Welcome to May’s edition of The Ombudsman. This month sees many of us travel to Belfast for our Annual Meeting and we’d like to say a big thank you to Office of the Northern Ireland Ombudsman for co-hosting the event.

I’d also like to thank Gary Hewitt from the Office of the Police Ombudsman for Northern Ireland, who has supplied the wonderful image of City Hall for our front cover, and the photographs that accompany his article, Welcome to Belfast (page 24). I owe that man a drink.

You can find out more about Northern Ireland’s schemes in this issue (pages 8 and 22), read about mystery shopping at the LGO (page 17), learn how the Financial Ombudsman Service invests in its staff (page 12), and check out Adam Sampson’s views on consumer confusion and how we could face the future together (page 14).

We also hear from charity founder, Fr. Peter McVerry, who writes about building trust with one of society’s hardest to reach groups – the homeless (page 10).

They’re just a few of this issue’s highlights. It’s packed with news, views and articles we hope will bring you closer to what’s been going on, and what’s coming up, in our world. And, for one issue only, especially for Annual Meeting attendees, we’ve included the first ever game of ombudsman bingo.

Enjoy.

Best wishes,

Faye

faye.west@legalombudsman.org.uk

THE HEADLINES

Neon News

Susan Fox

Ombudsman Services: Energy has become a founder member of the National Energy Ombudsman Network (NEON).

The group is a new Europe-wide network of independent, not-for-profit energy sector ombudsmen, in line with European energy directives. The other founder members are the Belgian and French ombudsmen.

The aims of the group are to promote energy dispute resolution services, improve complaint handling, and exchange information and experience. The group also represents members in debates at European level.

Energy Ombudsman, Lewis Shand Smith, said: “Ombudsman services are central to European debate at the moment, and member states are required to have an independent energy ombudsman. As the UK’s energy ombudsman, I’m happy to share our experience and learn from our European colleagues.”

Annual Meeting 2012

You may be reading this while you’re actually at the Annual Meeting and Association Dinner, but if you’re not, it’s being held in Belfast this month. A range of workshops will be held during the afternoon of 17 May at The Spires Conference Centre, including ‘Performance Management’ and ‘Engaging The Media’. The dinner’s in the City Hall at 7pm on that night, with the Annual Meeting starting at 9.30am in the Baby Grand Studio of the Grand Opera House on Friday 18 May. The workshops are kindly being run by the Office of the Northern Ireland Ombudsman. We’ll bring you a full report about the event in our next issue.
Bye bye BIOA, hello Ombudsman Association…

Yes, like Marathon, Opal Fruits and Jif before us, we’ve changed our name. It’ll take some getting used to, but we’re still the same on the inside – very much like Snickers, Starburst and Cif still are. We mentioned this in the last issue, but now it’s official as you’ll see from the new logo we’ve used on our front page. We’ll also have a new website domain name – www.ombudsmanassociation.org and our email addresses will change too. Until then, and also afterwards, the previous web address and email addresses will continue to work, so you’ll still be able to reach us if you need to.

Spotlight on…Commissioner for Public Appointments for Northern Ireland

Appointed in August 2011, John Keanie is Commissioner for Public Appointments for Northern Ireland. His role is to be the guardian of the processes used to make Ministerial public appointments in the country.

“I will work to ensure that all public appointments are made on merit, in a fair and open manner, and that opportunities to serve on the boards of public bodies are open to the widest possible field of candidates,” John explained.

Public bodies, and their boards, play a vital role in the lives of the people of Northern Ireland; in health provision, education, policing, justice, economic and social development – basically right across the spectrum of Government services.

“It is important that everyone with the skills or experience to contribute to these bodies is given the opportunity to put themselves forward for appointment,” John continued.

“My team and I are committed to ensuring that each Government Department has effective and efficient processes for recruitment and appointment and that those processes are fairly and openly applied to every public appointment.”

To find out more about the role of the Commissioner and his team, head for www.publicappointmentsni.org.

Ombudsman Timeline

A ‘timeline’ of Ombudsman members of the Association was printed in Issue 45 of The Ombudsman newsletter. Unfortunately, two members were omitted in error. These are the Gibraltar Public Services Ombudsman and the Waterways Ombudsman. The Secretary apologises unreservedly for these omissions. The correct list will be published in the 2011-12 Annual Report.
Welcome to our world

We’re delighted to announce the following new members to the Ombudsman Association.

Ombudsman Member: The Glazing Ombudsman (Christopher Hamer)

Complaint Handler Members: Welsh Language Commissioner (Meri Huws)

Judicial Complaints Reviewer (Moi Ali)

Anything of interest?

Want to find out what our interest groups have been up to? Then head for the ‘Members’ Area’ of our website at www.ombudsmanassociation.org where you’ll find the latest notes. They’re as well supported as ever, with the most recent meetings taking place as follows:

- Research Interest Group – 7 December 2011, London
- IT & Procurement Interest Group – 23 March, London
- Legal Interest Group – 30 March, Belfast
- HR Interest Group – 11 April, Edinburgh
- Communications Interest Group – 12 April, Edinburgh
- First Contact Interest Group – 19 April, Gibraltar House, London

If you’d like to get involved with any of the groups, please get in touch. They’re a great way to share news, views and ideas.

Posts confirmed

Local Government Ombudsmen, Dr Jane Martin and Anne Seex, have been confirmed in their posts of Chair and Vice-chair of the Commission for Local Administration in England. The Commission is the governing body of the Local Government Ombudsman scheme and is responsible for ensuring the statutory purpose and functions are achieved. Jane Martin has been Acting Chair since the retirement of Sir Tony Redmond in November 2010.

New Scottish Information Commissioner

Following the departure of Kevin Dunion back in February, Rosemary Agnew has been appointed to the role of Scottish Information Commissioner. Rosemary, previously Chief Executive at the Scottish Legal Complaints Commission, took up her post on 1 May. In the interim period, the Scottish Parliament appointed Margaret Keyse, Head of Enforcement, to serve as Acting Commissioner.
It’s important that we keep abreast of what’s happening in Europe. Here, Caroline Mitchell brings us the latest on what’s happening in the wider world that affects our schemes.

