Devolution of Policing and Justice in Northern Ireland

From 12 April 2010, the transfer of policing and justice powers from Westminster to the Northern Ireland Assembly took full effect. In this article, Marie Anderson, Deputy Northern Ireland Ombudsman, explores the impact of this significant constitutional development on the work of the Northern Ireland Ombudsman.

On 9 March the Northern Ireland Assembly voted in favour of the transfer of policing and justice powers from Westminster. The vote was a key stage in completion of the devolution timetable set at Hillsborough Castle on 5 February. A newly created Department of Justice for Northern Ireland (the DOJ) will have functional responsibility for the devolved powers. Some powers will not devolve; those relating to national security, gathering of intelligence data and human rights will remain matters ‘reserved’ to the UK Parliament. Tribunal and prison reform as well as legal aid funding were also on the agenda at Hillsborough.

A new Department of Justice
The Department of Justice (NI) Act 2010 made provision for the establishment of a government department, whose purpose is to exercise devolved policing and justice functions. This Act and the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 significantly extend the jurisdiction of the NI Ombudsman, to include complaints of maladministration concerning the Department of Justice, its agencies and NDPBs. The newly created department will deal with the administration of justice functions exercised by the former NI Court Service (NICtS) as well as the NIO policing powers exercised by the Northern Ireland Office (NIO). The independence of the judiciary remains sacrosanct under the devolution arrangements, although interestingly the DOJ will be responsible for the functions relating to the Judicial Appointments Ombudsman.

Orders giving effect to the transfer of legislative competence, executive functions of the Secretary of State and the Lord Chancellor to the DOJ as well as the transfer of property and assets were passed at the end of March. The work of
The Ombudsman Issue 40

Newsdesk

A note from the Editor
The Northern Ireland Ombudsman is our cover story for the second issue in a row, marking the significant changes the historic Hillsborough Agreement will bring to bear on that Office. Important changes are underway in Wales and Scotland too, where both public services ombudsmen have been charged with designing streamlined and standardised complaint handling processes for use across the public sector. The origins and progress of the Welsh experience are outlined in this issue, and a future item will describe developments in Scotland.

Sharing information is a common theme among schemes, and Nick O’Brien brings us up to date with the Health Service Ombudsman’s consultation on proposed new reporting processes and the rationale for her initiative. We share two significant reports, one from Ireland and a joint report from the LGO and PHSO. At this time of economic uncertainty, the Chair of the Financial Ombudsman Service gives his view of how the Service is responding to changing demand.

Our spotlight falls on the new member schemes of the Cayman Islands and the British Virgin Islands. We profile Dermot Gallagher, Chair of the GSOC and Jane Martin, the new LGO, and our Fair Premises feature the Georgian splendour of Dublin.

We have an update on BIOA’s complaint handling practice course, and Isobel Brown guides us through the OIAHE’s experience of designing and implementing a new website. Gráinne Byrne marks five years of FOI in Scotland with a personal view of how the legislation allows citizens to unlock secrets.

These past months have seen further change on the Editorial Board. Our thanks to Rafael Runco of the Housing Ombudsman Service for the many years over which he has made suggestions for improvement and offered ideas, always with a beaming smile! Our thanks too, to Susan Hudson, Policy and Communications Manager at the Public Services Ombudsman for Wales, for stepping into his shoes. We also welcome Kath Butler, who takes over from Jo Fainlight as the PHSO’s representative on the Board.

With best wishes, Emma

LGO’s new schools service starts
The first of the Local Government Ombudsman’s two new areas of jurisdiction started this month. On 19 April, the LGO began to deliver a new complaints handling service for parents and pupils with concerns about schools.

The first phase will involve maintained schools in four local authority areas – Barking and Dagenham, Cambridgeshire, Medway and Sefton councils. The current plan is to then include a further group of local authorities from September 2010, with each phase being fully tested and evaluated in partnership with the Department for Children, Schools and Families before the full service is rolled out nationally from September 2011.

The LGO already considers complaints about a wide range of education matters including concerns about the special educational needs statementing process and provision of services for those children; the way in which appeals are heard in respect of school admissions and permanent exclusions; and the provision of school transport services. But until recently the LGO has been prevented from considering complaints about internal school matters. The Apprenticeships, Skills, Children and Learning Act 2009 extended the LGO’s jurisdiction to include such matters.

Work also continues to develop the LGO’s new responsibility to deal with complaints from adults who purchase their own care services from the independent sector, including private care homes and home care agencies (the LGO already deals with complaints about local authority provided and funded facilities). The new service, introduced by the Health Act 2009, is planned to take effect from October 2010.

FOS – the year ahead
The Financial Ombudsman Service published its corporate plan and budget for 2010/11 in January. This opens up the proposed budget and the assumptions on which it is based to formal consultation. The budget was approved by the Boards of FOS and the FSA in March.

The year 2009/10 saw record numbers of cases, reflecting uncertain financial markets and challenging conditions for businesses and customers. Based on discussion with the industry and consumers, the assumption is that about 190,000 new cases will be received and 210,000 closed. The budget was agreed at £115.6 million.

Apart from dealing with the large numbers of cases, the FOS aims to work towards eliminating waiting times. It will also be subject to a value-for-money study by the National Audit Office in the coming year.

The approved corporate plan and budget can be found at: www.financial-ombudsman.org.uk/news/updates/corporate_plan_and_10-11-approved.html
Financial Services Ombudsman for Ireland
Bill Prasifka was appointed to be the new Financial Services Ombudsman for Ireland on 15 February, to succeed Joe Meade who retired on 3 January. Mr Prasifka took up his appointment in March 2010. Previously, he was Chairman of the Competition Authority.

