Reaching out to European citizens

The European Ombudsman, Nikiforos Diamandouros, took office in April 2003 and was re-elected for a five-year term in January 2005. From 1998 to 2003, he was the first National Ombudsman of Greece. He has held many eminent positions in the fields of political science and social research, and is a renowned academic and writer.

Editor Emma Gray met Mr Diamandouros in Berlin in November at the Sixth Seminar of the Regional Ombudsmen and similar bodies of EU Member States. The Seminar’s theme was Protecting the Most Vulnerable in Society: the Role of Complaints and Petitions.

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Of the issues raised by the Seminar, which do you feel were the most significant?

I’m very pleased and gratified to see colleagues approaching the issue of vulnerable groups from multiple perspectives. The keynote speech by Professor Hirsch [former judge of the European Court of Justice and a former President of the High Court of Germany] carried important messages about accessibility, intelligibility and the simplicity of language. He also accepts the notion that in the evolving scheme of things in the European Union, judges form one part of the legal arrangement, but another part – an important part – are the ombudsmen.

Professor Hirsch also talked about alternative dispute resolution mechanisms when he spoke of the idea of ‘democratisation of remedies’. There is a great deal of possibility of collaboration, of complementarity, between the courts and ombudsmen, which we should be able to build upon. I think this is an extremely important message that ought to resonate not only with Anglo-Saxon countries where that kind of tradition is more prevalent, but also in other countries where this kind of complementarity is not necessarily available.

Among the multitude of approaches to making ourselves accessible to vulnerable groups is developing simplified language – which doesn’t mean simplistic language. I think the UK-based Plain Language Commission is an important initiative that should be emulated across the board by all ombudsmen because vulnerable groups very often are not only disabled people but people who may have limited education, and so their capacity to penetrate wooden language written by administrations of all kinds is limited.

These are my two major impressions – the implications of the Hirsch address, and the degree of ingenuity and imagination that goes into colleagues’ approaches to issues of vulnerability – in particular our need to come up with plain language that makes our messages accessible to citizens and therefore allows us to reach out to them.

Continued on page 15
Chair of the Garda Síochána Ombudsman Commission to stand down

The Chairman of the Garda Síochána Ombudsman Commission (GSOC), Mr Justice Kevin Haugh, has indicated his wish to leave the Commission and return to the High Court. It is understood that he wishes to return to the High Court in February 2009, when he will have served three years.

Law Commission consults on administrative redress

The Law Commission for England and Wales published a consultation paper in July entitled Administrative Redress: Public Bodies and the Citizen. As the introduction explains, the paper looks at ‘when and how citizens should be able to obtain redress from the state for seriously substandard administrative action’. To achieve that aim, the Law Commission identifies what it calls ‘the four pillars of administrative justice’: internal mechanisms for redress, such as formal complaint procedures; external, non-court, avenues, such as public inquiries and tribunals; public sector ombudsmen; and remedies available in public and private law by way of a court action.

Apart from the general relevance to public sector ombudsmen of this review and of the underlying principle of ‘modified corrective justice’, four other specific recommendations will be of direct interest: that courts should have a specific power to stay proceedings where they think a case, or particular issue within a case, would be more appropriately dealt with by an ombudsman investigation; that the ‘MP filter’ (which currently governs referrals to the UK Parliamentary Ombudsman) should be removed or replaced by a dual approach which would allow direct citizen access but also allow MPs to continue to refer complaints; that the current statutory bars which prevent citizens complaining to ombudsmen should be removed, leaving ombudsmen able to conduct an investigation where, in all the circumstances of the case, it is in the interests of justice that they should do so; and that ombudsmen should acquire the power to refer questions of law to a court, following the model adopted in EU law whereby a Member State can make reference to the Court of Justice in Luxembourg for clarification of a point of EU law.

The consultation paper is available at www.lawcom.gov.uk/docs/cp187.pdf. The consultation period has now closed.

Freedom of Information – 10th Anniversary Conference

Emily O’Reilly, Ombudsman and Information Commissioner, hosted a conference in Dublin in May to mark ten years of Freedom of Information in Ireland.

The one-day event, which was opened by Brian Lenihan, Minister for Finance, and addressed by Ciaran Connolly, Secretary General for Public Service Management and Development, was attended by a wide and varied cross-section of the Irish public service. Contributions on the day included those of Kevin Dunion, the Scottish Information Commissioner and Graham Smith, the UK Deputy Information Commissioner as well as Maurice Frankel, Director of the UK Campaign for Freedom of Information.

Howard Back, retired Chief Inspector of the London Metropolitan Police Service gave a useful account of the extension of Freedom of Information to the police service in the UK. The conference also heard a politician’s perspective on FOI from Eamon Gilmore, Labour Party Leader, and

Left to right: Graham Smith, Deputy Information Commissioner for the UK, Emily O’Reilly, Ombudsman and Information Commissioner for Ireland and Eamon Gilmore, TD, Labour Party Leader.
a view on the question of extending FOI to issues of policing, immigration and asylum issues from Donncha O’Connell, Dean of Law at the National University of Ireland, Galway.

The Information Commissioner also launched a publication entitled Freedom of Information: The First Decade on the day of the conference. The publication tracks the significant developments of the first ten years of Freedom of Information in Ireland and looks ahead to what the future may hold.

Ombudsman for the Defence Forces in Ireland visits Canada
In October, the Ombudsman for the Defence Forces in Ireland, Ms Paulyn Marrinan Quinn, travelled to Canada on a fact-finding visit. Her first meeting was with André Marin, Ombudsman for Ontario, at his offices in Ottawa.

Since his appointment, the former Canadian Military Ombudsman has reorganised his office focusing its resources on high-profile, systemic investigations through the creation of the Special Ombudsman Response Team (SORT).

Travelling to Ottawa, Ms Marrinan Quinn then met with her Canadian counterpart, Ms Mary McFadyen, Interim Ombudsman for the Department of Defence and Canadian Forces and her team. These meetings provided an opportunity to exchange information and approaches on how common challenges such as redress, the optimum deployment of resources and the management of complainant expectations are addressed.

In Ottawa, the Ombudsman also met the Director General of Canadian Forces Alternative Dispute Resolution, the Director General of the Canadian Forces Grievance Authority, the Judge Advocate General and the Veterans Affairs of Canada Ombudsman.

She concluded her trip by participating in an Ombudsman Forum with Ms McFadyen and Mr Chris Wheeler, Deputy Ombudsman of New South Wales, Australia, where the panel reflected on differences and similarities in the approaches to ‘ombudsmanship’ in the three jurisdictions.

Bite-sized e-learning module launched for Citizens Advice Scotland
The Scottish Public Services Ombudsman, in collaboration with the Parliamentary and Health Service Ombudsman, Financial Ombudsman Service and Otelo, has developed a training module for Citizen Advice Scotland (CAS) staff and volunteers.