**EU proposals on alternative dispute resolution (ADR)**

In November last year, the EU Commissioner for Consumers announced a proposal for a directive on ADR for consumers and a proposal for a regulation on online dispute resolution (ODR) in consumer disputes. The ADR directive aims to ensure an easy and inexpensive way to resolve a dispute with a service provider or trader based anywhere in Europe. This includes complaints filed by consumers against traders but also complaints filed by traders against consumers (there would be clear difficulty here for existing ombudsman schemes with no power to make awards against consumers). The proposed directive is not prescriptive as to the method of ADR (mediation, arbitration and so on) to be employed, but it would require existing gaps in ADR coverage to be filled.

The ODR regulation will create a single online platform to resolve e-commerce disputes with traders from any other EU country, conducted online and in the consumer’s own language.

These are important initiatives to improve the functioning of the internal market. But they will present challenges. For example, as currently drafted, the proposal is that all ADR disputes should be resolved within 90 days. This is not practicable for many complaints – for instance those where expert evidence must be obtained or which raise highly contentious issues. The ODR regulation provides for complaints to be resolved within 30 days.

ADR entities should respect the quality principles of impartiality, transparency, effectiveness and fairness. These are similar to, but do not go as far as, the Ombudsman Association’s principles of good complaint handling.

The proposals are currently being negotiated in the European Parliament and among the member states, and are likely to be adopted (with modifications) in October. Member state governments would have to implement them by 2014/15.

**EIOPA – guidelines on complaint handling**

The European Insurance and Occupational Pensions Authority (EIOPA) has consulted on proposed guidelines on complaint handling by insurance undertakings and also on a draft report on best practice in handling complaints.

EIOPA is one of the three new European supervisory authorities in the financial sector.

The guidelines, which should receive final approval in June, will not be binding. National regulators will, however, be under a ‘comply or explain’ obligation.

The proposed guidelines and best practice are largely based on existing FSA rules, with requirements for root cause analysis, ADR referral rights, publication of complaint procedures and fair resolution of complaints.
We’re sad to report the deaths of two people who contributed greatly to the ombudsman world.

Kevin Murphy

Emily O’Reilly  Ombudsman for Ireland

On my own behalf and on behalf of all of the staff of the Office of the Ombudsman, present and past, I wish to send my deepest condolences to Kevin’s wife Kay and to his children, grandchildren and wider family. I know their loss is immense.

Kevin bore his debilitating illness with immense courage and good humour and never once complained to family or friends about the tragic turn his happy and active life in retirement had taken.

His period as a top civil servant with the Department of Finance and the former Department of the Public Service will be recalled by others, but it was his time as Ombudsman, and later as the first Information Commissioner, that brought him to public attention as a great champion of people ill-served by the country’s public administration.

Building on the work of the first Ombudsman, the late Michael Mills, Kevin moved to instil good practices in all of the public bodies the Office dealt with. He developed principles of good administration, complaint handling and customer service and, in doing so, helped to focus the attention of public officials on the needs of the people they served, rather than on the interests of the public bodies themselves.

His wide experience of the civil and public service allowed him to cut through bureaucratic obfuscation and excuses when dealing with difficult complaints and his own integrity, and strong sense of ethical behaviour, informed everything that he did.

Kevin exemplified everything that is good about the public servant and the public service. He did his work diligently, thoughtfully and modestly. The values that should be embedded in our public service were deeply embedded in him, and his legacy will be a renewed effort on the part of this Office towards honouring those values, and his memory, through our own service to the public.

Tony Newton, Baron Newton of Braintree

Ian Pattision  Ombudsman Association Secretary

Tony Newton, a strong supporter of the Association, sadly died in March this year after a long illness. From being the Chairman of the Council on Tribunal, Tony Newton became the first Chair of its successor body, the Administrative Justice and Tribunals Council, in November 2007 – a post he held until September 2009.

Tony had a long political career, serving as the MP for Braintree, Essex from 1974 to 1997. During his time in the House of Commons he held various ministerial posts including serving in Margaret Thatcher’s Cabinet as Secretary of State for Social Security and also Secretary of State for Health. He ended his career as an MP as Leader of the House of Commons from 1992.

After he lost his seat in 1997, Tony was created a life peer as Baron Newton of Braintree of Coggeshall in the County of Essex.
At Christmas, we pulled together a choir of ‘ombuds-angels’ to sing for change,” Andrew told us. “We wrote and produced our own version of the Twelve Days of Christmas to let energy companies know how they could help create harmony by putting customers at the heart of their services.”

Leading the choir was Chief Ombudsman, Lewis Shand Smith (read more about Lewis on page 26), who helped perfectly pitch the need for, among other things, clearer bills, simple tariffs and faster problem solving.

“Complaints across the industry rose, on average, by just over a quarter between July and September 2011,” Andrew explained. “While we obviously use official mechanisms to feed back our findings to the profession, we thought that we’d use the festive season to do something a little different to raise awareness.”

Following the interest generated by the carol’s release on YouTube, the Energy Ombudsman set its sights on another widely celebrated event – Valentine’s Day.

“We got together with the Poetry Society and poet Matt Harvey to call for healthier relationships between customers and energy companies,” Andrew told us. “It resulted in the anti-Valentine poem ‘It’s not me, it’s you’ which was written from the viewpoint of a customer disillusioned with his energy company, writing to break it off.”

To accompany the message, the ombudsman published a case study – ‘A switch with a hitch’. Both are available to read at www.ombudsman-services.org

“The poem was featured on the BBC news website and at one point it was the second most watched clip – above the death of Whitney Houston and just below the crisis in Greece,” Andrew said.

The poem also sparked a bit of a poetry competition between the energy companies and Which?, and was even reported in the Wall Street Journal!

“It was great to see that our light hearted approach managed to generate a lot of publicity and awareness,” Andrew concluded. “We had a surge in visitors to our website and an increase in Twitter followers for @OmbudServices.”

If you’d like to find out more about Ombudsman Services’ awareness raising work, email Andrew at ABradley@ombudsman-services.org
What’s different about the Northern Ireland Ombudsman?