Election for European Ombudsman
The European Parliament has re-elected P. Nikiforos Diamandouros as European Ombudsman, with 340 votes out of a total of 648 valid votes cast. The Ombudsman’s priorities for the next five years are to:

- ensure that citizens profit fully from the Treaty of Lisbon and the Charter of Fundamental Rights
- strengthen a “culture of service” to citizens within the EU administration
- further improve the efficiency of the Ombudsman’s office

The European Ombudsman is elected for five years. Mr Diamandouros has served as European Ombudsman since 1 April 2003. Before becoming European Ombudsman, he was, from 1998 to 2003, the first National Ombudsman of Greece.

Walter Merricks – Office of the Health Professions Adjudicator
Walter Merricks, after retiring in October 2009 as Chief Ombudsman, Financial Ombudsman Service, has been appointed the first Chair of the OHPA. This will adjudicate on fitness to practice issues brought by the General Medical Council and subsequently the General Optical Council. Independent adjudication, separate from regulators, professions and government, is intended to enhance confidence in the decision making process around fitness to practice. OHPA is expected to start considering cases referred to it in April 2011. Stephen Shaw, previously Prisons and Probations Ombudsman, has recently been appointed the first chief executive.

New FOS Chief Ombudsman
Natalie Ceeney has been appointed as the new Chief Ombudsman at the Financial Ombudsman Service. Natalie replaces Walter Merricks who stood down after ten years in October last year. Natalie joined the FOS in March from the National Archives, where she was chief executive and keeper of the public records. She was formerly director of operations and services at the British Library and previously led strategic consultancy projects across a range of industries at McKinsey & Company. After graduating with a first in politics from Cambridge, where she was president of the student union, she worked in the NHS at Great Ormond Street Hospital.

ICO Corporate Affairs Director becomes one of the UK’s first Chartered PR Practitioners
Susan Fox, Corporate Affairs Director at the Information Commissioner’s Office has become one of the first ever Chartered PR Practitioners. Susan is responsible for the ICO’s communications, leads on knowledge management and manages a Corporate Governance team. She is also the current Chair of the BICOA Communications Interest Group.

CBE for former SPSO
Professor Alice Brown, who was Scottish Public Services Ombudsman from 2002-2009, was given a CBE in the New Year Honours list 2010.

Director of the Equality Tribunal, Ireland, to retire
Melanie Pine, Director of the Equality Tribunal, has announced that she will be retiring with effect from 17 May 2010. Melanie has led the Tribunal from its establishment in 1999. She plans to pursue other interests in the future.

Polish Ombudsman condolences
Many ombudsmen expressed their condolences at the tragic death of Dr Janusz Kochanowski, the Ombudsman of Poland. He was in the presidential plane that crashed in Smolensk, Russia, on 10 April 2010.

Point of Information
Issue 39, page 18.
We wish to clarify that the Freedom of Information (Amendment) Act in Ireland, which included a new provision for the imposition of up-front fees on Freedom of Information requests, was effected on 11 April 2003 while Emily O’Reilly was appointed Ombudsman and Information Commissioner with effect from 1 June 2003.
Dublin is famous for its Georgian architecture, so-called because the buildings were erected between 1714 and 1830, when four successive Georges reigned in Britain and Ireland. The earliest buildings of the period were on the north side of the river Liffey. While there had been some development in the early 18th century, serious expansion on the south side did not begin until the second quarter of the century, when much of the medieval city was swept away and new streets laid out by what became known as the Wide Streets Commission.

Today, what we know as Georgian Dublin consists mainly of the streetscapes of the south side, where long terraces of houses lead into the great squares of St Stephen’s Green, Merrion Square and Fitzwilliam Square.

Closer inspection reveals that the houses are by no means uniform. Although all fairly similar, they vary in size and height, even within the same street, because plots of land were leased to individual builders, who might build five or six houses at a time. Most of the houses are two bays wide, but there are quite a few three- or five-bay structures among them. Originally built of yellow or pink brick, they have weathered to many shades of brown. Regardless of size, they all observe strict rules about the proportions of the windows on the different floors and the trademark of Dublin Georgian houses is the doorway, almost always surmounted by a fanlight.

Today, most of the houses are used as offices, but many retain their original fireplaces and fine plasterwork. The office of the Ombudsman of Ireland is a reconstructed five-bay house on Leeson Street near St Stephen’s Green. The Ombudsman’s first office was on the green itself – number 52, which contains magnificent plasterwork and painted decoration. The office of the Pensions Ombudsman in Ireland is a two-bay house on Upper Mount Street, close to St Stephen’s Church, known as the ‘pepper pot’ church, because of its distinctive tower. Although the house has been in government service for very many years, the 1911 Census reveals that it was home to the Chief Commissioner of the Dublin Metropolitan police.
News from the BIOA Secretary
Some of you will know of the sad death from cancer early this year of my late partner, Shirley. She will be known to many in BIOA as being my ‘helper’ at conferences and seminars during the past five years. I am most grateful and touched by the very kind support and messages of sympathy received from many BIOA colleagues. Thank you so much.

Ian Pattison

New members
The Association is pleased to welcome the following new members since the last issue of this newsletter:

Voting member
Nicola Williams – Complaints Commissioner for the Cayman Islands.

Corporate Associate members
Elton Georges CMG OBE – Complaints Commissioner for the British Virgin Islands.

Future direction of the Association

In October 2008, the Executive Committee decided to review the role and activities of the Association and to consider what its future direction should be. It was also agreed that this review should, in due course, include a review of the Association’s rules and criteria for membership, a process originally started by the Validation Committee at the request of the Executive Committee.

After an invitation to tender and an open competition, Carolyn Hirst (with Professor Janette Webb) was appointed to carry out the review. It was completed in August 2009, and the full report can be viewed on the ‘members’ area’ of the BIOA website.