Emily Logan, new Chair of the European Network of Ombudsmen for Children
The Ombudsman for Children in Ireland, Emily Logan, was elected to the Bureau of the ENOC in September 2007 and assumed the Chair in September 2008, when the Office hosted the annual ENOC conference in Dublin. This was the first time the Conference had been held in Ireland and it was opened by President McAleese. Titled Towards Implementation of the UN Convention on the Rights of the Child, its main aims were to facilitate the exchange of information and best practice between Ombudsmen for Children in Europe and to identify tools, strategies and mechanisms to assist individual members of the network to pursue implementation of the UN Convention on the Rights of the Child (CRC) at national level.

It was attended by 32 Ombudsmen for Children Offices from 26 Council of Europe Member States as well as international experts and observers, including from the Council of Europe, UNICEF, UNHCR and the European Commission.

ENOC, which was established in 1997, is run by a Bureau consisting of five members elected by the network. The role of ENOC is to facilitate the promotion and protection of the rights of children, as formulated in the CRC, across Europe.

Its objectives include facilitating information exchange between members and other regional groups and supporting the development of new children’s rights institutions in Europe and worldwide.

Scottish Human Rights Commission
On 10 December 2008 the world celebrated the 60th Anniversary of the Universal Declaration of Human Rights. The new Scottish Human Rights Commission marked the day by presenting a document, Building a Strategic Plan, to the Scottish Parliament, outlining an initial strategy to promote and protect human rights in Scotland.

In January a three month consultation into the plan will begin, taking Commission staff around the country to gather ideas and advice. The strategic plan will be laid before the Parliament in summer 2009.

New BIOA members
The Association is delighted to welcome the following new...
In medieval times, the Isle of Dogs was known as Stepney Marsh and in the 13th century it was drained to support meadows and pastures as well as cornfields. There are a couple of theories about how the name the Isle of Dogs came about, one of which is that Henry VIII kept his dogs here, sending boats over to fetch them to his palace at Greenwich when he felt like going hunting. In the late 1500s, the Port of London was alive with activity. Trade was expanding and Docklands became a point of departure for merchant ventures – in 1620 The Mayflower set sail from Rotherhithe to America.

As late as the 18th century, the only two buildings on the Isle of Dogs were a chapel and a pub. The building of the docks at the beginning of the 19th century, with their locks onto the Thames at each end, made the word 'isle' a reality. Growth was particularly fast in the 19th century, and shipbuilding burgeoned. The most famous ship built here was Brunel’s Great Eastern, and the site from which it was launched in 1859 is still preserved today. It was an area which enjoyed a unique lifestyle based on the growth and prosperity of traditional port activities and 100,000 dockers and ancillary workers were dependent on the Port of London Authority for employment. 1961 saw the peak year for the docks when over 60 million tons of cargo was handled.

By the 1970s, changes in trade, coupled with the containerisation of cargoes, caused London’s port activity to move downriver to the new container port at Tilbury. By 1980, the docks on the Isle of Dogs were all but closed.

The scale of the dereliction led the government of the day to establish an ‘urban development corporation’ to lever private and public money into the task of regeneration. The London Docklands Development Corporation was established in 1981 to kick-start regeneration of the abandoned dock areas and was given planning control over the whole of what was, then, a wasteland. The Isle of Dogs, at the heart of the former docks, was designated an ‘enterprise zone’. The redevelopment of Docklands was Europe’s largest regeneration project of the late 20th century.

The office of the Financial Ombudsman Service is located at South Quay Plaza, which was the first major speculative office development in the ‘enterprise zone’ of the Isle of Dogs. The development, completed in 1989, consisted of three separate office buildings, built in three phases. When it was built, its distinctive form and prime position established a Docklands landmark which could be seen from the Greenwich Observatory. Twenty years later, the modern Docklands business district is defined by its American-style skyscraper office blocks – at the centre of which is Britain’s tallest building, Canada Tower, at close to 800 feet. Canary Wharf and the surrounding area has now become the preferred location for many major international financial corporations and law firms, as well as major news media and service firms and public sector organisations. And today, once again, it boasts a working population of around 100,000.
Continued from page 3

member, elected since the last edition of the newsletter: **Ruth Marks – Commissioner for Older People in Wales.**

**Operational Management Seminars**

On 7 October, Operational Management Seminars (formerly the Operational Management Interest Group) held an all-day seminar on ‘First Contact’ and ‘Performance Management Systems’. This was hosted by Lawrence Graham, Solicitors, at their offices in London. A report of the Seminars is on pages 11-12 of this issue.

**Interest groups**

The four interest groups all met in the latter part of this year, as follows:

- **HR Interest Group** – on 18 September in Reading, under Peter Stansfield, HR Director at the Financial Ombudsman Service, as Chair.
- **Communications Interest Group** – on 19 September in Reading, under Sue Fox, Director of Communications and External Relations at the Information Commissioner’s Office, as Chair.
- **Legal Interest Group** – on 29 September in London, under Anne Harding, Legal Adviser to the Parliamentary and Health Service Ombudsman, as Chair.
- **First Contact Interest Group** – on 21 November in Edinburgh, under Carol Neill, Outreach Team Leader at the Scottish Public Services Ombudsman, as Chair.

Attendance at interest group meetings is open to any interested staff member of BIOA member schemes, and new members are always very welcome. These groups facilitate communication between schemes and enable staff to share ideas and issues of concern, and to disseminate good practice. Please contact the Secretary (secretary@bioa.org.uk) if you are interested in joining one or more of these interest groups.

**Working groups**

**Accreditation Working Group**

As reported in the previous Issue, the BIOA Executive Committee agreed to a proposal to engage the services of a suitable person on a paid part-time basis, for a limited period, to assist with the work of the Working Group in working with providers to set up one or more pilot accreditation training course.

After an open competition, Nick O’Brien has been appointed to that role. Nick will be well known to many in BIOA for his previous work at the Legal Services Ombudsman, then with the Disability Rights Commission and also for his regular contributions to this newsletter. Nick has also been for many years a member of the Editorial Board. The Working Group is looking forward to working with him.

A progress report on this ‘Accreditation’ project will be given at the BIOA Conference in May next year, together with a workshop.

**Governance Working Group**

The reformed Governance Working Group, now with Paul Kenny, Pensions Ombudsman for Ireland, as Chair, has met twice and continues to progress towards the production of a second consultation document, having taken into consideration the views of those members who responded to the first consultation.

The BIOA Executive Committee has approved the general approach to the work suggested by the Working Group, namely that the finished document should be one of high-level principles, with sufficient detail included to explain them, but that more detail with illustrations and examples should be given elsewhere, possibly on the BIOA website.

The Terms of Reference for the Group were also confirmed as:

- To identify those general principles of governance relevant to ombudsman and complaint-handling schemes which allow those schemes to function appropriately, including:
  - drawing up a statement of those principles which can be used as a guiding principle by existing schemes, by those seeking to set up new ombudsman and complaint-handling schemes and also by other interested parties such as consumer organisations and the recipients of schemes’ services
  - publishing elsewhere (possibly on the BIOA website) details and examples to illustrate those high-level principles
- publishing a high-level statement of those principles which can be used as a guiding principle by existing schemes, by those seeking to set up new ombudsman and complaint-handling schemes and also by other interested parties such as consumer organisations and the recipients of schemes’ services

A progress report on this ‘Governance’ project will be given at the BIOA Conference in May next year, together with a workshop.

