Twickenham and Oxford, has three daughters and a partner, Shirley, a retired schoolteacher who helps BIOA part-time as Administrator.
Who in public life do you most (or least) admire?
Of those that I have met in person, I have a great admiration for the late JK Galbraith. He addressed some of the key issues facing the modern world and was an erudite and witty speaker. Mary Robinson too impressed me with her passion for human rights and the way she communicated with academic, political and legal audiences as well as with people active in their communities.

What was your first job?
I left school at 15 to become a secretary in an insurance company at the West End of Edinburgh where, after six months, I successfully negotiated a pay rise of 10 shillings from the proposed 5 shillings.

Who would play you in the film “Alice”?
Lauren Bacall (1940s, Casablanca) because I admire her style and Diane Keaton (1970s, Annie Hall) for her wit and humour.

How do you travel to work?
Easily and on foot as I am lucky to live just ten minutes walk away from the office. But it was a more challenging journey after I broke my ankle last year!

What book are you reading?
Having left academe to join the world of investigators, my leisure reading is dominated by crime novels – Ian Rankin, Val McDermid, Kathy Reich and so on. I recently read Harlan Coben’s Gone for Good and have become hooked and am working my way through his other books and getting acquainted with the terrifying Mr Wu.

What modern gadget can you not do without?
I have to admit that it is my Blackberry to which I have become addicted.

What is the most (or least) satisfying aspect of your job?
The least satisfying is identifying the same things going wrong time and time again. But this is more than balanced by the occasions when I meet people we’ve been able to help by providing answers that let them move on from traumatic experiences in their lives.

Bach, Bacharach, Beatles, Buzzcocks, Britney?
If I was stuck on a desert island with only one choice it would have to be Van the Man.

It is a truth universally acknowledged that ... what? Women just cannot have enough shoes.

The best meal you have ever eaten is ...?
When I travelled outside Britain for the first time. It was 1962, my first holiday with my boyfriend (now husband). We were in France, stuck in Lyon railway station with just enough money to buy omelette and chips. They tasted divine.

One thing you are surprisingly good at is ...?
Tap dancing.

One thing you are very bad at is ...?
Singing – in fact I am banned from doing so by my family even in my own home but especially in public.

You have won the lottery. What is the most extravagant thing you do?
I would start by underwriting Scottish Ballet.

Which character in Coronation St/The Archers/Eastenders most closely reflects your point of view?
You should really ask me about the Scottish soaps – though I don’t follow those either...

If you had the option of living in any other period of history which one would you choose?
I am fascinated by the 1917 Russian Revolution. But closer to home I have had the privilege of living through and contributing to a small and peaceful revolution in Scottish political history.

You are omnipotent for one minute. What do you do?
Right some wrongs...

What is your favourite biscuit?
I do not discriminate as long as it is covered with thick chocolate.
Ian Pattison reviews happenings from ombudsman offices around the world

**Australia**

**MP introduces bill for airport ombudsman**

South Australian Federal MP Steve Georganas has introduced a private member’s bill to Parliament in an effort to establish an airport ombudsman. Mr Georganas says the ombudsman would investigate airport noise and developments.

He says most airports around Australia are privatised and on federal land which makes it difficult for neighbouring residents to oppose any of their activities. “It is a huge problem for residents living in and around the airport, certainly when development takes place,” he said.

“In this case you have no right of appeal, therefore I don’t think it’s unreasonable to be asking for someone impartial like an airport ombudsman to offer that service.”

Source: ABC Online, March 2006

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**Canada**

**Apologies legislation introduced**

‘Sorry’ will no longer be the hardest word if the British Columbia Government’s new Apology Act passes into law. The province has become the first in Canada to introduce legislation to allow people to offer an apology without fearing legal liability.

“There are times when an apology is very important and appropriate but the legal implications have long been uncertain,” Attorney General Wally Oppal said as the bill was introduced Tuesday. “The Apology Act is designed to promote the early and mutually beneficial resolution of disputes by allowing parties to express honest regret or remorse.”

“This act effectively separates expression of apology or remorse from the acceptance of financial responsibility.” Oppal told the legislature an integral part of the bill is that evidence of an apology is not admissible in legal proceedings. He said there are similar laws in Australia and California, where liability lawsuits have been significantly reduced. “You can’t solve problems between two people without an apology,” he said.