The review report identified some priority action points summarised in the report as:

- Decide what BIOA wants to be and who it is for
- Decide what to do about the membership criteria
- Improve the workings of BIOA itself
- Review activities and services to members
- Do more to raise the profile of BIOA, ombudsmen and members
- Clarify who and what BIOA represents

The Executive Committee has considered the report in detail and decided initially to concentrate on the following areas, some of which will continue as ongoing ‘work in progress’ to be taken forward by the new Committee for 2010/11, probably with other areas of the report’s findings:

- Membership categories
- PR and profile raising
- Validation, and criteria for membership
- Funding, staffing and sources of income
- Membership communication
- Review of objectives
- Future composition of the Executive Committee
- Change of name for BIOA

Membership categories

It was decided not to recommend a change in membership categories, retaining one category (currently ‘Voting member’) for those schemes which meet the Association’s criteria in full, and another category (currently ‘Associate member’) for other complaint-handling schemes. A minor change in name is, however, being recommended, to ‘Member’ and ‘Associate Member’ respectively. Voting rights will remain only for ‘Members’.

PR and profile raising

It has been agreed that professional assistance will be sought to raise the Association’s external profile with the media, governments and other relevant parties. The objective is for BIOA automatically to be considered a point of contact for consultation responses and other information and advice relating generally to ombudsman issues.

Validation, and criteria for membership

The Validation Committee has been asked to continue its review of criteria and rules, postponed pending the review report, to include recommendations for criteria for ‘Associate’ membership.

Funding, staffing and sources of income

It was agreed that no additional significant staffing or funding changes for the Association were currently needed, but that the situation would be kept under review.

Review of objectives

Minor changes to the Association’s objectives are being recommended in order to distinguish better between the Association’s promotion and support roles.

Future composition of the Executive Committee

Recommendations are to be made for the future composition of the Executive Committee to better reflect the Association’s current membership.

Change of name for BIOA

Discussions about possibly recommending a change of name of the Association are ongoing, both to assist with raising the Association’s external profile and to gain better acceptance in all areas of membership coverage (e.g. in the devolved administrations of the UK and in Ireland).

Association Dinner and Annual Meeting 2010

These events will take place on 13 and 14 May respectively, at the National Museum of Wales in Cardiff. On the afternoon of Thursday 13 May, the office of the Public Services Ombudsman for Wales will run a ‘fringe event’ for staff of BIOA member schemes. The Dinner will be held in the evening, and the following morning the Annual Meeting will address the normal business of the Association and there will be guest speakers on the topic of ‘learning from complainants’.

Biennial Conference 2011

The Association’s 9th Biennial Conference will be held on 12/13 May 2011 at Burleigh Court at Loughborough University. More details to follow in due course.
As reported in Issue 38, BIOA has been engaged for the last two years on work intended to promote validated professional training for staff of member schemes. At the start of this year, and following formal expressions of interest from selected training providers, BIOA invited Queen Margaret University, Edinburgh (QMU) to run a pilot course.

In response, QMU provided three week-long instalments of residential training at its state-of-the-art campus outside Edinburgh in October 2009 and February this year, comprising a pilot Professional Award in Ombudsman and Complaint Handling Practice, and an advanced Professional Certificate.

The two planned sessions at QMU were a sell-out and reflected an increasingly high level of enthusiasm for this project among BIOA’s membership. In fact the response was so good that the third, originally unplanned, instalment had to be arranged especially to cater for the higher than expected numbers.

That initial enthusiasm was matched by the very positive feedback provided by the first group of delegates, who were drawn from an impressively wide range of member schemes and reflected much of the geographical and sectoral diversity of BIOA itself: public and private; Britain and Ireland; large scheme and small; statutory ombudsman schemes; other complaint handling and investigative structures.

It was clear from that feedback that delegates especially appreciated the involvement of trainers and mentors not just from QMU’s in-house team but from among former senior members of the BIOA community, drafted in especially for these pilot courses. As a result, even the more seasoned delegates, who might have been expected to respond in a ‘nothing much you can teach me about ombudsmen’ fashion, in fact reported favourably.

A full evaluation of the three instalments has yet to be completed. It is already clear, however, that there is sufficient common ground between BIOA’s membership to enable the delivery of a course that is both generic (in that it holds appeal for anyone involved in ombudsman-type work) and specialised (in that it caters for what is distinctive to work of that sort, as opposed to training that is perhaps more geared towards practising lawyers or police investigations).

Although the course demanded a relatively high level commitment of time and energy, the mix of lecture, role-play and interactive sessions, reinforced by the completion of a written assessment after attendance at the course itself, clearly hit the jackpot: ‘great’, ‘superb’, ‘really good’, ‘interesting, stimulating and relevant’ were some of the words used by delegates to describe the experience.

Quite aside from the core elements of the course itself, it is striking that many delegates also spoke of the considerable benefit of having a rare chance to meet colleagues from other parts of the complaint handling world, to share experience, and for once having time to gain genuine insight into how others operate. The potential for interaction of this sort to motivate and energise staff is hard to quantify but is clearly very real, nonetheless.

It now remains for BIOA to absorb fully, and quickly, the lessons yielded by the QMU experiment. This exercise was, after all, not primarily about assessing QMU’s delivery but about using the experience of that delivery to get a measure of what such a course, ideally, should cover, at what level it should be pitched, and how it might best be delivered. On the basis of that empirical experience, BIOA can now turn its attention to drawing up formal criteria for the future evaluation of training courses that might attract BIOA validation, including such factors as core programme content, learning outcomes, key learning objectives, learning tools, trainer experience and credentials, and cost, as well as formal quality assurance requirements.

BIOA’s aspiration remains that of stimulating the training-delivery market place so that a wide range of potential providers, whether academic institutions, commercial training organisations, or in-house training teams, wherever they might be in Britain or Ireland, will come forward to offer dedicated professional training in ombudsman and complaint handling practice. The dividend for BIOA members will be that there is sufficient choice to meet the diverse needs of an equally diverse practitioner community, matched by a measure of assurance of common standards and core coverage.
The Cayman Islands

By Susan K. Duguay,
Administrative and Investigative Officer

The Office of the Complaints Commissioner of the Cayman Islands (the OCC) was established pursuant to the Complaints Commissioner Law 2003. It is the sole Ombudsman in the Cayman Islands, with a total staff of six, and the present Commissioner, Nicola Williams, is only the second Complaints Commissioner.