**Scottish Legal Complaints Commission**

The Scottish Legal Complaints Commission (SLCC) has replaced the office of the Scottish Legal Services Ombudsman (SLSO). The SLCC was set up under the Legal Profession and Legal Aid (Scotland) Act 2007 and is governed by a Board composed of a non-lawyer chair plus four non-lawyer members and four lawyer members who are appointed by Scottish Ministers after consultation with the Lord President of the Court of Session.

Previously, legal complaints not resolved by the appropriate professional body could be taken to the SLSO. The Ombudsman was able to investigate how the complaint was handled, but not the actual complaint.

The office of the SLSO was abolished from 1 October and the SLCC has taken over the review functions. The Scottish Legal Ombudsman, Mrs Jane Irvine, has been appointed Chair of the SLCC. Eileen Masterman is the new Chief Executive of SLCC, which will be applying for BIOA membership in due course.
It has been an extremely busy year for the Financial Services Ombudsman of Ireland. To October 2008 some 5,000 complaints were received, an increase of 33% over the same period in 2007. Ombudsman Joe Meade stated that this may be indicative of the present difficult economic times but that he considers it more as a vindication of the changed regulatory and consumer protection environment for financial services put in place by the Government since 2000. The numbers of complaints to and resolved by his Office has grown consistently each year since its inception in April 2005. By October 2008 some 16,500 complaints had been received. Both consumers and Financial Service Providers are satisfied that his office provides an impartial, independent and cost-free dispute resolution service.

Examples of recent case studies (from July 2008):

- Insurance agent drove a vulnerable farmer living alone to an ATM cash point to secure sale of unsuitable health policies while another agent stayed behind in the house – action condemned, premiums of €1,520 returned and €1,500 compensation
- Naive bank official facilitated an ‘interfering neighbour’ to improperly deal with and change the account status of elderly siblings’ joint deposit account of €106,000 – the 85 year old was in hospital and the 79 year old was deaf; €1,200 compensation and account change overturned
- Husband, aged 69, met with the Bank, invested €100,000 in a fund which then fell sharply in value to €68,000 and signed what purported to be his wife’s signature – €52,000 refunded by Bank to wife by direction from Ombudsman
- €50,000 award following delayed review of Unit Linked Whole of Life Policy for couple in their late 60s who had by then paid over €60,000 in premiums – increase from €780 to €2,000 in monthly premium sought; systemic problem also identified by Ombudsman in 1,800 other cases which are being remedied
- Bank’s threatening letter debacle cost it €4,000; the Bank’s systems were at fault
- Bogus non-resident account allegedly held by a member of the Gardaí merits €2,000 compensation – building society did not really appreciate the gravity of its mistake
- Accountant’s unnecessary delay in submitting financial accounts to Insurance Company had serious consequences for Claimant’s Income Protection claim – Ombudsman was able to get claim reopened.

Judicial Review

The Ombudsman’s findings on a complaint are binding subject only to an appeal to the High Court by either party and as a statutory officer he is also subject to judicial review.

The judicial review, appeal and constitutional challenge by Davy Stockbrokers against a Finding of the Ombudsman issued in January 2008 in the Enfield Credit Union complaint is of great significance. In his finding the Ombudsman held inter alia that the credit union was not informed as to the real nature of the investment; Davy failed to exercise its proper duty of care in advising the credit union to purchase bonds which were at a level of risk that did not ensure security of capital; the bonds had no definite maturity date; had no step-up clauses and are subordinated. For those reasons he held that the bonds were unsuitable investments for this credit union.

The Ombudsman directed Davy to pay Enfield Credit Union the sum of €500,000 in exchange for the three bonds and to refund all fees and commissions paid in relation to the purchase of the bonds.

The hearing on the judicial review aspect was held on 8-10 July 2008 and by reserved judgment delivered on 30 July 2008 quashed the decision of the Ombudsman and remitted the matter to him for the purpose of the complaint again being investigated and adjudicated upon. Enfield Credit Union informed the Ombudsman in mid-August 2008 that it had withdrawn its complaint following settlement terms agreed in July 2008 by Davy with it and other credit unions that were also sold these bonds – media reports indicate that some €35m was the total overall settlement figure involved. The Ombudsman appealed the judgment to the Supreme Court on 28 August 2008 and he awaits its judgment.

The judgement raised certain concerns about the Ombudsman’s procedures including inter alia exchange and discovery of documents, preliminary findings and oral hearings. As a result of this judgement its procedures for dealing with complaints had to be revised. Because these procedures require the Ombudsman to act in a far more formal quasi judicial way than he did up until then the Office is much slower in resolving complaints. The average complaint investigation which had been taking three months is now taking at least five months.
The Waterways Ombudsman scheme is possibly the smallest British scheme. It was set up in 1993, but it was only in 2006 that it moved from associate to full voting membership of BIOA. That followed a major revision to the rules in 2005, including the setting up of a Committee to oversee the scheme’s operation. It deals with complaints about British Waterways, which is a public corporation managing 2,200 miles of (most) canals and (a few) rivers in England, Scotland and Wales. The Committee has two British Waterways members, three independents (including the Chair, Professor Jeffrey Jowell QC) and three from user groups.

Whilst the majority of complaints relate to boating (e.g. licencing, moorings, seizure of illegally moored boats), they cover a wide range of subjects and issues from angling rights to commercial tenancies and from discrimination to pricing procedures – with a significant number of complaints relating to property. British Waterways own a lot of land and buildings around canals, including some substantial urban development sites. They have statutory powers and duties, but they also have to act commercially. Their contractual and commercial activities (including their wholly-owned marina company) as well as their public responsibilities are within the Ombudsman’s jurisdiction. So the scheme is something of a hybrid between public and private sector schemes.

The Ombudsman can deal with complaints about maladministration or unfairness from individuals, organisations and businesses with a turnover of less than £1m, and can make financial awards of up to £100,000. The rules require British Waterways to comply with recommendations, and the Ombudsman to publish a summary of cases determined. The Ombudsman has always worked part-time and largely alone, though a small bank of contractors is to be set up to assist in workload peaks.

For the first 10 years only about five to ten complaints were determined annually but, following improvements to British Waterways’ complaints procedure, numbers increased dramatically. Five cases were determined in 2003-04, 26 in 2005-06 and 39 in 2007-08. About 120 new enquiries were also received that year. ‘Waterways’ in the title confuses some people – leading to enquiries not only about canals but also about water companies and even a ferry booking!

It would be wrong to imagine that waterways complaints do not arouse the same passion as other complaints. Significant numbers of people live or holiday on boats, have committed years of voluntary work to waterways, make their livelihood from a waterway business or live next to a canal. Feelings about related complaints can run high and there are some well-organised stakeholder groups with strong views.