The Northern Ireland Ombudsman is the popular title applied to two statutory offices – the office of Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. Marie Anderson explores how, and why, the two offices were established and the unique features of each.

Marie Anderson
Deputy Northern Ireland Ombudsman

Historical context

There are two distinctly different ombudsman schemes operating under the title of Northern Ireland Ombudsman. Dr Tom Frawley CBE holds both offices but his jurisdiction is different from other ombudsman, for instance he investigates employment complaints brought by staff of bodies in jurisdiction under both schemes.¹

Statutory provisions underpinning both roles differ and this derives from the political and social context that existed in Northern Ireland in 1969 when the offices were first established. In May 1969, during the passage of the Bill establishing the Parliamentary Commissioner for Northern Ireland (Ombudsman), it was announced that a separate office would be created to deal with complaints in local government and a wide range of other public bodies including those that provided health, education, housing and local government (Commissioner for Complaints). The background to the creation of the Commissioner for Complaints can therefore be best understood in the political unrest in Northern Ireland in 1969 and the many complaints of bias and discrimination made by members of the nationalist community in employment, housing and local government.

Current jurisdiction

The current jurisdiction of the Assembly Ombudsman for Northern Ireland is set out in the Ombudsman (NI) Order 1996. This Order is based on the provisions of the Parliamentary Commissioner Act (NI) 1969 which first established the Office of the Parliamentary Commissioner for Northern Ireland replicating the Parliamentary Commissioner Act 1967 at Westminster. The Assembly Ombudsman deals with complaints of maladministration by government departments and their agencies. In 1999, the remits of the Assembly Ombudsman and the Irish Ombudsman were extended to include a joint jurisdiction covering complaints about cross border bodies that were established under the Good Friday Agreement and deal with issues such as tourism and waterways.

Complaints under ombudsman legislation currently do require MLA sponsorship although there are proposals under active consideration by the OFMDFM Committee of the NI Assembly to remove the MLA filter and provide for a twin track approach.

There is no requirement, however, for MLA sponsorship where a complaint is submitted to the Northern Ireland Commissioner for Complaints. The list of bodies under his jurisdiction is extensive and can be found at schedule 2 of the Commissioner for Complaints (NI) Order 1996. The list

¹ Background information from the Ombudsman and Commissioner for Complaints annual reports.
extends to some 137 bodies including all local councils, the Northern Ireland Housing Executive and registered housing associations as well as a number of justice bodies such as NI Policing Board, NI Legal Services Commission and the Probation Board (NI). The Commissioner’s jurisdiction to deal with complaints about HSC Trusts and general health service providers extends to matters of clinical judgement. It should also be noted that there is no bar on commercial and contractual matters under this legislation, unlike under the Assembly Ombudsman provisions.²

There are key aspects of the Commissioner’s legislation that do not apply in any other ombudsmen scheme (including the Ombudsman (NI) Order 1996). In relation to procedures regarding investigation, there is a right to a formal hearing³ where the Commissioner considers there may be grounds for making any report or recommendation that may adversely affect any person or body complained of. In one complex investigation there have been three formal hearings to date. In relation to remedies, the Northern Ireland Ombudsman has the same broad discretion as to remedy as other ombudsmen schemes. But in his Commissioner jurisdiction he has two further mechanisms for remedy for injustice arising from maladministration. There is a right for a person aggrieved to go to the County Court for compensation where the Commissioner’s finds maladministration and injustice. The jurisdiction of the County Court is unlimited in this respect. This right to seek damages has been used recently in one case where the body settled for a sum substantially in excess of the Commissioner’s recommendation for financial redress.⁴ Further, the court is also able to direct a body to take or refrain from taking any particular action where the court is satisfied that it is reasonable in all the circumstances to enable justice to be done. Also, article 17 of the 1996 Order allows the Commissioner to request the Attorney General for Northern Ireland to seek relief in the High Court where he concludes the body concerned is likely to continue in conduct of a kind that would amount to maladministration.

**New legislation**

Academics have commented that the reason for the differential in the two schemes, in particular the existence of a County Court enforcement mechanism which departs from the classical ombudsman model, is due to the need to strengthen the Commissioner’s remit in combating discrimination.⁵ The proposals to refresh and reform the Northern Ireland Ombudsman legislation are still under active consideration by the ODFMDFM Committee of the NI Assembly, the question is whether the merger of the two offices will result in a shift towards the classic ombudsman model or the Commissioner model. Only time will tell.

**References**

1 Personnel cases have increased from 2010/11 figure of 11.6% to 16% of total number of complaints
2 Paragraph 5 of schedule 4 of the Ombudsman (NI) Order 1996
3 Article 12(7) of the Commissioner for Complaints (NI) Order 1996
4 Article 16 (1) of the Commissioner for Complaints (NI) Order 1996 – it should be noted this provision does not apply to general health service providers
5 C White ‘Enforcing the Decisions of the Ombudsman – the Northern Ireland Local Government Ombudsman’s experience’ (1994) 45(4) NILQ 395
Building trust with hard to reach groups

I have worked with homeless young people for many years. Many have suffered serious traumas in childhood for which they have never received help, or, where help has been offered, it was ineffective.

Overcoming mistrust

For ombudsmen to reach out to such marginalised groups in our society, there are often major difficulties to overcome. First, many homeless people have a huge distrust of officialdom. Many have been failed by every state organisation they have engaged with. They may often have experienced very negative attitudes towards them from some personnel in those agencies. Many complain about the attitude and behaviour of the police towards them, for example, about being treated badly when they attend hospital, and they certainly experience being treated badly when in prison. “They just treat us like we were scumbags, because we are homeless or drug users or have a criminal history,” I am regularly told.

So, the first obstacle to overcome is mistrust. Although many of your schemes exist to hold state bodies and public and private services to account, in the eyes of homeless people, you are another official body and their experience is almost universally negative.

Negative attitudes

Their initial reaction is that you, like others before you, will fail them and they won’t get a successful outcome. And they may fear that again, because they are homeless or use drugs or have a criminal history, they will not even be believed and will experience the same negative attitudes that they have regularly experienced from other agencies.

