



International Ombudsman Institute
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Parliamentary
and Health Service
Ombudsman

The Art of the Ombudsman: leadership through international crisis

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The title of this monograph is burgled (with kind permission) from Nicholas Lander's classic account, *The Art of the Restaurateur* (Phaidon 2012).

Rob Behrens

Parliamentary and Health Service Ombudsman, Manchester, 6 April, 2021

Parliamentary and Health Service Ombudsman's Executive Summary



By late 2020, COVID-19 had claimed 1.8 million deaths worldwide¹ and raised fundamental questions about public health and security, the delivery of public and health services, the policing of and access to national borders, civil liberties and the suspension of fundamental freedoms. The primary aim of Ombudsman Offices is to safeguard public and human rights. They are therefore directly involved in and affected by the pandemic and its consequences as they endeavour to help citizens whose lives have been affected.

We carried out a survey among the international Ombudsman community to find out what leadership challenges they were facing as a result of the COVID-19 crisis and other crises going forward. This study is based on questionnaire returns from 53 Ombudsman schemes in 37 different countries representing 24% of International Ombudsman Institute (IOI) members. The returns come from a diverse range of organisations across a number of continents, and the results are therefore based on a broad cross-section of the Ombudsman community at national and sub-national level.

Ombudsman successes to emerge from the pandemic

As a snapshot of how Ombudsman schemes confronted the pandemic in its formative stages – an unprecedented series of events across the world – the results suggest a number of successes but also some causes for concern.

First, with regard to success, there has been clear and demonstrable learning gained through the experience of running organisations during the pandemic. Ombudsman leadership has been largely resolute, flexible and adaptive throughout the crisis, and has drawn on networks like the International Ombudsman Institute and the Network of the European Ombudsman to consult and exchange views and experience. Although rooted in a participative style, Ombudsman leadership approaches have necessarily become more directive but also more empathetic when dealing with the challenges of remote working. Approaches have also been defiantly pragmatic in getting on with the business of complaints resolution and public policy improvement.

¹WHO Coronavirus Disease (COVID-19) Dashboard, World Health Organisation, 31 December 2020, <https://covid19.who.int/>

There has been no recourse to waving an illusory magic wand.

Secondly, there is evidence of decisive action by Ombudsman schemes to contribute to learning about the impact of the pandemic via the use of 'own-initiative' powers. These entitle schemes to launch investigations where there is public interest but no individual complaint. Most responding organisations (87%) are able formally to conduct inquiries on their own initiative, and many have done so in direct response to matters arising over the course of the pandemic.

Examples of this include investigations into:

- multiple financial irregularities relating to procurement and expenses by members of the Presidential Taskforce dealing with the COVID-19 pandemic (Malawi)
- the experience of disabled people during the COVID-19 emergency (New Zealand)
- policies and practice related to visiting residential care homes (Slovenia)
- the lack of legally required training for staff in special care homes (Estonia)
- member state Governments use of EU funds against the background of COVID-19 to promote independent living for people with disabilities and older persons, and transitioning away from residential care institutions (European Union)
- the consequences for inmates and residents of the attempt to keep COVID-19 out of prisons and half-way houses (Denmark)
- policing of borders and immigration rights (Finland)
- administration of homelessness by local authorities (Wales).

Almost all respondents agreed that Ombudsman organisations should have 'own-initiative' power. And many of those with this existing power who have not yet launched investigations intend to do so. The common theme that ties these areas of investigation together is the manner in which vulnerable individuals have been treated throughout the crisis. For the small minority of schemes without own-initiative powers (mostly in the United Kingdom), contributions to learning from the pandemic have been constrained by the delay in receiving individual complaints (which have to go to front-line bodies first) and the need to process these complaints individually before coming to a systemic view. Where Governments have also been Delphic about the arrangements for public inquiries into the pandemic, this is a lost opportunity for learning.

Thirdly, of the 52 respondents,² only 4 per cent have roles and responsibilities that are governed neither by legislation nor by constitutional rules. This governance is largely consistent with the recommendations of the Venice Principles on the Protection and Promotion of the Ombudsman Institution³ and emphasises the constitutional legitimacy of Ombudsman institutions in administrative justice systems.

²NB: one questionnaire was received too late for inclusion in the analysis. Although 53 were received, the analysis in this study is limited to 52 submissions.

³[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)

Causes for concern to emerge from current research - the heightening of existing challenges after COVID-19

With regard to causes for concern, the Venice Principles also state that: ‘the procedure for selection of [Ombudsman] candidates shall include a public call and be public, merit-based, objective, and provided for by the law’.⁴

In terms of how individuals who completed the questionnaire came to be in their roles, the majority (54%) were appointed via a process of open competition. 21% were appointed solely by invitation and the remainder (25%) went through a mix of the two. The appointment of some individuals has therefore, historically, been inconsistent with the guidance now set out by the Venice Principles. If the number of people not appointed on the basis of fair and open competition were to grow, this would constitute something of a threat to the legitimacy of the Ombudsman institution where independence is a *sine qua non*.