More information can be found on the website www.waterways-ombudsman.org or from the Ombudsman, Hilary Bainbridge.
Human rights and ombudsmen

Nick O’Brien, Legal Policy Consultant, uses case studies from a number of schemes to illustrate ombudsmen’s activities in the human rights arena.

Introduction

There has been plenty of encouragement in recent years for public sector ombudsmen to take an active role in the protection and promotion of citizens’ human rights, and to see themselves as operating within a human rights framework. The European Ombudsman and the Council of Europe Human Rights Commissioner have spoken about the implicit human rights remit of ombudsmen and the part they should play as part of national ‘human rights structures’. Ann Abraham, the UK Parliamentary Ombudsman has written recently (61 Parliamentary Affairs 2008 377) of ‘the inherent alliance between ombudsmen and human rights’; Emily O’Reilly, the Irish Ombudsman, reminded BIOA members at their Biennial Conference at Warwick in April 2007 that ‘every day, many of us grapple with complaints about social housing, health care, disability and social services which not only raise procedural issues about the basic entitlements of individuals to monetary grants and benefits, but also the most profound issues of human dignity and respect’; and in her evidence to the Scottish Parliament on the Scottish Commissioner for Human Rights Bill in December 2005, Alice Brown, Scottish Public Services Ombudsman, expanded on her written submission that ‘human rights are fundamental to the concept of good public administration.’

Dignity: inadequate level of care for a disabled adult

Health Service Ombudsman for England and Local Government Ombudsman for England

Frank, an adult with severe learning disabilities, lived in a care home. Frank’s parents became increasingly concerned about his health and safety, and eventually decided to look after Frank at home. In a joint report, the Ombudsmen found that the care home had not ‘provide[d] him with appropriate care in an environment conducive to his development’. The report added: ‘In terms of Frank’s human rights, it would be for the courts to determine whether there has been a breach of the Human Rights Act 1998 and if so to make binding declarations and decisions.’ We have considered whether relevant issues were engaged in Frank’s case and whether they were properly taken into account in a timely way by the Council and Trust. The greater a person’s disability or communication difficulties, the greater the need for proper consideration to ensure the protection of basic rights, such as human dignity. We have concluded that Article 3 (which includes inhuman or degrading treatment), Article 8 (which includes right to respect for private and family life and home) and Article 14 (prohibition of discrimination) were engaged in Frank’s case, and that the Council and the Trust both neglected to give those issues proper or timely consideration. This failure was so significant as also to amount to maladministration…This failure was so significant as also to amount to maladministration and contributed to the injustice suffered by both Frank and his parents.’

Respect: failure to have regard to the privacy of travellers and their families

Local Government Ombudsman for England

A local council sought to evict a group of travellers living on an unauthorised site through exercising planning enforcement powers. The council published sensitive information about a number of the travellers and their families in a public report. This included details of medical conditions, financial affairs, children’s schools and a named child’s learning difficulties. The Local Government Ombudsman recognised the need for the council to collect information about the travellers’ circumstances, but concluded that the decision to publish all of the information in the report was maladministration. He concluded that the council had failed properly to balance the need for open decision-making against its duty to protect personal privacy. The Ombudsman acknowledged that only the courts could determine whether there had been a breach of Article 8 of the ECHR, but was still able to conclude that ‘the Council should have given more considered and conscious attention to the principle of respect for private life enshrined in Article 8 and, if it had done so, it is likely that it would have reached a more proportionate decision that did not imperil the privacy of vulnerable children and members of their families.’

Equality and autonomy: elderly disabled woman a prisoner in her own home

Local Government Ombudsman for England

A local authority kept an elderly disabled woman in unsuitable accommodation for at least five years longer than necessary. The Local Government Ombudsman found that the Council had failed to consider her housing needs and her human rights, and that she had been ‘practically a prisoner in her own home’. The Ombudsman concluded that the council had neglected to consider Article
8 of the ECHR, which says that everyone has the right to respect for his or her private and family life.

**Dignity and privacy: neglect of elderly disabled man by hospital**

**Scottish Public Services Ombudsman**

Mrs C complained about the nursing care received by her late father, an elderly man with dementia. She said that prior to admission her father had been mobile, talkative and continent. But on the first visit to see him in hospital she found him barely able to speak, unable to feed himself, incontinent and his right arm paralysed. At later visits, the family would often find him lying in bed soaked in urine and sweat with the constant struggle of trying to get up. They frequently had to ask for the linen to be changed before the visit could start. They often found him unshaven and on occasions lying in bed covered in nothing more than an incontinence pad. The Ombudsman concluded that the nursing staff failed to maintain the patient’s personal hygiene and dignity, failed to ensure his nutritional needs were met and responded poorly to family concerns. Commenting on the complaint, the Ombudsman stated:

‘Dignity and privacy are basic human rights and I am very concerned that they were denied by a public service to a vulnerable member of society.’

**Equality: school transport for disabled students**

**Scottish Public Services Ombudsman**

The complaint related to the transport of two young men aged 16 and 17, who have special educational needs, to and from their school. One of the young men had Cerebral Palsy and Spastic Quadriplegia, and required the use of a wheelchair at all times. The other had a severe learning disability, had a spinal steel rod in his back that restricted his movements and also used a wheelchair. Their parents complained to their council about the treatment of their sons by members of a bus company’s staff while they were being transported to the special educational needs school. The SPoS investigation upheld aspects of the complaint and made several recommendations to the council, including that the Council make a redress payment to both sets of parents, in recognition of the anxiety and frustration they suffered during the course of their dispute with the Council and for their time and trouble in pursuing their complaint, and issue them with a full, formal apology for the manner in which the Council dealt with the school transport dispute. The Ombudsman commented that:

‘Although this specific complaint did not refer to human rights when it was presented to my office, the investigation demonstrates the requirement on public bodies to be mindful of human rights when they design and implement their policies and procedures. The Human Rights Act 1998 sets out the rights that need to be taken into account in the delivery of public services. The law on human rights is no different from any other law that my investigators may consider when looking into complaints. In this connection, I believe that the role of my office includes the promotion of respect for human dignity, particularly where vulnerable people and their families are concerned. My expectation is that public authorities are not only technically compliant with the law, and with their own policies and procedures, but that they make decisions and take actions that further an approach that integrates human rights into their work.’

**Some points for reflection**

- A human rights framework includes not just civil and political rights but social and economic rights too.
- A human rights framework is not just about domestic human rights law but about the broader ethical principles that underpin the law, as well as other international human rights instruments.
- Those human rights principles are sometimes summarised as fairness, respect, equality, dignity, autonomy (‘FREDA’, for short).
- ‘Equality and diversity’ are human rights issues, although often not thought of in that way in Britain and Ireland.
- Human rights failings are likely to constitute maladministration.
- Human rights considerations can add weight to an ombudsman’s findings, aid interpretation of other standards, and focus attention on the individual as a person.
- The human rights concept of ‘proportionality’ is a more searching test of public authority action than a conventional ‘reasonableness’ test.
- Human rights observance can help ‘humanise’ impersonal administration.
Northern Ireland is the unresolved complaints process. For improvement that arise from a customer focus and the opportunities to change police attitudes towards a office will need to continue its work is also a significant belief that public are what the public requires. There independent oversight and accountability to convince all police officers that officers not subject to a public complaint, the general police population, including knowledgeable.