They will bring with them their ever-present sense of powerlessness – a homeless person versus a powerful State body. So believing that they can never win, what’s the point of even trying – and experiencing failure yet again?

The second difficulty schemes are likely to face is that many homeless people have very low self-esteem. “Why do you bother with the likes of us?” I’m sometimes asked. This reinforces their sense of powerlessness against those who are considered ‘respectable’ in society and against who their complaint is going to be made.

Building relationships

The ideal way of overcoming these obstacles – but I...
Building trust with hard to reach groups

appreciate the practical difficulties it would pose – is to build personal relationships of trust between those on the margins and individual staff in your offices.

We have a wonderful community policeman who comes into our drop-in centre for homeless people once a week. He just sits there and has a few cups of tea. When he first started coming, everyone walked out – no way were they going to sit in a room with a policeman! But he kept coming. Eventually some of the homeless people who use the drop-in centre on a regular basis got curious and came in to ask him what he was doing there. Gradually, the relationship grew and now they come in wanting to know what day he’ll be in this week because they need his help. While he hasn’t changed their attitude to the police in general, they can no longer dismiss all policemen as the same. They will never go to the police for help, but they will go to this particular policeman for help. Those on the margins may never come to trust institutions, even those institutions which are there to help and support them. But they will trust people, where they feel that they are not being judged or put down because they are homeless or using drugs.

I think that is the challenge your offices face in trying to reach out to those on the margins, particularly these days when funding is shrinking and workloads are growing. Those on the margins may not respond to leaflets or written communications explaining the work you do, but they will respond if they feel they are valued and respected and what they say is taken seriously.

If you’d like to find out more about the work of the Peter McVerry Trust, head for www.pmvtrust.ie
The Financial Ombudsman Service (FOS) has undergone many changes in the past few years. One of the most significant has been to training and staff development. We spoke to lead ombudsman, Caroline Mitchell, to find out how they approached the challenge.

"As we launched our largest recruitment campaign yet, we recognised our existing training system needed a complete overhaul," Caroline explained. “We knew we’d need to adapt our strategies to cope with the rise in caseloads, particularly in light of the challenges faced by PPI.”

This realisation prompted the idea for ‘The Academy’ – a twelve week programme for new adjudicators, which provides training in both technical and softer skills, to give new starters a well-rounded introduction to their roles.

**The Academy**

Officially opened in February 2011, The Academy, which is built up of existing resource within the organisation, has seen a new group join every four weeks. A total of 581 adjudicators had been through the programme by its first birthday.

“From the outset, the focus is on delivering excellent customer service,” Caroline told us. “The tailor-made programme ensures that all adjudicators are working towards the same goal. Each adjudicator is initially allocated to a team which is overseen by a mentor, usually an existing experienced adjudicator, who remains with the individual for the duration of the training.”

The high level support and guidance provided by the mentors is crucial in making The Academy work. By facilitating, rather than providing, answers and directing adjudicators to relevant resources, it encourages them to develop their own decision-making skills from the start.

The mentors provide a safety net for new adjudicators – allowing them to learn the role in a safe environment by checking all work produced. This includes rigorous quality checks.
Quality matters

"Quality is key to the training new adjudicators receive," Caroline stressed. "And quality is not just about spelling the consumer’s name right – although that is essential – but about getting to the heart of the problem and getting the right outcome."

“Our HR Training Team has designed mandatory product specific programmes in banking and insurance. We also provide investment and PPI training for adjudicators going into those areas – and everyone attends a week long induction programme introducing staff to the organisation."

After week eight, adjudicators start spending two days a week in their team and three in The Academy.

Caroline believes the key to The Academy’s success is the attitude of the adjudicators. They live the values of the organisation from day one, share their knowledge and work as a team. Ombudsmen also play an important role by participating in case clinic discussions and supporting the training’s development.

Once training’s complete, adjudicators graduate and celebrate their achievements with a passing out parade.

"This is a really important part of the programme," Caroline told us. "We recognise adjudicators who have done particularly well and award prizes for excellent customer service. It’s a chance for the graduates to celebrate together before they join their permanent teams."

PPI case assessors

The Academy is just one of the initiatives that has been introduced. The demand to settle thousands of outstanding PPI complaints, led to their latest recruitment campaign and training plan.

“We want to create a PPI Resolution Centre with four training rooms and an IT room,” Caroline told us. “We aim to recruit a total of 580 case assessors and had 100 join us in April, with a further four groups of 120 assessors to follow."

Each assessor is given a mixture of classroom and ‘on the job’ mentor-based training. They are each tested throughout the intensive four-week training programme so that their competence can be assessed.

Assessment takes the form of multiple choice questionnaires, dummy case testing, and feedback from mentors on soft skills.

“The objective is for the case assessors to experience each stage of the core process in a logical way and defined way, allowing the staff and management to work together constructively,” said Caroline. “It’s the first time we’ve taken such a high level approach to training, but we felt the volumes involved demanded it.”

Accredited training

Existing adjudicators can also access an accredited training course which forms part of their continuing professional development. This was developed by Edinburgh’s Queen Margaret University, which also designed the Ombudsman Association accredited course.

“It’s a challenging course,” Caroline told us. “It’s set at Masters level, lasts for twelve weeks, and covers all the skills required to be a good adjudicator – investigation, critically evaluating evidence, analytical skills, effective communication and the importance of providing good customer service.”

Eighty members of staff ranging from experienced ombudsmen to newly appointed adjudicators piloted the course which is now being rolled out across the organisation. All adjudicators will have to take and pass the course before they can be considered for advancement.

“We’re committed to providing the necessary training to equip staff to deal with the demands of the role and provide excellent customer service,” Caroline concluded. “We’re also keen to offer staff opportunities for personal growth and development and feel our new training package provides this.”

To find out more about how these training programmes and opportunities were developed, email Caroline.Mitchell@financial-ombudsman.org.uk.
Back in March, after three or four moments of false anticipation, the Solicitors Regulation Authority finally licensed the first Alternative Business Structure (ABS).