The OCC is responsible for investigating complaints against more than 80 government entities, and its aim is to investigate, in a fair and independent manner, complaints against government to ascertain whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

We also work to ensure that residents are informed of their right to good administration and to facilitate effective ways to improve good governance and best practice.

In 2009, the OCC dealt with 465 complaints.

The services of the OCC are offered free of charge to all residents of the Cayman Islands. The Office will investigate complaints made in writing that fall within the scope of the Complaints Commissioner Law (2006 Revision). The Commissioner may investigate matters on all aspects of the office. The Complaints Commissioner is also by law a member of the Anti-Corruption Commission (the Anti-Corruption Law 2008, 1(b) of the Schedule).

The Virgin Islands

By Louann Hodge-Smith,
Senior Administrative Assistant/Investigator

The Office of the Complaints Commissioner of the Virgin Islands opened for business in March 2009, 16 years after a Constitution Review Commission recommended it in 1993, nine years after its actual inclusion in the Constitution and six years after the passage of the Complaints Commissioner Act in April, 2003.

The first Complaints Commissioner is Elton Georges CMG, OBE, who earlier served as Deputy Governor of this British Overseas Territory for two decades. He is supported by two members of staff.

As it is a new office, the Commissioner and staff as well as their potential clients are learning as they go along. Since opening its doors the office has fielded nearly 60 approaches, 45 of those in 2009. Several were outside its jurisdiction, but the office in many of those cases has assisted nonetheless in working out a settlement.

In those complaints that were investigated discourtesy and unreasonable delay in responding are the aspects of maladministration most often found, thus far. The Commissioner has twice resorted to his final recourse when agencies do not accept or act on recommendations for redress, namely, to lay a special report before the House of Assembly. He also recently submitted the report on the first investigation undertaken on his own motion, which was an examination of how an electricity connections subsidy programme is administered.

The Office has benefited from the generosity of the more experienced institutions in other Overseas Territories for training assistance and coaching, the Bermuda Ombudsman’s Office and the Cayman Islands Complaints Commissioner’s Office, in particular. Both have also been available to provide timely assistance by telephone. Realising the importance of networking, the Office has also joined the Caribbean Ombudsman Association and the BIOA.
One of the issues which most ombudsman schemes comment on is the number of occasions when whatever the quality of the original decision complained about, the handling of the ensuing complaint was lamentable. This adds to the frustration and annoyance of the complainant and makes a satisfactory conclusion harder to reach.

In pondering this issue in the context of devolved public services in Wales, it was evident that there are major disparities in the way organisations deal with complaints, and a myriad of different complaint handling processes. Looking at the evidence from the Ombudsman’s casebook, it was very hard to identify what value is being added by this variation. It begged the question, if a standard system was put in place, would this lead to an improvement?

On the face of it, there would be a number of virtues. Complainants would know how their complaint should be handled. Multi-agency complaints would be easier to manage. Training for staff on complaints handling could be developed on a multi-agency basis. Best practice could be engineered in, and new developments could be implemented rapidly across the public sector. Data on complaints and their outcomes could be held in a consistent fashion allowing trends to be captured and lessons learned.

In light of the possible benefits, the Ombudsman, Peter Tyndall, put a paper to the Minister for Public Service Improvement in the Welsh Assembly Government suggesting that this would sit well with the Government policy of promoting improvement through collaboration and joint working. It also was consistent with the reforms being considered to health redress which broadly parallel similar initiatives elsewhere within the UK. A streamlined system has the potential, of course, to also offer some economies compared to current arrangements.

The issue was considered by the Cabinet, who were attracted in principle to the proposal. The Ombudsman was invited to chair a steering group to draw up proposals for a new system. The expectation is that the model complaints process should be one which can be adopted across devolved services which includes local government, health, housing associations, the Assembly Government and the bodies it sponsors.

The work of the group is progressing well. It was decided that there was little point in setting out to re-invent the wheel. Its initial work focused on agreeing a standard definition of a complaint and the principles to underlie the new system. These were developed in light of the extensive work already undertaken in Wales and more widely, taking account of both public and private sector models.

In taking its work forward the group has developed a draft document which is in two parts. The first element is a customer facing model policy (i.e. the text addresses the potential complainant), together with a model complaint form. The second element is headed ‘Design Criteria’ and provides detailed guidance to public service providers on developing the model procedure.

Much emphasis has been placed on a streamlined process. The current proposal envisages three stages. The first is an informal stage where complaints are initially raised with frontline staff. The second stage is formal internal investigation, where there is a focus on ‘do it once, do it well’. The third stage is independent external investigation, which would normally be by the Ombudsman.

The aim is to consult with all the relevant public service providers this Spring. Following consideration of the responses to that consultation, advice will then be submitted to the First Minister of the Welsh Assembly Government. In the event that the Government wishes to introduce a common procedure, the aspiration is that this can be achieved within existing legislation. The exceptions to this will be in the field of health, where the Assembly Government is already planning legislation and has acquired legislative powers, and in social services where more work will be required.

The project is an ambitious one, and inevitably there will be challenges in the detail, but it has the potential to provide a sound basis for improved, consistent complaint handling across the public sector in Wales.

The Public Services Ombudsman for Wales would welcome any observations and information about similar initiatives elsewhere. Please contact: susan.hudson@ombudsman-wales.org.uk
All you have to do is ask
Gráinne Byrne, Communications Officer, Scottish Public Services Ombudsman

Let’s be clear, the word ‘official’ is just another way of saying ‘bureaucrat’; bureaucracies are notoriously shrouded in mystery and secrecy and are not the pillars of a bona fide democratic State. The principles of democracy demand that governments are accountable and open, operating in full view of their citizenry.

Yet for centuries, it has been accepted, even traditional, for governments to preserve official information, actively withholding it from the public to avoid embarrassment over the possible disclosure of weakness or, more damaging, corruption.