An independent survey of over 1,200 people in Northern Ireland, conducted earlier this year, indicated that 86% recognised that we are independent of the police, 85% reckoned the Office was fair and 83% said we are helping to improve policing. A separate anonymous survey indicates that 85% of the police officers investigated by my Office believe they were treated fairly, 95% considered our investigators professional, and 91% said our investigators were knowledgeable.

However, a more recent survey of the general police population, including officers not subject to a public complaint, shows that there remains a challenge to convince all police officers that independent oversight and accountability are what the public requires. There is also a significant belief that public complaints are just a nuisance. Our Office will need to continue its work to change police attitudes towards a customer focus and the opportunities for improvement that arise from a complaints process.

One of the major challenges facing Northern Ireland is the unresolved question of how we deal with the legacy of three decades of conflict. There are those who feel it’s best not to open up old wounds. Conversely, there are those who feel that we must learn from the mistakes of the past, as well as those who feel passionately that the truth must be told, regardless of consequences.

It is an issue that a Government-appointed Group, chaired by Lord Eames and Denis Bradley, is currently considering. Its recommendations will have profound implications for the Police Ombudsman’s Office. We are one of a small number of agencies dealing with issues arising from Northern Ireland’s troubled past – including the investigation of every case during the conflict in which the actions of a police officer may have caused a person’s death. This is a significant workload on top of the 3,000 fresh complaints we receive each year. Depending on the outcome of the Group’s deliberations, historic cases may or may not remain within the remit of this Office, and we must plan for either contingency.

There are other major challenges too. At some stage, yes, to be agreed by Northern Ireland’s politicians, they will assume responsibility for policing and justice in the Province. This devolution of power from Westminster, while appropriate and welcomed, will undoubtedly have implications for my Office.

Despite the scale of the challenges that lie ahead, I have great confidence – given the skill, dedication and enthusiasm of my staff – that we will continue to discharge our functions effectively and for the benefit of all in Northern Ireland.

A personal view from the Ombudsman on the challenges ahead

My appointment as Police Ombudsman last November coincided with the sense of a new beginning in Northern Ireland. After three decades of conflict, the guns have now fallen silent prompting significant investment, an influx of tourists, and unprecedented, although still tentative, political progress.

Following a stocktaking and stakeholder consultation period, I decided that a strategic refocusing was required on our very public ‘business’. An organisational development plan, focusing on quality improvement, is the result. This theme, running through our corporate plan for the coming three years, will build resilience so that we are properly equipped to meet the challenges of a society in transition. Only by doing this can we meet our statutory requirement of taking steps ‘best calculated’ to secure the confidence of police and public.

Peter Tyndall took on the post of Public Services Ombudsman for Wales in April 2008, in succession to Adam Peat. Somewhat unusually, Peter’s previous post had been as Chief Executive of the Arts Council of Wales, a post he had held since 2001. His earlier career, however, had been in social care and housing, and he has found this provides a very useful background for his role.

Originally from Dublin, Peter moved to Wales in the late 1970s and worked in the independent sector developing and managing services for people with learning disabilities. He played an active part in the early days of what was then known as the All Wales Mental Handicap Strategy, a pioneering Government initiative designed to develop people-centred services in community settings to replace the institutional provision of the past.

He helped to develop national guidance and played a key role in establishing some of the agencies that went on to deliver the new services across Wales. He brought a rights-based approach to his work and a commitment to the individual, as opposed to the service. Subsequently, he moved to Tai Cymru, the Welsh arms-length body which funded and regulated housing associations.

At Tai Cymru, Peter developed policy for supported housing and housing for older people. He worked on the funding framework, helped to manage the development programme and monitor the success of the funded projects. He developed a strategic approach to addressing single homelessness, which was relevant in his next post with Cardiff Housing Department. He was responsible for services including homelessness, sheltered housing, housing development, supported housing, and some general needs housing management.

Peter Tyndall
Public Services Ombudsman
Ombudsman for Wales

One of the major challenges facing Northern Ireland is the unresolved question of how we deal with the legacy of three decades of conflict. There are those who feel it’s best not to open up old wounds. Conversely, there are those who feel that we must learn from the mistakes of the past, as well as those who feel passionately that the truth must be told, regardless of consequences.

It is an issue that a Government-appointed Group, chaired by Lord Eames and Denis Bradley, is currently considering. Its recommendations will have profound implications for the Police Ombudsman’s Office. We are one of a small number of agencies dealing with issues arising from Northern Ireland’s troubled past – including the investigation of every case during the conflict in which the actions of a police officer may have caused a person’s death. This is a significant workload on top of the 3,000 fresh complaints we receive each year. Depending on the outcome of the Group’s deliberations, historic cases may or may not remain within the remit of this Office, and we must plan for either contingency.

There are other major challenges too. At some stage, yet to be agreed by Northern Ireland’s politicians, they will assume responsibility for policing and justice in the Province. This devolution of power from Westminster, while appropriate and welcomed, will undoubtedly have implications for my Office.

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An independent survey of over 1,200 people in Northern Ireland, conducted earlier this year, indicated that 86% recognised that we are independent of the police, 85% reckoned the Office was fair and 83% said we are helping to improve policing. A separate anonymous survey indicates that 85% of the police officers investigated by my Office believe they were treated fairly, 95% considered our investigators professional, and 91% said our investigators were knowledgeable.

However, a more recent survey of the general police population, including officers not subject to a public complaint, shows that there remains a challenge to convince all police officers that independent oversight and accountability are what the public requires. There is also a significant belief that public complaints are just a nuisance. Our Office will need to continue its work to change police attitudes towards a customer focus and the opportunities for improvement that arise from a complaints process.

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The BIOA autumn seminar was held at the offices of Lawrence Graham, Solicitors, in London on 7 October 2008. We are most grateful to Simon Randall (Partner) and Lawrence Graham for allowing BIOA to use its premises and facilities. The two topics discussed were First Contact and Performance Management Systems. Around 90 people attended the Seminar, representing 34 different organisations.

**First Contact**

**Chair: Caroline Mitchell (Ombudsman, Financial Ombudsman Service)**
Carol Neill (Outreach Team Leader, Scottish Public Services Ombudsman)
Carol’s presentation focussed on using premature complaints as a source of ‘intelligence’ about complaint handling by service providers. Around 50% of complaints received are premature and are dealt with by the ‘Gateway’ team, established in April 2007. The body complained about is usually contacted, as well as the complainant, to see if the complaint can be resolved at this stage. The new process has helped reduce investigators’ workload, and through ‘Gateway’, the SPSO is building its understanding of why premature complaints arise.