As opening sentences go, that is possibly one of the dullest I have ever penned (and I’ve penned a few in my time). And even by the standards of this august magazine, at first blush it may appear somewhat irrelevant to your day-to-day-lives. Bear with me and I’ll try to explain the significance.

ABSs are a technical vehicle by which law firms can be owned by non-lawyers. What this means in practice is that law can now be offered as part of a multi-disciplinary or bundled service. One of the first companies to take advantage of the new freedom is a...
well-known high street brand which intends to offer legal services through its network of banking outlets. In two years time, you will be able to buy law from the same person who lends you money. In five years, we may see businesses offering a one-stop shop for house purchases, with one business doing the estate agency, surveying, mortgage broking and conveyancing.

Consumer confusion
As the boundaries between traditional sectors break down, issues are created for regulators and for ombudsmen. When we have these multi-disciplinary house purchase providers, who should the dissatisfied customer complain to? The Financial Ombudsman Service? The Property Ombudsman? Ombudsman Services? The Legal Ombudsman? Should we really expect the poor consumer to work out exactly what part of the transaction went wrong and so where to address a complaint? With the benefits of a one-stop shop come the disadvantages of a sectoral offering for redress.

And these are not just private sector issues. The potential overlap of the jurisdictions of the Parliamentary and Prisons Ombudsman has been a running sore for years (I should know – I was there at the start). And the formal distinctions between private and public sectors are eroding as fast as contracting out accelerates; just ask the Local Government Ombudsman. It is even difficult now to draw an easy distinction between services and products; in these days of intelligent software, customers can, for example, write wills and generate divorce documents without any human intervention. If these products are flawed, to whom can they complain – the creator or the seller of the product?

Getting to grips with Government
Government appears slow to recognise the problem and even slower to respond. If there is a response, it is to rush to create more sector specific ombudsman schemes. As I write, I have meetings in my diary with various bits of Government to discuss plans for new ombudsmen for charities, bailiffs and insolvency practitioners, and I hear rumours of many others besides. In its desperate desire to adapt to the realities of the changing markets, this approach risks, in truth, further complicating an already complicated redress landscape.

There is however a stimulus which may at least encourage Government to plan a more strategic approach to the issue. The European Commission’s proposed Directive on Alternative Dispute Resolution (ADR) was published in November last year. If accepted, it would require all member states to consider and put in place an appropriate network of ADR.

The relevant Government department, BIS, is beginning to do some sort of modelling of what its response might be. However, we have yet to see any real evidence of officials preparing the sort of strategic response which will be necessary to get to grips with the issue. Nor is the split in responsibility for ombudsman schemes between BIS, which owns consumer protection, the Ministry of Justice, which owns civil justice, and the Cabinet Office helpful in finding a Minister to act as ombudsman champion.

It may be some while before we can see Government paying much attention to the increasing practical difficulties in managing our work that some of us are beginning to experience. So what can we do in the meantime?

Continued on page 16
Easing the problem
I suggest that there are a couple of areas where we might think about easing the problem. First, perhaps we could do some of the Government’s thinking for them and take on the task of devising a strategic approach to the pattern of regulation and redress. Where do we need formal ombudsman schemes? What types of consumer redress should be left to less formal, industry-led ADR mechanics? When do we consider that a safety net of trading standards and small claims courts is enough?

And what about the pattern of schemes which currently exist? Let us not forget that it was not long ago that what is now the Financial Ombudsman Service was split into its previous constituent elements, covering insurance, banking, and so on. Is the current split between schemes in the long-term interests of consumers? On a personal level, I am not entirely convinced that the case for a separate Legal Ombudsman is now as powerful as it appeared to be just five years ago when the Legal Services Act established my office in statute.

Heading towards harmonisation
Regularisation of the landscape will take time and, in some cases, primary legislation. We can suggest a long-term strategy but the decisions are not ours to take. In the meantime, we do not simply have to sit passively and wait. There are things which are within our power to achieve. If we accept that there is likely to be an increasing number of complainants who are confused about where they go for redress or are subject to overlapping jurisdictions, we can work to tidy up our processes for passing cases between us. At a minimum, we should know the areas of overlap and have systems in place to direct complaints quickly where they need to be.

Perhaps we should be more ambitious? We all have similar processes and similar needs, so how far can we make use of common IT platforms so that cases can be passed seamlessly? Are there steps we can take to increase the harmonisation of our rules and powers so that complainants are not subject to arbitrary and conflicting time limits? In a world where only a small percentage of dissatisfied customers ever complain, and most of those who do find their way to us are told that their complaint is not eligible for us to investigate, how far can we make common cause to explain to the public what ombudsmen are and how they can make use of us?

I am aware that none of this is new. But it seems to me, coming back into ombudsmanry some 15 years after I was first here, there is new a maturity and a confidence around. Colleagues I speak to are not content merely to be passive complaint handlers or to feedback trend information to the sectors in which they operate. There is talent and there are ideas about how policy and structures can be changed. We should use them.

If you’d like to talk to Adam about the issues he raises in this article, he’s speaking at the Ombudsman’s Annual Meeting in Belfast on Friday 18 May. Alternatively, you can email him at adam.sampson@legalombudsman.org.uk
Our survey said...

Last year, the Local Government Ombudsman (LGO) carried out a mystery shopping exercise. We spoke to Preth Rao, Head of Policy and Research at the LGO, to find out how it went.

The mystery shopping took place within our advice team,” Preth told us. “It complemented our cyclical programme of quantitative and qualitative customer satisfaction research, focussing on the front end of the organisation.”

The research was also framed to complement the LGO’s existing in-house quality monitoring. They wanted to assess whether its contact centre delivered a high level of customer service, managed expectations, and crucially, that accurate advice was being given.

Accuracy is not a common criterion of assessment in most mystery shopping research and designing the mystery shopping exercise was quite a challenge.

“We had to ensure, in accordance with the Market Research Society’s Code of Ethics, that staff knew that mystery shopping would take place,” Preth explained. “We also needed to make sure that it didn’t affect normal performance or cause anxiety.”

The team avoided this by briefing advisers in advance, explaining the reasons for the exercise, making it clear that it wasn’t linked to performance, and assuring staff that individuals wouldn’t be identified.