Campaigners for freedom of information fought hard to liberate government secrets, and it is thanks to these champions that ‘official’ information no longer translates as information that is closeted.

Established in Sweden over 200 years ago, Freedom of Information legislation granted citizens a statutory ‘right to know’ – the right to ask for, and receive, official information from authorities.

During the last decade, UK legislatures introduced two Acts of law that would open up the abyss of government secrets to the electorate. The Freedom of Information Act (2000) and the Freedom of Information (Scotland) Act 2002, which both came into force in 2005, gave all members of the public, whether in the UK or elsewhere in the world, a legal right to access the information held by UK public bodies.

‘The Freedom of Information Act 2000 signalled a break with the traditional culture of secrecy: “the principle that communication was the privilege of the State rather than of the citizen was at last reversed.” (Fenwick 2002: 334)

The English and Scottish FOI Acts aimed to open up ‘access to information held by public authorities’ to “any person making a request and to have that information communicated to him’ (FOI Act [2002]). The legislation opens up information in the spirit of honesty and equality; and some argue that “a public body can no longer fob off a question with a poorly argued excuse.” (Brooke: 2005, 1)

The last five years of liberated access to information in the UK has exposed controversies such as the MP expenses scandal, scale of hospital waiting lists, and information about the Iraq conflict; and it has served to influence policy to improve public services.

Charged with enforcing and promoting access to information in Scotland, Kevin Dunion, the first Scottish Information Commissioner, views the first five years of FOI as an undoubted success. He also believes, however, that the FOI Act should be regularly reviewed if its future success is to be assured:

“The introduction of FOI has led to the release of an enormous amount of information to the public – including important information on how authorities spend public money, how they perform, and how they arrive at their decisions. This information is making a real difference to the lives of ordinary people.

We need to ensure, however, that the FOI ‘right to information’ is protected into the future. With more and more public services being provided by third parties, it is essential that FOI ‘follows the public pound’. I’m pleased to report that the Scottish Government is considering the extension of FOI to cover additional bodies – including PFI/PPP projects and private prisons. It is essential that FOI evolves in response to the changing public sector landscape.”

International Right to Know Day is 28 September.

Environmentally unfriendly
By Jackie Feeney, Head of Communications, LGO

The combined failings of three public bodies allowed illegal waste activities to go unchecked over a seven-year period with devastating effect.

Environmentally Unfriendly, a joint report by Ann Abraham, Parliamentary Ombudsman and Anne Seex, Local Government Ombudsman, looks to the three bodies to pay £95,000 in compensation to the neighbours of the unauthorised waste site. The payment by the Environment Agency, Lancashire County Council and Rossendale Borough Council reflects years of extreme distress, aggravation and financial loss suffered by the complainants, Mrs D and her son, after the Environment Agency and Councils failed to stop a neighbour from using his land as an illegal landfill site. From 2000-2007 thousands of tonnes of rubbish were illegally dumped, burned and processed on farmland a few metres from Mrs D’s home, enough to fill three Olympic-sized swimming pools. Mrs D and her son live in a green belt area noted for its biological and archaeological heritage. Their complaints about the

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A Chairman’s view

By Chris Kelly, FOS Chairman

I joined the Financial Ombudsman Service as a member of the non-executive board in 2002 and have been chairman since 2005. I had spent over 30 years in the civil service, 25 of which were at the Treasury where I had been involved with both economic and social policy, including spells as director of monetary policy and director of the budget and public finances. So I already had some understanding of the way the financial system worked. But I did not know a great deal about alternative dispute resolution. I discovered a well run and important organisation that made decisions affecting the lives of thousands of people.

As chairman, I am responsible for leadership of the board and for its efficient operation. The board is not representative in that no member is appointed specifically to represent any particular sector. Instead it draws on a wide range of experience, knowledge and skills brought by members from a range of backgrounds, including both the financial services industry and consumer journalism. The ability to look at issues from a number of different perspectives greatly enhances the quality of our discussions.

The role of the board is to take a strategic overview of the Service, ensuring it is properly resourced and able to operate effectively and independently. To do that, we need to be able to challenge the executive team – who are open, and willing, to be challenged. Board members have said they enjoy working with the Service precisely because of this.

We have to resist the temptation of becoming too involved in the management of the Service, while giving direction on the strategic issues – not least what the enormous growth in our caseload means for our business model. This financial year we expect to have received at least 160,000 new cases. Next year we could get significantly more. Inevitably this puts pressure on processes originally designed for much smaller numbers. It has also meant a rapid expansion of our staff, a large proportion of whom have now been with us less than 12 months.

The board does not, of course, get involved in making decisions about individual complaints. That is the preserve of the ombudsmen – appointed by the board on terms that ensure their independence from the board as well as from everyone else. Some consumers have difficulty with this concept and mistakenly think that the chairman is a higher level ombudsman to whom they can appeal when their complaint is rejected. I receive some interesting correspondence as a result, often from people who have transferred their original anger about a financial business to the Service which has not upheld the complaint.

We do have a role in determining the framework in which individual decisions are taken. Board members also periodically review samples of decision letters and closed case files. As well as providing first hand experience of the Service’s product it helps the board to understand the very real impact that a dispute can have on the lives of the parties concerned.

A consistent challenge is not just the size of our caseload but its unpredictability. It is almost ten years since the Service was established. In that time, the volume of new cases increased from 31,000 in 2001 to 113,000 in 2006, fell to 94,000 in 2007 but is expected to reach about 160,000 in 2009-10. The increases have been driven by significant surges in complaints resulting from single issue consumer campaigns – such as mortgage endowments and payment protection insurance. We have responded to the challenge by both increasing our in-house resources and making use of outsourced case handlers to provide greater flexibility in managing the caseload. Following a successful pilot, about 350 outsourced contractors from two providers are currently working at South Quay. We are also appointing fee-paid ombudsmen on a part-time flexible basis, using a model similar to fee paid district judges.

Being chairman of the Service is hard work and challenging at times, but very rewarding.