In February, acting BC Ombudsman Howard Kushner wrote a report titled *The Power of an Apology: Removing the Legal Barriers*. The report encouraged apologies when a person had been treated unfairly by a public agency. “My experience as Ombudsman has demonstrated to me the power of an apology in settling disputes,” Kushner said in a release. “However, too often I hear from public agencies that they will not apologize for fear that their apology will be used against them as acknowledgement of liability in any potential civil action.”

Source: WebWire, March 2006

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**Canada**

**ID scanning raises privacy concerns**

Scanning or photographing identification is becoming routine at some Winnipeg nightclubs, but some people are complaining it’s an invasion of privacy. The ID images are scanned and the images held for a period of time. Club owners call it a matter of security.

A similar practice in Alberta has been investigated by the Privacy Commission. Its preliminary finding is that keeping this kind of information violates privacy laws.

Barry Tuckett, who recently retired as Manitoba’s Privacy Ombudsman, is concerned businesses in Manitoba haven’t proved they need to store this kind of information.

“That’s a violation of the principles of privacy,” says Tuckett. “You do not collect personal information and private information on individuals unless there really is a justifiable need. And only then you insure that you collect the minimum amount and also that the information is destroyed as soon as it’s no longer needed for the purpose that it was collected.”

Tuckett wants to see much more public discussion about what private information can be stored by nightclubs. In the lineup outside the Canada Inns Tijuana Yacht Club there was little concern about how security inside the door was running IDs through a scanner. While waiting to get in, Derek Campbell admitted he rarely thinks about his privacy.

“It’s crossed my mind, but it’s not really been an issue, I don’t think,” he said. Jordan Kuzmak did wonder about having his ID scanned. “But I trust this place,” he said. “I don’t think they would give out my information.”

Barry Tuckett believes it is not so much a question of trust as it is about good practice, and minimizing the spread of personal information. “The minimum amount they need is to see if you’re 18, is to take a look at the picture and the name,” says Tuckett. “Now, if they are collecting it on hard copy, why? And what is the purpose of it? And who gets to see it?” Tuckett says we are giving up a lot of personal freedom by allowing this kind of activity.

Source: CIC News, March 2006

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**Ireland**

**Concern over tracking devices on children’s mobiles**

Mobile phone tracking devices designed to allow parents to monitor their children’s whereabouts could be illegal. The Office of the Data Protection Commissioner is warning that children’s rights could be violated by the service.

Under data protection legislation, people must consent to having the tracking device on their phones before it is installed. It is feared that children under the age of 16 may not understand the issues involved. Concern is being expressed that many children will be pressured into consenting to the service by their parents.

Source: Irish Examiner, April 2006

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**New Zealand**

**Former ombudsman named Governor-General**

Judge Anand Satyanand has been appointed to succeed Dame Silvia Cartwright as Governor-General, it was announced recently. Prime Minister Helen Clark said the Queen had approved the appointment.

“Judge Satyanand will bring many personal strengths to the role...”

Continued on page 18
The Ombudsman for products they never ordered. A poor hearing are tricked into paying offensive that elderly people with telemarketing, a new record.

Minister for Consumer Affairs, Karita Bekkemellem, is considering a ban on enforcement but 90 per cent of our process was becoming more complex they are wrong is a challenge.”

Mr Belgrave said the complaints government and law, as well as a deep appreciation of the different groups and communities which make up contemporary New Zealand,” the Prime Minister said.

Judge Satyanand has worked as a lawyer and a judge and retired last February as Ombudsman. Judge Satyanand, of Indo-Fijian parentage, will be the first New Zealand Governor-General of Asian ethnicity. Dame Silvia’s term will end on August 4 and Judge Satyanand will be sworn in after that.

Chief Ombudsman John Belgrave says his office should be made more relevant to Maori and elderly people. Mr Belgrave, who spoke at a Rotary Club meeting in Hamilton recently, also said he wanted more “people in the street” to make use of the Official Information Act.

The Ombudsman’s office is an independent body that investigates complaints against government agencies. It receives 6,000 complaints a year. “We want to make our department more relevant to groups such as Maori and Grey Power as they make up greater numbers of the New Zealand demographic,” Mr Belgrave said.

Meetings with runanga and other community groups had been positive, he said. “Individuals can find dealing with a government agency formidable. But sometimes convincing a complainant they are wrong is a challenge.”