**Paul Kendall (Head of Customer Contact Division, Financial Ombudsman Service)**

Although the formal (core) role of the FOS is to resolve disputes, the CCD plays an important role in assisting complainants and providing a high level of consumer service. The CCD has 96 staff and deals with thousands of enquiries each week. They can deal with eligibility checking, and also with complaints where a reasonable settlement offer has been made. There is minimum use of automated telephony, and most staff are multi-skilled, being able to deal with the full range of enquiries. Translation and other services are available for those with language or other special requirements.

**Neville Jones (Deputy Local Government Ombudsman for England)**

Neville described the LGO’s new Advice Service (which is based in its Coventry office and opened six months ago) as a major flagship project for the whole organisation which will completely change the way it works. Some 40% of complaints received are either premature or out of jurisdiction.

**John Gillies (Programme Manager, Citizens Advice Access Strategy)**

He developed the strategic plan for the housing service and took particular pride in ending the use of bed and breakfast accommodation for homeless families.

His move to the Welsh Local Government Association was expected to be in the field of housing and community care. To his surprise, he was asked to take on the Education and Culture brief! He greatly enjoyed the challenge, and his involvement with the arts led to his move to the Arts Council, a job which enabled him to work in a challenging environment but have a great insight into the creative processes which underpin the arts. Having always enjoyed classical music and theatre, he now had an opportunity to support the creators in these and other art forms. His time in post saw the creation and redevelopment of many buildings and arts organisations, including the Wales Millennium Centre and National Theatre Company.

Until his appointment Peter served as a Board Member with Cardiff Community Housing Association.

The opportunity to become Public Services Ombudsman was one Peter relished, and he can draw on the diversity of his experience across the public sector in Wales. He remains strongly committed to services which have the individual at their heart, and looks forward to building on the sound foundations put in place by Adam Peat both in providing redress for individuals, and in driving improvement across the public sector.

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BIOA Autumn Seminar

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and feedback has shown that a single-number advice line is urgently required. It is anticipated that the new call centre approach will deal with up to 4 million calls annually. It also accepted that there is a need to develop electronic services including email, text and one-to-one messaging. Inter-active trails will be run on the CA website.

Performance Management Systems

Chair: Jerry White (Local Government Ombudsman for England)

Donna Bateman (Senior Manager for Review Operations & IT, Independent Review Service)

Donna outlined how the performance of individuals can affect the performance of the whole organisation. IRS has a well-developed performance management system, the starting point being the corporate plan which sets out the key business purpose and objectives. All objectives are reviewed annually for relevance and achievability. Performance standards are set for individual staff members, with a self-appraisal system having been in place for some time. All staff have key work objectives concerned with business values. The management team meets formally with the Commissioner twice a year to review performance.

Siobhan Coughlan (Programme Manager – Service Transformation, Improvement & Development Agency)

Siobhan explained that the IDEA had been set up in 2000 to help local authorities with their performance improvement. She defined the role of performance management as being to:

- provide better services to the customer
- provide a means of service improvement
- enable benchmarking and inspection

The 2007 Local Government and Public Involvement in Health Act provides for a lighter touch compared with previous requirements, with 198 performance indicators. The regime is now less ‘output’ and more ‘outcome’ focussed, involving local empowerment, rather than ‘top down’ micro management.

The governance process will vary from authority to authority. Some performance indicators include customer feedback, mystery shopping, MPs’ casework, staff feedback, staff turnover/sickness rates and community group feedback.

Clare Brannigan (Computer Application Services)

Clare described how IT systems can be used to support caseload performance management, illustrated by the CAS ‘Workpro’ application. Drivers for performance were identified at different points in the organisation, as follows:

- Contact centre
- Back office
- Supervisors/managers
- Chief Executive/Ombudsman

Clare then described, and illustrated, how IT can support these drivers to provide performance management information throughout the organisation.

Dr Sharon Gilad (London School of Economics and King’s College, London)

Sharon’s presentation was based on recent debates regarding performance management by transparency, specifically based on the financial services industry concerning the publishing of industry complaint statistics per firm to drive up performance. The Financial Services Authority (FSA) and the Financial Ombudsman Service (FOS) intend to publish statistics in future.

The public, consumer groups and the media will need to take care when interpreting the statistics, as the firms most complained about will not necessarily be the ‘worst’. They might, for example, be more accessible and responsive to customer concerns. Moreover, transparency could make some good firms less accessible and responsive to complaints. The publication of the FOS data alongside the FSA data reduces some of these risks.

The full report of the seminar and copies of presentations are in the ‘members’ area’ of the BIOA website. Staff of member schemes can gain access to this by contacting the Secretary (secretary@bioa.org.uk).

Biennial Conference

2009

The next Biennial Conference of the Association will be held next year on 7/8 May 2009 at Scarman House Conference Centre, University of Warwick. The Conference will commence at the earlier time of 11.30am on Thursday, 7 May and will end at lunchtime on Friday, 8 May.

The Conference will celebrate 200 years of the institution of the Ombudsman (the first Ombudsman in its present form was introduced by the Swedish Constitution in 1809), examining how and where BIOA and its member schemes fit into that landscape, with the overall theme of ‘much done – still more to do’.

As well as an initial plenary session, followed by the Annual Meeting, there will be a mixture of large workshops/discussion and more traditional smaller workshops, as follows:

Plenary session:
The future direction of BIOA

Annual Meeting:
This session is for all Conference delegates. As well as reports about the ongoing work of the Association, the Chair is hoping for a lively debate on its future direction.

Large workshops/discussions:

- Research into public sector ombudsmen and administrative justice
- Trends in consumer redress
- Public redress
- The institution of the Ombudsman

Smaller workshops:

- Consultations – a level for change?
- Security of information
- Freedom of information
- New media and the Ombudsman
- Unacceptable behaviour
- Governance
- Managing customer expectations
- Accreditation
- Equality and diversity
- Equality of access and the investigation of discrimination complaints
- Training for bodies under jurisdiction
- Knowledge management

The Conference fee is £380 (+ VAT) to include accommodation on 7 May and all meals and refreshments. Booking details will be sent out in January 2009.
Principles of Good Complaint Handling

By Parliamentary and Health Service Ombudsman, Ann Abraham

In my introduction to the Principles of Good Complaint Handling I wrote, ‘Everyone has the right to expect a good service from public bodies and to have things put right if they go wrong. When things do go wrong, public bodies should manage complaints properly so customers’ concerns are dealt with appropriately’.

I believe that the function of my Office is twofold: to deliver individual benefit to complainants and to serve the wider public benefit. The Principles of Good Complaint Handling, which was published last month, clearly falls within my Office’s second function. The publication seeks to explain to public bodies and complainants what I mean by good complaint handling, and offer clarity around the behaviour and standards I expect from those bodies in my remit who consider complaints.

The Principles of Good Complaint Handling complements the Principles of Good Administration and Principles for Remedy, which I published last year. Good complaint handling is a fundamental part of good administration, so the same six principles apply.

1. Getting it right
2. Being customer focused
3. Being open and accountable
4. Acting fairly and proportionately
5. Putting things right
6. Seeking continuous improvement

I believe that the Principles of Good Complaint Handling is compatible with BIOA’s Guide to principles of good complaint handling for Ombudsman schemes, which was published in April 2007.