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Environmentally unfriendly

damage the waste was causing to the environment and their property went unchecked for seven years. The three public bodies failed to work together despite the existence of a national protocol which clearly required a coordinated joint approach on waste enforcement. Environmentally Unfriendly recommended that all three bodies:

- should individually write to the complainants to apologise for the failings the Ombudsmen have identified;
- make good any financial loss resulting from the frustration of Mrs D and her son's plan to sell their property in 2005 (an independent valuation put this amount at £35,000);
- pay compensation of £60,000 for the disruption to the complainants' lives;
- put in place a joint agreement between the Environment Agency and Lancashire County Council on how they will work together to respond to illegal waste activities (as required by the national protocol) to prevent recurrence; and
- determine whether any other action, individually or jointly, is required to prevent a recurrence of such events. The financial compensation has been divided amongst the Environment Agency and the Councils according to their obligations to use their powers to act on the complaint. The public bodies have all accepted the Ombudsmen's recommendations. Copies of the report are available on the two offices' websites, www.lgo.org.uk and www.ombudsman.org.uk
was delighted when I heard last year that I had been appointed as a Local Government Ombudsman in England. Having now been in post in the Coventry office since January, I can only reiterate my commitment and enthusiasm for the role.

My interest in the effective administration of public services was nurtured as a research fellow at The University of Birmingham, School of Education, where I studied the new arrangements for the delegated management of schools. As a parent-governor myself at that time, I was both excited at the prospect of ‘parent power’ in our schools and interested in the practicalities of ordinary members of the public seeking to influence the local governance of education. My research over several years, including a doctoral thesis on the relationships between schools and parents, deepened my understanding of citizen-state relations as it became clear that complex questions of public accountability lie at the heart of these relationships – many of which have since been the subject of developments in public policy.

Throughout my career to date, I have seen at first hand that local public service delivery has indeed become more customer focused and responsive to local needs – from my experience of working with officers and members in local authorities at the Improvement and Development Agency for Local Government (IDeA), working with NHS trusts at the NHS Centre for Involvement and, most recently, as a non-executive director of Coventry Primary Care Trust and deputy chief executive of The Local Better Regulation Office. My role in establishing The Centre for Public Scrutiny was a further opportunity to raise awareness of the importance of holding the executive to account – not least through the scrutiny function in local government.

As LGO and Vice-Chair of the Commission for Local Administration in England I will be looking forward to opportunities to ensure we continue to offer a service which is accessible, fair and independent and to enhance the wider ‘public value’ of complaints-handling as one of the important drivers of public accountability.
Sharing and publishing information about complaints

By Nick O’Brien, consultant


The initiative has its origins in two significant developments: first, changes in the NHS complaints system, especially the abolition of the Healthcare Commission as a second stage complaint handler; and secondly, the increased focus on the importance of information about complaints following events in mid-Staffordshire and elsewhere. The result of these two developments has been the creation in some quarters of unrealistic expectations about the volume and scope of information that the Ombudsman can and will make available.

As the consultation document explains, the aim is to achieve a proper balance between the Ombudsman’s legitimate need to protect the privacy of individual casework and the desire at the same time to share the lessons derived from complaints with those most likely to benefit from having access to that information. In the case of the Health Service Ombudsman that group includes the NHS itself; regulators such as the Care Quality Commission, Monitor, the General Medical Council and the Nursing and Midwifery Council; organisations providing advice and advocacy; MPs; and the public at large.

The options available to the Health Service Ombudsman are limited not only by the Freedom of Information and Data Protection legislation but more particularly by the founding legislation (the Health Service Commissioner Act 1993) which requires that the Ombudsman’s investigations must be conducted ‘in private’. The exceptions to that general rule of non-disclosure arise from the ability to disclose information for ‘the purposes of the investigation and any report to be made in respect of it’, and, separately, ‘in the interests of the health and safety of patients’ where ‘the information is to the effect that any person is likely to constitute a threat to the health and safety of patients’.

The consultation describes the Ombudsman’s preferred approach for sharing information in future, which will include sharing information:

- with the public: by laying before Parliament and publishing a number of reports relating to NHS complaints, including an annual report on NHS complaint handling performance, regular digests of case summaries, occasional reports to raise awareness of noteworthy issues and, if necessary, a special report in respect of any individual case where injustice remains without remedy;
- with the NHS: by sending an anonymised copy of the investigation report to the relevant Strategic Health Authority, as well as by sending a copy of the report to the NHS body and/or practitioner complained about, to the commissioning Primary Care Trust and to the Secretary of State for Health; and by disclosing information to the NHS employer, and/or Primary Care Trust, and/or the relevant Strategic Health Authority, and/or the Chief Executive of the NHS when the Ombudsman has concluded that an individual clinician, manager or administrator constitutes a threat to the public;
- with the Care Quality Commission and Monitor: by alerting them to recommendations the Ombudsman has made in an investigation report in order to ensure that those recommendations are properly followed up by the regulators in their inspection and monitoring programmes, especially where the Ombudsman has found failings that extend beyond the individual case and are therefore in need of ‘systemic remedy’;
- with professional regulators: when the Ombudsman obtains information which calls into question the fitness to practice of an individual clinician; and
- with others: by giving information to, for example, coroners, the police, the National Patient Safety Agency and National Clinical Assessment Service, the Equality and Human Rights Commission, and the Information Commissioner.

We received a total of 95 responses to the consultation from a wide range of bodies. Overall, respondents were very supportive of the approach to sharing and publishing information about complaints as set out in the consultation document. However, many said they wanted more information about complaints that the Ombudsman decides not to investigate. As a result, we will be reviewing our practice in relation to the information we share with NHS bodies and practitioners about these decisions. A full report on the results of the consultation is available on our website at www.ombudsman.org.uk. The first NHS Complaint Handling Performance Report is expected to be published in October 2010.
Project managing a website build

Isobel Brown, Assistant Adjudicator and First Contact Manager Office of the Independent Adjudicator

We set out to redevelop our website in spring 2009. The brief was to create a more updated look and feel, a site which was interactive and one we could update ourselves, as we previously did not have a Content Management System (CMS).