Mr Belgrave said the complaints process was becoming more complex as expectations of government agencies rose. “We listen to a complaint and then ask ‘What is the agency’s side of it?’ We don’t have legal powers of enforcement but 90 per cent of our findings are acted upon.”

Norway

Minister for Consumer Affairs, Karita Bekkemellem, is considering a ban on sales by telephone due to the methods used by some of the salesmen. The Consumer’s Ombudsman last year received 7,500 complaints about telemarketing, a new record.

Bekkemellem says that it is particularly offensive that elderly people with poor hearing are tricked into paying for products they never ordered. A new marketing law is at present being circulated for comments.

New Zealand

Ombudsman wants more Maori calls

The Ombudsman wants more calls from Maori and elderly people. The Ombudsman’s office is an independent body that investigates complaints against government agencies. It receives 6,000 complaints a year.

The Ombudsman’s office is an independent body that investigates complaints against government agencies. It receives 6,000 complaints a year.

Pakistan

Federal Insurance Ombudsman appointed

The federal government has appointed Justice S Ali Aslam Jafri as Federal Insurance Ombudsman for a four-year term, with office at Karachi.

The institution of Federal Insurance Ombudsman is meant to provide for diagnosis, investigation, redress and rectification of any injustice done to a person through maladministration by any of the insurers in the public or private sector. The institution would address grievances relating to life insurance as well as the general insurance sector.

Philippines

Ombudsman faces Supreme Court contempt

The Supreme Court has ordered the Office of the Ombudsman, under pain of contempt, to provide them with a progress report of its investigation on the anomalous 1.3 billion peso poll automation project with Mega Pacific Consortium.

In its eight-page resolution, the court warned the Ombudsman that it would not hesitate to exercise its power of contempt against anyone who would fail to observe due respect for its directives, mandates, orders and judgments. It ordered the Ombudsman to submit its first report on or before June 30 and every three months thereafter until it finished its investigation. The court also said that the reasons cited by the Ombudsman for its non-compliance were “flawed,” saying:

\[ \text{The power to punish for contempt among all courts is necessary to preserve the orderly administration of justice.} \]

That [the high tribunal] will not hesitate to exercise its contempt power against anyone who fails to follow their order like what they did with the Commission on Elections.

They are not interfering with the Ombudsman’s duty to investigate but are mindful of the need to “act promptly on complaints”.

Ombudsman Merceditas Gutierrez said in her comment last month that she was not duty bound to report the results of her investigation to the Supreme Court. Gutierrez, through the Ombudsman’s acting chief legal counsel Emora Paganuran, maintained that under Section 5, Article XI of the 1987 Constitution, the Ombudsman had “no duty to render reports on the status, eventual outcome and completion of its investigation to any government agency, being a constitutionally independent body.”

Russia

Ombudsman suggests public control over army draft

The Russian Human Rights Ombudsman has suggested public control over the army draft and energetic efforts to make military service more appealing.

“Violations of human rights make it necessary to exercise public control over the army draft,” says Lukin’s report 2005, which was released in Moscow recently. “Public organisations have exposed plenty of violations by draft commissions. So, the participation of public organisations in draft commissions needs to be considered and legalised,” he said.

“IT is impossible to restore the popularity of military service, which is now very low, merely through the traditional methods of cultivating patriotism or recollections that our grandfathers and fathers had far worse conditions of military service. We will have to make a fresh start in advertising the benefits of military service,” Lukin said.

South Africa

‘About time’ bank charges are probed

The Ombudsman for Banking Services has welcomed the Competition Commission’s probe into bank charges an issue, it says, that has long been the subject of public debate. He also says he is exploring the possibility of expanding its mandate to cover policy issues and charges.

“In keeping with the rules of financial ombudsman schemes internationally, upon which the OBS is modeled, the OBS may not consider a complaint or dispute that relates to a practice or policy of a bank (for example, a bank’s general interest rate policy or fees and charges policy), unless it relates to a fee or charge being incorrectly applied by the bank having regard to any scale of charges generally applied by that bank.

“Fees and charges are regulatory issues. The statutory regulators in South Africa that have a say over the banks and their conduct are the Reserve Bank, the Financial Services Board and, to a lesser extent, the DTI,” the OBS said. Notwithstanding this, the OBS had been...
and continued to be approached by bank customers who wished to complain about bank fees or penalties in particular.