So why does good complaint handling matter? I believe it is an important way of ensuring customers receive the service they are entitled to expect. Complaints are a valuable source of feedback for the public body; they provide an audit trail and can be an early warning of failures in service delivery. When handled well, complaints provide an opportunity for them to improve their service and their reputation.

I believe that good complaint handling should be led from the top, focus on outcomes, be fair and proportionate, and sensitive to complainants’ needs.

My experience of complaints I have investigated shows that often poor complaints handling is itself at the root of the problem and has led to unremedied injustice or hardship for complainants.

My profile as Health Service Ombudsman is set to increase from April 2009 as the NHS complaints handling system moves from a three tier system to a two tiered one with the demise of the Healthcare Commission. This mirrors the NHS complaints arrangements in Scotland where the Scottish Public Services Ombudsman helped to pioneer a simpler two tier complaints system some years ago. I hope to build on the lessons learnt in Scotland to ensure that the new arrangements south of the border are equally successful.

Together with the Principles of Good Administration and the Principles for Remedy, the Principles for Good Complaint Handling will be one of my key weapons in promoting better and more consistent service provision and complaint handling in all public bodies in my remit, but particularly the NHS.

The Principles of Good Complaint Handling can be found on PHSO’s website www.ombudsman.org.uk. For more information about this or previous Principles publications, please contact: Principles@ombudsman.org.uk.

James Haswell OBE

James Haswell died peacefully after a long illness on 9 October at the age of 86. Many BIOA members will remember James as the first Insurance Ombudsman (the first private sector ombudsman in the UK) – a post he held for eight years from 1981-89. He was a solicitor who had practiced briefly in London and Cornwall before joining the army. He served in the Army Legal Corps until his retirement at the rank of Lieutenant Colonel in 1981.

It was good fortune that brought James to the Insurance Ombudsman Bureau. The steering group seeking the first ombudsman sought candidates from the armed forces on the grounds that someone with such a background could have the ‘broad and common sense approach’ they were seeking and his commanding officer put his name forward.

He was a good choice. The IOB model has been adopted by many other schemes worldwide and its success owes a great deal to the practical common sense James brought to setting up this new scheme. And, of course, to the charm he exercised on a sometimes reluctant industry.

James had an infectious joy in life, his family, his music and his work as an ombudsman about which he once said ‘I never remember enjoying a job so much’.

By Caroline Mitchell, Ombudsman, Financial Ombudsman Service
Barbara Batchelor

We are very sad to report the sudden and very unexpected death of Barbara Batchelor at the end of November. Barbara was a valued staff member with the Parliamentary and Health Service Ombudsman from 1994 until her retirement in 2007, where she held the post of Communications Manager. Barbara was a staunch and very active long-term supporter of the Association, including being the Chair of the BIOA Communications Interest Group and serving for several years on the Editorial Board of this newsletter. She also helped in many other ways, including with the administration at BIOA conferences and by contributing many articles for the newsletter. She always brought great commitment, but also good humour, to what she did. She will be greatly missed. We extend our sympathies to her family and friends.

Michael Mills

1928 – 2008

In the Hurler on the Ditch, which Michael Mills described as a ‘memoir of a journalist who became Ireland’s first Ombudsman’, he recalled the time when he was offered the post of Ombudsman by Ireland’s then Minister for the Public Service, Mr John Boland, in October 1983. The Minister rang him at his hotel in Berlin where, as political correspondent with the Irish Press, he had been writing a background story about a proposed visit by the German President to Ireland. ‘He told me he had been asked by the Government to offer me the job of Ireland’s first national Ombudsman. I expressed surprise at the offer. I was very flattered to be chosen but told him frankly that I knew nothing about the job. He said “Welcome to the club; nobody else knows anything about it either”.

Ten years later, in his Annual Report as Ombudsman, Michael reflected on the decade in Office and demonstrated in its administrative system. These measures included measures to rectify unfairness in the State pension system, to provide for a system for compensation for late payments by public bodies, to help eliminate discrimination against deserted husbands and widowers, to enhance entitlement to an electricity allowance, to expand eligibility for payments to persons with disabilities, to improve options for leave from work for adoptive mothers, to expose anomalies in the law relating to separated persons, and to broaden entitlement to rent supplements for local authority tenants. Michael was Ireland’s first Ombudsman, serving in the Office from 1984 until 1996. Born in Mountmellick, Co Laois, he joined the Irish Press in 1953 and from 1957 to 1963 was drama and film critic with that newspaper. In 1963 he became its political correspondent and wrote widely on government, politics and public administration. He frequently contributed to radio and television current affairs programmes. Michael established himself as an authoritative political correspondent who reported on a most turbulent period in the history of Fianna Fáil, then the majority ruling party in parliament. Although employed by the Irish Press, which was traditionally staunchly pro Fianna Fáil, he was not afraid to antagonise senior figures in the party by writing the truth as he saw it.

When invited to become Ombudsman, Michael accepted on condition that all the party leaders in the Dáil had no objection. These leaders included Charles Haughey, with whom he had a difficult relationship from the time the latter became Taoiseach (Prime Minister) in 1979. As a political correspondent Michael had come to distrust Haughey and the differences between them continued into his period as Ombudsman. Following a general election in 1987, the incoming Government, responding to the emerging fiscal crisis, set out implementing a round of swingeing financial cuts in the budgets of government departments and offices. Disproportionate cuts were made in the budget of the Ombudsman’s office to the extent that it was unable to discharge effectively its statutory functions. Michael’s response to the threatened emasculation of the Office was to make a special report to the Oireachtas highlighting the effects of the cuts on his ability to carry out his statutory functions. This action secured the strong support of the Oireachtas and had the desired outcome in ensuring the survival of the Office. On another occasion, as the end of his first term approached in 1989, a move by Haughey to prevent Michael’s re-appointment was thwarted by supporters.

Michael found his job challenging but rewarding although from the start he ran into obstruction from several government departments who seemed resentful of his investigative powers. Over the years he campaigned vigorously for greater powers so that he could, as he saw it, fairly represent the interests of the public. During his tenure, the Office of the Ombudsman became firmly established as an advocate for those who had been treated unfairly by the State’s institutions. He had a strong commitment to social justice and, as Ombudsman, exhibited those qualities which he believed should be synonymous with the role – integrity, independence, a strong public service ethic and a consummate interest in righting wrongs.

In private Michael had a great love of film and theatre. He had a deep appreciation of the arts and was a committed visitor to exhibitions in museum and galleries at home and abroad. He had an interest in all sports but golf was his main source of relaxation. The late President of Ireland, and Michael’s close friend, Patrick Hillery, was a regular playing partner. Michael is survived by his wife Bríd, daughters Frances, Pauline, Veronica and Stephanie; sons Gerald, Kieran, Liam and Michael.