“Despite our initial concerns, most advisers were not resistant and, in fact, the results shone a very positive light on their work,” Preth said.

The LGO found that the best way to get the most value out of the mystery shopping methodology was to design the scenarios that would be tested themselves. They also identified risks and challenges, some of which had to be finely balanced, such as fielding calls during busy times to gain a full picture of the service, while not unduly adding to call loads and pressures.

“Getting involved in the design and development of the mystery shopping was essential,” Preth stressed. “The research company wouldn’t have had the technical competence to do this, and couldn’t have developed the scripts around what the correct, or an acceptable answer, should be.”

This took some time but saved money and, most importantly, ensured the LGO retained control of the project, so it delivered what they wanted.

“We also briefed the research company’s call centre about our organisation, our advice team and our core business which they found very helpful,” Preth continued. “We also developed variations on the seven scenarios to avoid repetition over the five weeks. To add extra diversity and reality to the situation, we wanted to test how people dealt with difficult calls and so built in that some callers would be aggrieved and also emotional.”

Interestingly, there was no difference in the quality of service provided in spite of how callers behaved – a testament to the LGO’s advice team.

In fact, the results of the exercise as a whole were very positive with few areas for improvement highlighted.

“We did find that call quality fell slightly during busier times and callers felt a bit rushed,” Preth added. “We also saw that there was diversity in responses on more complex cases.”

The scenarios and results will be a useful resource for future training and staff development at the LGO. “The researchers felt that given the complexity of calls we retained high professionalism, politeness and clarity. It was great to be able to feed back these positive comments to our advice team,” Preth concluded.

If you want to find out more about the LGO’s mystery shopping exercise, email P.Rao@lgo.org.uk
Completing the virtuous circle

Elizabeth Derrington
Independent Complaints Reviewer for Land Registry and Partner, ICRS

A Google search for, ‘learning from complaints’, produces 60 million references. The first few pages reveal citations from many sectors including health, finance, local government and policing. However, there are far more explanations of the potential benefits of the process than detailed guidance on how to do it.

In the PHSO’s Review of complaint handling 2010-11 Ann Abraham’s introduction emphasises the costs, both to customers and to public bodies themselves, of failures to learn from ‘feedback that is free to collect and readily available’ and cites a number of cases where serious service failures could have been avoided if this had been done. The report also argues that organisations need to regularly to ask the question: ‘What are we doing differently as a result of what we’ve learnt from getting things wrong?’

Sharing good practice
I have worked with many large organisations, and have observed firm intentions to ‘close the loop’ by feeding back the lessons of complaints into customer service improvements. I have also seen, too often, how these intentions can end up producing far more words than action.

The only organisation that I have worked with that has effective machinery for tackling the learning process is Land Registry. As Land Registry’s Independent Complaints Reviewer (ICR) for the last three years, I have observed the system in operation, and have become increasingly aware of how unusual it is. I’d like to share with you my external ‘take’ on the system and why it’s effective.

Setting up ICREST
The arrangements are not new. Shortly after the appointment of my predecessor as ICR in 1998, Land Registry recognised that ICR reports were generating a really valuable stream of recommendations for improvement, but there wasn’t a system in place to ensure they were implemented. This gap was filled by setting up a cross-organisational team – the ICR Evaluation and Study Team (ICREST).

ICREST’s role is to look at ICR reports and recommendations, decide how the organisation should respond, and then plan and follow through that response. It sounds straightforward, but it would have been easy for the team to have become focused on box-ticking, and to have made little impact. I think the fact that ICREST has been highly productive (as assessed by a comprehensive management review in 2010) is the result of several factors. These include the structure of the group, its working methods, the
enthusiasm of individual members, and the positive feedback that the whole group gets from seeing its work lead to improvements in the organisation and the service it delivers to customers.

The group’s members bring a wide range of technical knowledge of systems and procedures. This means that when any specific proposal is under consideration, there is always a member able to give an informed view on the practical implications. When necessary, they’re on hand to say ‘that simply won’t work’, or ‘that won’t be cost-effective’. I feel sure that this practical scrutiny during the planning process significantly reduces the risk of problems further down the line as changes are rolled out.

Impact
In terms of impact, there are, at least from my perspective, two main factors that help ICREST succeed. First, the consistent support of the Land Registry Board, who have recognised the value of its work to the organisation and its customers. This backing from the top gives the group credibility and enables it to carry through changes. Secondly, ICREST has a clear communications strategy. Minutes and reports are accessible to all staff (and to me and my staff) via Land Registry’s intranet. Where major changes are introduced – for example a new complaints process launched in 2010 – they are supported by active publicity and training.

Having members with individual energy and enthusiasm also makes a big difference. During my occasional visits to ICREST, it’s clear that members are exceptionally committed to their task of helping Land Registry improve. I am sure that one of the reasons for this enthusiasm is that individual members can see the contribution they are making to the development and improvement of the organisation as a whole. Most of the changes are small rather than dramatic. The important point, however, is that there is a steady flow of ideas which are the direct result of analysing real life cases. This ensures an ongoing and incremental process of improvement for Land Registry and its customers.

Large organisations are not fleet-footed, and it takes time and careful planning to achieve lasting change. To harvest the ‘seeds of error’ and make them grow requires a systematic approach, watering and assiduous weeding. This is exactly what ICREST does.

It seems to me that ICREST is an excellent example of an active approach to learning from complaints, which has survived and flourished because it delivers results. It also offers a valuable model for other organisations that want to get beyond a superficial commitment to learning from complaints, and actually complete the virtuous circle.

If you’d like to find out more about ICREST and its work, you can get in touch with Elizabeth at Elizabeth.Dressington@ice.gsi.gov.uk
Courting the ombudsman

Anthony Rich, General Counsel at the Legal Ombudsman and member of the Ombudsman Association’s Legal Interest Group, has joined The Ombudsman magazine’s growing team of contributors. Here he tells us what’s being done to share learning about judicial reviews across our community.

It is a sad fact of life that where there is a hotly contested dispute between two people to be decided by a third party, at least one protagonist will be disappointed and want to fight on to the bitter (sometimes very bitter) end.

