



Ombudsman legislative reform: notes from a roundtable discussion held in Sheffield, 18 January 2019.

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The Ombudsman Legislative Reform Roundtable event brought together lead figures in the ombudsman community, with academics and a selection of stakeholders to the ombudsman, including former complainants and organisations complained about. The aim of the event was to discuss and take forward some of the key principles that should underpin legislative reform and the potential proposals that might be included.

The plan is to publish a short policy-focused collection from the event – ‘The Sheffield Manifesto: a proposal for English Public Services Ombudsman’. This briefing paper summarises some of the key issues that were raised.

A universal right to complain

Right at the end of the event, the idea of a universal legal right to complain was debated. This, it was argued, should be the central premise that should underpin the new legislation. Rather than waiting for new complaint processes to be established or required by legislation, the assumption should be that there is a right to complain unless specifically stated otherwise. This basic premise should have implications for expanding the jurisdiction of the ombudsman sector in several respects, including for instance covering the delivery of public functions by private service providers, such as school academies.

Throughout the day much was said about the difficulties that complainants faced in securing their right to complain. These included:

- The complexity of the complaints maze that needed to be navigated, which too often required a user of interconnected public services (such as in relation to an overall care package) to complain through multiple authorities and complaint routes.
- The delays entailed in obtaining redress.
- The frustrations of the process which meant that for too many the complaint process causes damage in itself.
- Too often complainants began with a desire primarily to see change occurring, and ended with a deeper level of grievance once their complaints are not taken sufficiently seriously.
- The deterrence from complaining experienced by many sections of society.

Simplification, enhanced coordination and signalling within the complaints system was part of the solution – but contributors spoke of the need to find new ways of raising awareness and the importance of culture within public service organisations. Pockets of good practice were cited, but there was a concern that much more needed to be done.

One of the sessions focused on the complainant experience, for which Naomi Creutzfeldt provided a paper. Several themes were explored, including the importance of procedural fairness within complaint systems and the managing of expectations through good communication. A recurring theme, however, was the need for public service providers to see complaints as tools for learning lessons, and for ombudsmen to see an important part of their role as being to encourage the cultures that foster feedback rather than defensiveness.

Another big concern raised was the systematic tendency of complaint processes to favour certain demographics, and to fail other groups, such as vulnerable users, who complain at very low rates.

Expanding the ombudsman's toolkit

Richard Kirkham in his paper made the argument that the next ombudsman legislation was likely to be the last for a long time, hence it was necessary to be ambitious and grant the ombudsman the widest set of powers appropriate for an ombudsman scheme. Whilst there were risks in an ombudsman overreaching their powers or an ombudsman 'going rogue', these could be offset by strong accountability processes and effective scrutiny.

This argument would not be accepted by all. A concern was expressed that some of the language used by ombudsman reformers, such as references to European examples and human rights, might hinder reform initiatives given current political sentiment. It was also noted that an ombudsman would need to be careful not to be seen to be used by rival political groups to enter into areas of political controversy. Further if an ombudsman with expanded power was created, its role as a higher tier complaint handler would have to be protected given the reassurance this role gives lower tier complaint-handlers.

Much of the day was spent debating the nature of potential reforms to the ombudsman sector. Kirkham's paper illustrated the wide range of measures that could be included, many of which related simply to the aged nature of existing legislation, but other proposed measures would involve the acceptance of more novel and creative ombudsman powers.

O'Brien's paper made a powerful case for the ombudsman to be seen as a strong part of the democratic process, rather than simply a mass complaint-handler. The true power of the ombudsman, it was claimed, was its ability to be the catalyst for change in under-scrutinised areas of public service delivery. It was pointed out that the 'English' ombudsman model was very limited compared to its international counterparts. Even the powers of the new Northern Ireland Public Services Ombudsman scheme came with restrictions that restrained the office when compared to elsewhere. An effect of this was to reduce the influence that the ombudsman had when engaging with public service providers.

The big measures for reform centred on the proposal for an own-initiative power of investigation and the duty to operate as a Complaint Standards Authority. Both measures have been introduced in devolved nations, but were rejected by the UK Government when drafting the 2016 Public Services Ombudsman Bill.

Chris Gill's paper brought together the arguments for and against these proposals, and collated the best evidence and research on their influence to date where they have been adopted. Whilst the UK experience in this area is minimal, around the world it is difficult to find any examples of the powers being used irresponsibly by the ombudsman. On the restrictions (including consultation) on the use of the own-initiative power in Northern Ireland, it was noted that this had strong benefits in terms of pre-planning and double checking the merits of the selected area of investigation. On the benefits, it was suggested that the most obvious was the capacity of the ombudsman to intervene in areas where complainants were unable or too vulnerable to complain. But other opportunities were also important, with the Windrush affair cited as an example of a major public administration failing which could not be investigated because no complaints were received by the Ombudsman (the lack of own initiative powers compounded by the impact of the 'MP filter'). Another problem-area arose at the borderline between the ombudsman and other redress mechanisms, where multiple grievances may be partially resolved by a legal process (and hence exclude the role of an ombudsman), yet leave significant systemic maladministration uninvestigated. Difficulties with some of the mandatory reconsideration processes operating in Northern Ireland was cited as an example.

The complaints standard authority role in Scotland was cited as an example where the early evidence was that improvements had been effective. In England it was noted that although the creation within public service providers of a strong internal culture towards complaint handling was key, the guidance



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received already from the ombudsman sector was often very helpful for local complaint handling staff. Might this evidence suggest that a complaints standard authority model would work in England as well?

One final area of expansion might relate to the interconnection between the ombudsman sector, the courts and tribunals. Might more work be done to make more effective the division of labour between the different justice institutions? The ‘double hatting’ approach in the Property Tribunal where both County Court decisions and Tribunal decisions are taken in one place offered one example.

Oversight, scrutiny and accountability

If a more powerful public services ombudsman is to be created for England, then its expanded powers need to be balanced out with an increased focus on scrutinising the work of the office. Kirkham’s paper covered the innovations that had occurred on a non-statutory basis within the ombudsman sector, such as establishing advisory boards and audit committees and made the argument that these should now be recognised in legislation. These innovations include: a duty to publish decisions; an internal right to review; and various duties to report on performance.

Thompson’s paper interrogated the 2016 Bill’s proposal to establish a statutory board for the ombudsman, and to alter the Parliamentary process for overseeing the work of the ombudsman. This paper triggered a healthy debate as to the merits of the Government’s proposal and the benefits of the current corporate sole model. The unintended consequences of the well-intentioned reform were a concern for some, as it might lead to the ombudsman’s independence being compromised by an over-officious Board or through excessive Parliamentary control. Others though noted that in England there had been two recent instances of the traditional corporate-sole model being far too slow to pick up leadership problems within an ombudsman scheme, and that this made the strengthening of the oversight arrangements inevitable. It was noted that it is often the case that ‘reform tends to fight the last battle’. Whether the Bill’s proposals were appropriate participants were unsure, but it was observed that within the wider ombudsman sector there were many different design solutions to consider. It was stressed that regardless of the final design, transparency of decisions and decision making processes was the key to governance and oversight issues. Finally, it was noted that the current Parliamentary relationship with the ombudsman was problematic as the Public Administration and Constitutional Affairs Committee had a difficult, and conflicted, role to play in both scrutinising and supporting the work of the ombudsman.

The future

The Ombudsman Roundtable was a one-off event which brought together a broad audience. It was generally agreed that there remained much merit in the idea of legislative reform in the sector and that further initiatives and interactions were required to build a broad constituency in support of the proposal.