By Matthew Merrigan, Investigator, Office of the Ombudsman for Ireland
Reaching out to European citizens

Continued from page 1

Were there any surprises for you in topics that came up either in people’s presentations or in the discussions?

I wouldn’t say that there were surprises. I think what I had was confirmation of my long-standing conviction that there are very significant variations in the cultures of ombudsmen, and in the political and legal cultures which we all represent, all across Europe. This kind of variety of course makes it very interesting, but also raises challenges for us as we try to collaborate among ourselves, because obviously there are different combinations of rule of law and democracy across Europe. There are different perceptions even of what the ombudsman institution is or should be. Some countries will stress much more the role that the ombudsman plays in the constitutional arrangements of any given country; others will focus much more on being able to provide support for citizens.

A concept you mentioned in your seminar remarks is ‘life beyond legality’ – what do you mean by this?

This is a kind of a phrase that I’ve come up with, which of course needs to be qualified to be explained, because if misunderstood it might imply that legality is dispensable, and it clearly is not. Provided we make a very clear statement of the fact that ombudsmen are in fact bound by the law, must obey the law, the issue then is to draw attention to the fact that legality covers a narrower concept of social activity than good administration. Ombudsmen use a broader arsenal of weapons, so to speak, to defend the rights of citizens.

The way I put the formula very simply is that whereas by definition any illegal act by a public body is by definition also an act of maladministration, the obverse is not the same – it is entirely possible for a public body to have acted legally and yet to have violated the canons of good administration. So, this is the basic principle on which I have I based this little quip of talking about ‘life beyond legality’.

Another phrase that you are associated with is the ‘culture of service’. How do you think we can go about embedding that culture within public institutions?

A ‘culture of service’ for me implies internalising a code of behaviour, or if you want to use anthropological jargon, adopting mental maps, cognitive maps, through which you see the ombudsman as part of an arsenal of state institutions whose purpose is to be able to imbue the public service with an understanding of its mission as being to serve the citizens.

Again, you’ve got to draw distinctions across cultural traditions. The notion of service to citizens is much more prevalent and much more historically present in the Anglo-Saxon tradition. In the continental tradition, for lots of historical reasons, there is an alternative conceptualisation, which is that the state is there ‘to take care of’ people.

However, it is extremely important to remember that once you enter the realm of democracy then you also talk about citizens, and citizenship, and citizenship implies rights, and citizens have rights – they obviously have obligations as well – and one of their rights is the right to good administration. Good administration should mean that you try to deal with citizens or users of your services in a way that bears out an understanding of that fact that the state exists to serve the citizen and not vice versa, which is not intuitively obvious in all of the countries of the European Union.

Secondly, this ‘culture of service’ implies, again, issues of good administration rather than legality. In other words, being fair, being polite, trying to be friendly towards the citizens – all these kinds of things are not necessarily legal principles but they are part of the principles or the canons of good administration that underscore what I would call a ‘culture of service’.

What has been the impact on good administration of the signing in December 2007 of the Charter of Fundamental Rights?

The Charter of Fundamental Rights was proclaimed by the Presidents of the European Commission, the European Parliament and the Council of the European Union in December 2007 in Nice. It is not a legally binding document, it is, however, a political document. I have taken the view that the institutions which proclaimed it ought to be held accountable to it. Therefore, the European Ombudsman has as of December 2007 applied the Charter in its dealings in complaints with the institutions, and by extension, to all the bodies and agencies of the European Union, and this has not been contested.

The next important step would be the ratification of the Lisbon Treaty. Assuming we do get Irish consent, and we do get therefore, the Treaty ratified, the Charter will become binding on the Member States – legally binding on the Member States when applying Union law. In this context, it’s very important to underscore that European Union law is not law external to the members of the EU, it is part and parcel of the domestic legal order. It forms part of the domestic legal instrument and therefore ought to be applied by the public administration, by the judiciaries, and of course by ombudsmen in their daily dealings.

So the moment the Charter becomes legally binding, assuming the Treaty is ratified, then whenever EU law is applied to a Member State – and there are areas of law where EU law covers huge parts of the law – there the Charter would

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Reaching out to European citizens

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become legally binding. That would also imply that Article 41 of the Charter, which recognises good administration as a fundamental right, will also acquire legally binding qualities.

It will remain for the courts to decide what the real content of a legally binding good administration or principle is, and it would be a very interesting thing for ombudsmen to witness, but I would hazard a guess that the accumulated soft law of ombudsmen will probably serve as an interesting source of inspiration for the courts as they grapple with the issue of how they will define the legal content of good administration. So the Charter, I think, once it becomes legally binding, will open up all sorts of new opportunities for ombudsmen, both at the European level but certainly at the national and regional level of the Member States.

In your Annual Report, you refer to the European Network of Ombudsmen Statement that was adopted in Strasbourg in October 2007. Is it possible to say what difference that initiative is making? No ombudsman can possibly hope to be able to achieve his or her role alone. This is especially the case for the European Ombudsman who is trying to deal with EU law in 27 other states. So the Network is an extremely important instrument for bringing us together, allowing us to share best practice, transfer cases and information back and forth and ultimately to exchange information concerning the evolution of EU law.

The Statement essentially is meant to try and inform citizens of the European Union of the rights that are incumbent upon them, that come from their second citizenship – which is their European citizenship. It is geared to informing citizens in the Member States that as European citizens they have rights and to inform them of how they can make use of these rights under EU law. From that perspective, the Network is extremely important because it is through the Network that information can be disseminated widely. As of next year we will have a powerful interactive guide and an overhauled website of the European Ombudsman, whose purpose will be to try and capitalise on information technologies to be able to make information readily accessible to citizens and thereby empower them to enjoy their rights without excessive intermediation.

How can we best use communication to reach out to the people we have been talking about today, namely the vulnerable citizens? I think we’ve got to be conscious of the fact that an ombudsman has to be imaginative in trying to reach out to a multiplicity of audiences through a multiplicity of instruments. ITC will obviously be very useful for those who have access to the internet or are computer literate, but we should not become complacent or self-satisfied by simply having done that.

In terms of what the European Ombudsman does, I try to reach out to the general public through travels to all the member states (I have travelled to all the 27 Member States, and some of them more than three or four times) and I speak to large audiences of non-governmental organisations, universities, the press and so on. I have also tried to devise a strategy of targeting particular groups, whether the privileged or the vulnerable – I include lawyers, businessmen, and also non-governmental organisations representing minorities.

It is important to be on the lookout for ways in which you can reach out to particular groups that represent vulnerable groups. Mercifully, in our day and age, the vast majority of vulnerable people are, in one way or another, connected into networks, so the challenge is how to identify those networks and reach people through them.

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Editorial Board – Emma Gray (Editor)
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BIOA Chair receives Honorary Doctorate
Emily O’Reilly, the Irish Ombudsman, has been awarded an Honorary Doctorate from the National University of Ireland (for Ombudsman) in recognition of her contribution to public service and human rights. The Ombudsman is pictured at the ceremony on Wednesday, 3 December 2008 with her husband Stephen and children Daniel, Holly, Zoe, Ella and Jessica.