Ombudsman schemes only have limited, if any, appeal mechanisms so people unhappy with the outcome of their case will often try to challenge the decision in court by the judicial review process. This is not an appeal or a re-hearing, but an audit by the court of whether the ombudsman made a lawful decision by a lawful, and human rights compliant, process.

While each scheme inevitably has different rules, the court’s decision on any particular case can have wider repercussions beyond the scheme from which it came.

While the actual decision may turn on the details of the scheme concerned, there are often useful judicial quotes or lines of reasoning that other ombudsmen can use.

For example, in an Office of the Independent Adjudicator case called ‘Sibourema’, Lord Justice Richards helpfully said:
“The decision whether a complaint is justified involves an exercise of judgment with which the court will be very slow to interfere.” – a view most ombudsmen will appreciate and want to quote in their defence.

A point of general principle can be raised with far-reaching implications. This was the case when a small investment house challenged the Financial Ombudsman Service last year. The investment house argued that the right to a fair hearing (enshrined in human rights law) meant all ombudsmen’s decisions required a pre-decision oral hearing. The European Court of Human Rights eventually ruled that there was no such general requirement, a great relief to all ombudsmen schemes.

So what is the Ombudsman Association doing to keep us abreast of cases that could have wider impact, and help Ombudsmen defend court challenges?

Firstly, the Legal Group is working to collate and share ombudsman cases with wider implications. We hope to provide a database of such cases on the new website later this year.

Secondly, the group acts as an information exchange. So, when the Ombudsman for Bermuda, Arlene Brock, had a case challenging her constitutional position, she was able to use the group to find useful precedents from other countries. Case authorities were then provided which the Bermudan court found to be helpful precedents, and Arlene won her case, which confirmed the wide extent of her jurisdiction. The group benefited when Arlene kindly fed back a range of other relevant judicial decisions her research had identified.

Thirdly, to help readers keep a finger on the judicial pulse, we will print reports of new cases in this magazine.

Of course, other cases that haven’t been subject to judicial review can be significant too. For example, the Legal Ombudsman recently took a solicitor to court after he repeatedly failed to produce documents. The relevant Act said this failure could be punished like a contempt of court. The judge imposed a four month prison sentence, albeit suspended.

Although that case turned on the detailed law covering that particular scheme, the judge was clearly intent on supporting the work of ombudsman schemes. As the judge, Mr Justice Wyn Williams, put it:

“What then am I to do in these circumstances? I say without hesitation that the defendant’s default is such that a sentence of imprisonment would be justified. It is simply not acceptable for a solicitor to behave in the way that [the solicitor] did in this case. To repeat, he ignored reasonable requests for information in respect of a perfectly legitimate complaint, then he failed inexcusably to deal with a notice served upon him under statutory provisions when that notice informed him that to fail to respond might constitute a contempt of court. Such behaviour by an officer of the court cannot be tolerated by the court. To repeat, in my judgment, a sentence of imprisonment would be justified to bring home to [the solicitor] and to other solicitors who might find themselves in his position that they should not wilfully ignore matters of such importance.”

This favourable judicial climate is reflected in decisions involving other ombudsman schemes too. However, we can best keep that climate favourable if we ensure all ombudsmen are armed with the best base of court decisions we can.

So please do make sure your lawyers, internal or external, support the Ombudsman’s Association’s work by sending details of decisions of importance, or copies of any court decisions made, to the Legal Group.

You can also send them to me at anthony.rich@legalombudsman.org.uk and I will make sure they are shared.
If there was ever any doubt that an Ombudsman’s Office and the principle of independent investigation matter to more than those of us in the regulatory sector, then one only has to look at the past year of the Office of Police Ombudsman for Northern Ireland.

The Police Ombudsman’s Office is 11 years old and in that time its work has attracted local, national and international news headlines and along the way gained it a reputation as the ‘gold standard’ in police accountability.

However, last year that reputation took something of a battering within the Northern Ireland community. The Office continued its good work of many years standing in efficiently addressing over 3,000 complaints per annum, thereby contributing to the maintenance of public confidence levels in excess of 80%, and continued to make significant policy recommendations designed to improve the delivery and accountability of policing in Northern Ireland.

Unfortunately, it also became the subject of a lot of negative media coverage and appeared to have lost the confidence of some key stakeholder groups. The Office saw its reputation and credibility become the subject of intense public scrutiny; its operational independence and governance arrangements were openly questioned and part of its operations were suspended.

While the problems of the Police Ombudsman’s Office were particular to that organisation, the issues and tensions at play had a wider significance for the concept of an ombudsman.

Inspection reports
Some of the problems faced by the Police Ombudsman’s Office were internal and apparent to question the core values of the organisation. In the case of the Office, and the pivotal role it plays in the Northern Ireland community, it was perhaps inevitable that these matters would become the subject of public debate.

In his resignation in March 2011 the then Chief Executive alleged there had been a lowering of operational independence between the Office and the police it investigates, and an interference in the Office by its sponsoring body, the Department of Justice.

Various inspect reports followed. In the first, commissioned by the Police Ombudsman, the Criminal Justice...
Inspectorate concluded that there was a lowering of operational independence in how the organisation conducted its investigations of historical matters. The second report, commissioned by the Department of Justice, pointed to individual instances of where the relationship between the Department of Justice and the Office could have been better handled, but crucially, did not discover any evidence of systemic interference in the governance and functioning of the Office.

The Office has accepted both reports and the recommendations they contained. Its interim Chief Executive, Colin Lewis, and his team of senior managers are working on a ‘Transformation Action Plan’. The plan includes the establishment of new critical review and quality assurances processes and the development of protocols with the Office’s sponsoring department which will both protect its operational independence while satisfying the rules of accountability in the use of public resources.

A fresh start
The Office now shows signs of a fresh start. A new Police Ombudsman is about to take up post. He is Dr. Michael Maguire, the current Criminal Justice Inspector for Northern Ireland. It has also recently announced receipt of an extra £10 million in funding over the next six years to investigate historical cases in the period referred to as ‘the Troubles’.