Defining our Requirements
The first stage was to define our requirements. We conducted surveys among our stakeholders and staff and took note of the design and features of other websites. We also held meetings with web-designers recommended by other BIOA users, which provided a wealth of information.

We considered it vital that our aims for the website tied in with the strategic goals of the organisation and that the Management Team gave approval where appropriate, for example, whether we would accept complaint forms submitted online without a signature.

We used a local IT company as consultants to help produce a ‘Specification of Work’ (SOW) with over 100 requirements for the site, including technical details, as we did not have the internal IT expertise to do this ourselves.

Selection process
The next stage was to put the project out to tender. We published the SOW and invited companies to submit a proposal setting out how they would meet our requirements. They were also asked to include design ideas for the homepage.

Following a short-listing process, four companies were invited to give a presentation to a panel, which included our consultants. We set out the criteria on which we would judge the presentations. As part of their presentation, we selected one specific company to say how they would tackle it. This proved to be an invaluable exercise and it gave us a real insight into working with them.

We made a recommendation to the Management Team and, following a due diligence process, the project was awarded. The company we selected could meet all our requirements for a fixed price. They used an open source CMS and would build any additional modules we needed.

Development and Testing
We then worked on the design for the site: the homepage, other page layouts and the sitemap (which sets out the sublevels of the site). We also set rules so that all sections of the site followed the same pattern. Alongside this, a team of people were tasked with writing the content. We set up a file structure identical to the sitemap into which the content was saved. Following editing, these were sent to the designers to upload onto a development site.

We proofread the site and ran extensive tests to check for errors, inconsistencies and broken links. Each person testing the site was provided with a spreadsheet on which they could record the page where the error was found, the current text, amended text, broken links etc. We also provided a ‘Style Consistency Sheet’ setting out the use of capital letters, hyphens etc. These spreadsheets proved very easy to use when it came to making the required changes.

We launched the website in February 2010 (www.oiahe.org.uk). Due to time constraints the CMS will be delivered in Phase 2 (April 2010), along with two further interactive features designed to reduce some administrative burdens: online submission of complaints and a complaint tracker system.

Training
We ensured that front-line staff were familiar with the new features. The Enquiries Team have already found it useful to be able to direct students to specific areas of the website, particularly the ‘Complaints Wizard’, where students can see what they need to do before bringing their complaint to us (www.oiahe.org.uk/students/wizard).

We also introduced a system for submission of emails whereby we try to collect all the relevant information and focus the enquiry (www.oiahe.org.uk/contact/e-form.aspx). We are currently monitoring use of this feature.

Lessons learnt
The most important aspects to managing the project were good communication and keeping meticulous records.

Version control of documents is hugely important, especially where these are being updated by more than one person.

In hindsight, it would have been better to have circulated the Style Consistency Sheet prior to writing the content, rather than at the checking stage!

It would also have been better for us to have published the contract with the SOW, rather than asking the provider to submit their contract to us.

If you would like any further details, please email isobel.brown@oiahe.org.uk
In October 1981, a major tragedy occurred in the seas off North West Donegal when a fishing boat, the MFV Skifjord, sank leading to the loss of its owner and skipper, Francis Byrne, along with his 16 year-old son and three other crew members. Francis Byrne’s widow was left with a young family of five boys and three girls.

In June 2001 the then Department of Communications, Marine and Natural Resources launched the Lost at Sea Scheme with a closing date of 31 December 2001. The Scheme was a once-off, time-bound, non-statutory scheme and was aimed at those owners of fishing vessels whose boats had been lost at sea in the period 1980 to 1989. The Scheme allowed them, or their immediate family, an opportunity to apply for ‘replacement capacity’. The Scheme was intended to facilitate successful applicants to carry on a family tradition of sea fishing which, because of their misfortune, otherwise would have been closed to them by virtue of a new regulatory system for the Irish Sea Fishing Fleet, introduced in 1990, which effectively limited the overall fishing fleet capacity.

One of Francis Byrne’s surviving sons, Mr Danny Byrne, acting on behalf of his mother, complained to the Ombudsman following the Department’s decision to reject the family’s application under the Lost at Sea Scheme. Following a preliminary examination of the case, which failed to resolve the complaint, the Ombudsman launched a formal investigation in July 2006.

The Ombudsman’s investigation looked at the development and implementation of the Lost at Sea Scheme and described in some detail the role of the then Minister and his officials in that process. The Ombudsman concluded that the Byrne family’s application did not meet at least two of the conditions of the Scheme and that the family was adversely affected by the decision to reject its application. The Ombudsman also found that the design of the Scheme and the manner in which it was advertised were contrary to fair and sound administration and that these shortcomings were factors in the Byrne family not qualifying for assistance under the Scheme.

Weaknesses in the design process also included a lack of adequate research of files held within the Department regarding vessels lost at sea during the relevant period, lack of documented analysis of the pros and cons of the Scheme’s qualifying criteria and a failure to include provision for the exercise of discretion in the vetting of applications.

As a finite, one-off Scheme, the Ombudsman found that the advertising process should have been more thorough, comprehensive and targeted. She found that some prospective applicants were put in a more advantageous position than others as they were written to directly by the Department and the Minister to inform them about the Scheme when it was launched. The Ombudsman also found clear evidence of poor record-keeping leading up to the sign-off of the Scheme, including a lack of written analysis of the various drafts of the Scheme and limited records of the interaction/directions between the Minister and his officials.

The investigation and the recommendation for redress had involved only one case, that of the Byrne family. By way of redress, the Ombudsman recommended that financial compensation of €245,570 be paid to the Byrne family. The Ombudsman’s recommendation was rejected by the Department of Agriculture, Fisheries and Food, which had taken over functional responsibility for the matter. The Department maintained that the Scheme was fairly designed and correctly applied.
to all applicants and as such no redress was warranted.