Further, a large percentage of those consumers who had participated in a competition currently being run by the OBS, inviting bank consumers to provide tips for the banking industry, had commented on the need for banks fees and charges to be addressed. “Out of a desire to be relevant in a South African context and to provide a comprehensive service to bank customers, the OBS is exploring the possibility of expanding its mandate to cover policy issues and charges,” the OBS said.

Source: I-Net Bridge, April 2006

Spain
Action against football racism ‘wishful thinking’
The Spanish Ombudsman has condemned the official response to persistent incidents of racism in Spanish football, saying it has been little more than wishful thinking. In a report to the Spanish Parliament, the Ombudsman called for more determined action against the growing number of xenophobic skinheads amongst football fans.

Enrique Mujica, the Ombudsman, told the Spanish deputies they must use “greater strictness and severity in dealing with violent hooligans, racists and those who aid and abet them”. He said his agency will take official action against racist behaviour in the sport. Mujica, who appeared before the mixed Congress-Senate commission, acknowledged the Ombudsman should correct his own insufficient presence in the fight against racism and violence in sports”.

“If no complaints are filed we will proceed in our own official capacity, and when we are told that these degenerates are causing disturbances in the sport we will go to the competent authorities to see to what extent they will intervene and correct this conduct,” he said.

Mujica said educational reform should be integrated into the fight against violence, racism and xenophobia, as part of the new content of citizens’ education, and asked the sports media to be “forceful and categorical in repudiating acts like these”. So-called monkey chants have been directed at black players in Spanish football in recent years.

“Something has to change when a soccer match becomes a high-risk activity,” Mujica said, and expressed his condemnation for “the abnormal spectacle of offensive, insulting banners with xenophobic words and symbols displayed in soccer stadiums with total impunity”. Mujica said racist incidents occurred in football more than any other sport because of the presence of “ultra groups” of hooligans.

Source: Expatica, March 2006

Sweden
Discrimination Ombudsman wins lawsuit against woman who refused to sell puppy to lesbian

A Swedish court has imposed a 20,000 kronor fine on a woman kennel owner who refused to sell a puppy to a lesbian.

The kennel owner, who was not identified, had initially been willing to sell the woman a puppy but changed her mind when she found out the woman was living with a lesbian partner, according to Sweden’s discrimination ombudsman, a government watchdog who filed the lawsuit.

The Nacka District Court outside Stockholm issued the ruling on Thursday, the ombudsman’s office said. “This is an important verdict,” said Hans Ytterberg, who heads the ombudsman’s office. “It is important that these incidents are tried in court.”

Source: The Associated Press, March 2006

Hairdressers and taxis, for example, are no longer allowed to offer special rates for women, while many men have felt hard done by when they discover that they are not allowed into bars because they are too young, even though younger women are able to breeze past the doormen.

“Bars tend to use women as bait for men through having different age restrictions. But at the same time that means there are men who feel that they are discriminated against,” said Magnus Jakobsson, press officer at Jämo. However, very few of the incidents reported to Jämo have so far led to convictions. Many cases are dropped since the discrimination cannot be proven.

Source: TT/The Local, May 2006
Ombudsman complaints

In our report in May, we said that we thought that estate agents who broke the law shouldn’t get their commission – but that the estate agents’ ombudsman, Stephen Carr-Smith, disagreed. Mr Carr-Smith has pointed out that this could imply he condones this situation; he does not – but he has no power to intervene legally to deny an agent his commission. We’re happy to clarify this and to note that, in at least one case in the last year, Mr Carr-Smith has set the compensation award to a complainant at a level equal to that of the £2,600 commission fee – effectively ensuring that the agent didn’t benefit financially from a case where it had broken the Ombudsman for Estate Agents’ (OEA) code of practice in several ways.

In the article, we also reported the experience of a Which? member who was awarded £1,000 compensation by the ombudsman but who was ‘not impressed’ with the length of time the investigation took. We are pleased to confirm that he was unhappy with the total length of time it took to resolve his complaint with the agent, and that the time the ombudsman spent adjudicating on the case was only one part of that and in the particular circumstances was not in itself unreasonable. We are also happy to add that the member accepted the award without taking up the option to appeal against the ruling.

There are aspects of the OEA scheme that concern us where we believe it falls short of the level of protection consumers deserve. We do, however, recommend that consumers use agents who are members of the scheme as it does offer a level of protection unavailable elsewhere. We agree with the OEA that an independent redress scheme should apply to the whole industry and will work with the OEA and others to achieve this.

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