During the most turbulent part of its year, the Police Ombudsman’s Office was the subject of several public statements by the Northern Ireland’s Minister of Justice, of questions in the Northern Ireland Assembly and of hearings by its Justice Committee. Its internal business became the focus for several investigative journalists.

Yet it was also during this period that some seasoned observers noticed a discernable shift in the tone of the public discussion. In the early years of the Office, much of the public debate centred on the question of whether there was a need for an ombudsman system in policing.

Last year that dialogue had changed. All the questions being asked by the politicians voiced concern about any possible damage which had been done to the ombudsman system and how that might be put right. There was now an acceptance that society needed a Police Ombudsman and a cross-community desire that the Office repair itself.

That is not a bad place to start putting things right.
Welcome to Belfast!

As many of us descend on Belfast for this year’s Annual Meeting, Gary Hewitt, Senior Information Officer from the Office of the Police Ombudsman for Northern Ireland, decided to share some of the things this great city has to offer. Here’s what he recommends for those of you with time to spare during your stay…

The Ombudsman Association has certainly picked a great year to have its Annual Meeting in Belfast. As most of you will be aware, it’s 100 years since the launch of Titanic, and the city is buzzing with events to mark the centenary.

Foremost among these has been the opening of a multimillion pound Titanic Visitor Centre. Dubbed by some as Belfast’s answer to Bilbao’s Guggenheim, the landmark building rises over the River Lagan just yards from the slipway where the famous liner was built.

It is open from 9am-7pm, seven days a week. Admission is £13.50 for adults, although concessions are available for advance bookings.

While the focus may be on the Titanic during 2012, the city has many other highlights to offer.

They include the impressive City Hall. With its grand dome and imposing Portland stone façade, it is the most prominent building in the city centre. The city council offers free one hour tours at 11am, 2pm and 3pm.

Travel
Monday to Friday, and at 2pm and 3pm on a Saturday. They are available on a first-come, first-served basis, so just head for reception if you’re interested.

Other jewels in the city’s crown include the Ulster Museum and Botanic Gardens. Recently re-opened after a major renovation, the museum is home to a rich collection of art, history and natural sciences and is free to all visitors.

Also within the Botanic Gardens, visitors will find the beautiful Palm House (1839), one of the world’s oldest surviving curvilinear cast iron glasshouses. Stepping inside, visitors are treated to an impressive display of exotic flora which continues in the adjacent Tropical Ravine.

Nightlife and dining in the city is mainly concentrated in two areas – ‘The Golden Mile’ between the City Hall and Queen’s University, and the Cathedral Quarter, a compact area of cobblestone streets with a bohemian laid-back vibe clustered close to St Anne’s Cathedral (itself open to visitors – notice how the black in the Cathedral’s mosaic floor leads to a dead end, while the white leads to sanctuary and salvation).

You will find yet more entertainment in the Odyssey, just a few hundred yards from the Titanic building. This massive complex boasts a multiscreen and IMAX cinema, a 10,000 capacity arena, as well a large selection of pubs, clubs and restaurants and the W5 scientific visitor centre.

There are dozens of great pubs to choose from throughout the city, but perhaps the most famous is The Crown Bar in Great Victoria Street. Owned by the National Trust, and lauded as perhaps the finest surviving example of a Victorian Gin Palace, the bar was famously described by former Poet Laureate John Betjeman as a “many coloured cavern”.

These are just a few of the highlights – there are far too many to mention in the confines of this article. Perhaps the best advice to any visitor would be to go with the flow, soak up the atmosphere, and enjoy the craic!
More complaints, vicar?

It seems that BIOA members haven’t always spent a life in ombudsmanry – some have secret pasts which may come as a surprise…

Lewis Shand Smith, Chief Ombudsman of Ombudsman Services, which handles complaints for the energy, communications, property and copyright sectors, started his career as a Rector.

Having a vicar as a boss has all kinds of unexpected advantages. I now know how to remove candle wax from carpets and am reliably informed that the BBC series Rev is true to life. I may not need to call on my boss to conduct a wedding service for me, but Lewis will still do the honours for close family and friends.

“It was definitely a vocation,” said Lewis. He was taught the skills of the trade in Edinburgh, including elocution, music, voice projection and spirituality. “Then, after a sheltered life in Shetland and at university, I took a curate’s job in the industrial heartland of Motherwell. Suddenly I was among steelworks and tower blocks with thousands of people.”

Far from finding this daunting, Lewis has fond memories of his time there.

“I remember the really nice people. It made a big impact on me. I realised there was a huge division among people. The living and working conditions of the steelworkers were very poor – life expectancy was short, death in childbirth was high”. The experience set Lewis on a lifelong journey
to see right being done. “It’s more than justice – it’s not just about the right legal answer, but about the right thing to do.”

The Church clearly equipped Lewis with transferable skills. “I was Rector at one of the biggest Churches in Scotland,” he explained. “It was failing and I had to turn it around. Just like in the private sector, it’s a question of finding the right business model. I designed a programme and attendance increased by 50% and income more than doubled. It’s a process of continuous improvement. Building on your strengths, addressing your weaknesses, communicating well and understanding the context – it’s the same managerial challenge anywhere.”

His interest in natural justice led Lewis to lead a public life outside the Church, including as a council leader. He combined his role as Rector with a new role of Deputy Scottish Public Services Ombudsman, and eventually the Ombudsman role took over.

So, what does he miss about being a Rector? “The close involvement you get in people’s lives and in the local community,” he told me. And what doesn’t he miss? “The intrusion – when you’re the local Rector, your home is part of the community and people treat it that way. They used to walk straight into the kitchen through the back door!”
It’s eyes down if you’re attending this year’s Ombudsman Association’s Annual Meeting in Belfast. To make sure everyone’s paying attention, we’re inviting you to play our new BingOA game. Just keep an ear out for these popular ombudsmanship catchphrases and mark them off the BingOA card as you hear them. We can’t promise a jackpot prize, but if you do get a full house, give Faye West the details of exactly where you heard the words, and who said them, and you might find yourself being bought a drink. Good luck!

To let us know about an issue you’d like to see covered, please get in touch with the editor or anyone from our Editorial Board.

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