While public bodies are free in law to reject the Ombudsman’s recommendations, this is only the second time in the twenty-five year history of the Office that this has happened. The first occasion was in 2002 in a case involving the Revenue Commissioners, which, with the assistance of the Oireachtas, was ultimately resolved to the then Ombudsman’s satisfaction.

When the Ombudsman considers that a public body’s response to a recommendation is unsatisfactory, her only recourse is to make a special report to each House of the Oireachtas under Sections 6(5) and 6(7) of the Ombudsman Act, 1980. Arising from the Department’s response in this case, the Ombudsman presented a Special Report to each House of the Oireachtas on 14 December 2009.

On 4 February 2010 a lengthy debate on the Special Report was held in Dáil Éireann. The debate took the form of a series of statements rather any detailed engagement with the substance of the investigation. This process was repeated in the Seanad on 18 February with another exchange of statements. Throughout these exchanges, the Minister of State at the Department of Agriculture, Fisheries and Food expressed the view that, despite his admiration for the work of the Office of the Ombudsman and for the ombudsman institution generally, in this particular case he took the view that “there is no basis for payment in the amount proposed or any amount”. Furthermore, the Minister for State rejected the Ombudsman’s findings that the actions complained of were “contrary to fair or sound administration”.

A proposal that the Special Report be referred to the Joint Oireachtas Committee on Agriculture, Fisheries and Food for more detailed consideration was defeated in a vote of the Dáil on 4 February 2010. The vote was 68 to 63 with Members voting along party lines.

On 2 March 2010 the Opposition parties in the Dáil made another attempt to have the Special Report referred for consideration by an Oireachtas Committee but the Taoiseach took the view that it was a matter for the particular committee as to whether or not it looked at the Report.

The Committee met on 3 March 2010 and considered a proposal from the opposition parties that the Committee should consider the Special Report. This attempt failed following a vote which again followed party political lines.

On 9 March 2010 the Ombudsman gave a speech at a conference in the Institute of Public Administration in which she was highly critical of the approach being taken by the Government in response to her Special Report. This speech attracted widespread publicity.

On 24 March 2010 the matter was again raised in Dáil Éireann and the Taoiseach indicated that he had no objection to the Committee considering the matter. On 31 March 2010 a further Opposition motion was put to the Seanad proposing that the matter should be considered by the Committee. It was subsequently agreed that the Ombudsman should appear before the Committee in connection with the Special Report. At the time of going to print it had been announced that the meeting would take place on 21 April 2010.

The Ombudsman’s Special Report is available at www.ombudsman.ie
The Parliamentary and Committee Debates are available at www.oireachtas.ie
Devolution of Policing and Justice in Northern Ireland

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establishing and embedding the new department is ongoing.

Tribunal Reform

The issue of the ongoing Tribunal Review Programme is of particular importance. Greater coherence in the approach to tribunal reform has been evident since responsibility for all NI based tribunals transferred to the now abolished NICtS. However, improved decision making, training and further streamlining of NI tribunals will now be examined. A steering group will consider further reforms and ensure all parts of the administrative justice landscape work together for the benefit of NI citizens.

Reduction in legal aid funding will also impact on the demand for NI Ombudsman services. The NI Ombudsman cannot accept complaints where an individual has recourse to a legal remedy (for instance judicial review) or can have recourse to a tribunal (such as the Fair Employment Tribunal). There is a residual discretion to investigate complaints where it is not reasonable to have expected an individual to resort to or have resorted to legal proceedings. Given the contentious nature of policing and justice issues and cuts in legal aid funding, it is anticipated that work loads in the Ombudsman’s office will increase post 12 April.

The NI Prisoner Ombudsman’s jurisdiction is not currently on a statutory footing and it was agreed at Hillsborough

that a review of this role and remit is required. Subject to that review, devolution of policing and justice places any complaints concerning maladministration in respect of NI Prisoner Ombudsman investigations under the jurisdiction of the NI Ombudsman.

Joint Working

The NICtS, NIO and their agencies currently fall within the jurisdiction of the Parliamentary Ombudsman. Ann Abraham. Transitional arrangements for investigations in respect of the NICtS and NIO agencies under the remit of the Parliamentary Ombudsman are in place. Interestingly, the volume of NIO and NICtS complaints to the Parliamentary Ombudsman pre-devolution of policing and justice has been limited. It is therefore difficult to assess fully the potential case load that may be created by this extension of jurisdiction. The new department may have ‘teething problems’ and the experience of this office is that the NI citizen will seek to test the new arrangements. The impact of having a locally based Ombudsman will also need to be considered. The Parliamentary and Northern Ireland Ombudsmen have agreed to work jointly to ensure a smooth transition. Complainants and newly devolved bodies will require timely information to raise awareness of these jurisdictional changes.

Preparing for the change

Tom Frawley, the Northern Ireland Ombudsman welcomes the increase in his jurisdiction: “This is an exciting time and assessing the impact on case work volumes is challenging. However my staff and I have been working hard to prepare for the opportunities that devolution of policing and justice brings.” Additional funding is required but it is anticipated that a new directorate of justice will be created in the office with an initial staffing of three investigating officers led by a Director.

Interestingly, the Police Ombudsman for Northern Ireland (PONI) will come under the NI Ombudsman’s jurisdiction as an NDPB of the new Department of Justice. A recent visit to the Ontario Ombudsman by the Deputy NI Ombudsman provided a valuable and timely insight into the issues that might arise for an Ombudsman with ‘oversight’ responsibility for a police complaints handling body. This ‘accountability spiral’ as it has been described was however anticipated by Dr Maurice Hayes1 when he recommended the setting up of an independent office to deal with police complaints.

It is difficult to predict the impact on the NI Ombudsman case work volumes but what is clear is that the NI Ombudsman will play an important role in the accountability and oversight framework for the new Department of Justice in Northern Ireland.

References

1 A Police Ombudsman for Northern Ireland. A review of the police complaints system in Northern Ireland (NIO, January 1997)