Has the pandemic changed the strategic challenges facing Ombudsman schemes? Schemes have certainly had to grapple with remote and flexible working. They have also had to respond decisively and sympathetically in countries where public services (especially hospitals and social care facilities) have needed to prioritise their core activities throughout the pandemic rather than expend resources on complaint handling. For some schemes covering health and social care provision where the pandemic has struck prodigiously, this has meant a temporary suspension of Ombudsman investigatory activities.

However, when asked to set out the key challenges at the height of the first wave of the pandemic, the responses of those involved in this research are recognisable to anyone familiar with the operational challenges faced by the Ombudsman community in the last ten years: the public’s lack of knowledge and understanding of the Ombudsman’s role; lack of appropriate resource; meeting expectations of service users; and having an outdated or restricted mandate. It is as if these issues – particularly access to vulnerable groups – have been heightened rather than changed fundamentally by COVID-19. The only significant addition is ‘disruption from national or international crises’, something obvious given the time and circumstances of the survey and the onset of the pandemic. Here, there are a small number of examples of populist Governments using the cover of the pandemic to curb civil liberties and rights.

With regard to public understanding of the Ombudsman’s role, a common concern from respondents is the public’s apparent lack of appreciation that the Ombudsman is ‘not an advocate for individuals but an advocate for fairness’.⁵ Respondents also noted that there can be confusion about what the Ombudsman can and cannot do. In addition, lack of appropriate resourcing is a major challenge for most Ombudsman Officers. In an extreme case, the resources allocated to the relevant Office barely covered administrative costs and prevented the appointment of qualified staff. Lack of funding has also resulted in schemes being unable to finance the publication of investigation findings and conclusions, or to develop outreach work.

⁴Venice Principles, principle 7, page 4

⁵A much-used phrase, which originated from the Office of the Ombudsman, Ontario, Canada

A third of respondents selected ‘meeting the expectations of complainants and service users’ as their first or second most challenging issue. This is closely tied to the difficulty with which schemes struggle to reach those who are most vulnerable in society and typically belong to disadvantaged or underprivileged groups. The paradox that those who are most in need of assistance are also the least likely to seek it out (or even be aware of the services available to them) persists in much of the Ombudsman world.

A quarter of respondents selected their organisation’s mandate not being wide enough as a significant challenge. Respondents also reported problems with overlapping mandates, notably in Cyprus, where the Ombudsman explained that the independence of the institution had been under threat from another public institution. There are also significant challenges around human rights abuses. In the last few years, national Ombudsman Officers have come under pressure and attack for championing human rights issues in a number of countries, including Slovakia, Poland and Pakistan. In Poland, the Ombudsman came under unremitting attack for his principled defence of human rights undermined by a populist Government. The submission from the Mexico City Human Rights Commission (MCHRC) came in the context of chastening and systemic human rights violations in Mexico. These include violations committed by security forces – extra-judicial killings, torture, enforced ‘disappearances’ and abuses against migrants. They also include recent murders of human rights defenders and abuse concerning sexual orientation, gender identity and disability.

Organisational values, personal skills and attributes

The organisational values, personal skills and attributes that Ombudsman Officers found most difficult to deliver in their own organisations were, in essence, mirror images of the strategic challenges described above. Over half of respondents said that user accessibility is the most difficult to deliver in their organisation. The general context is that: ‘The [Ombudsman] institution is not well enough known amongst society. We need to find ways to reach the most vulnerable.’⁶ This is not easy, because the most vulnerable include culturally, religiously and linguistically diverse groups and others (for example, refugees and asylum seekers) who may also be disadvantaged. Strategies to address these issues include outreach work, the application of new technologies to reach people remotely and the construction of more diverse workforces capable of reaching and communicating with the communities they serve. The success of these strategies is partly dependent on having the necessary resource (both financial and non-financial) to reach out. It is also dependent on having a mandate that facilitates reaching out through, for example, the ability to conduct own-initiative investigations.

Ombudsman Officers understand the importance of transparency. It exists ‘so that all your decisions are clear to everyone and accessible’.⁷ However, achieving transparency was judged difficult for more than a third of Ombudsman organisations (37%, n=19) because of competing priorities. There is a balance to be struck between delivering transparency alongside the inherently confidential nature of the investigative work that Ombudsman services are involved in. The benefits of publishing information arising from casework are clear. Most importantly, publication can be used as a means by which to highlight the core functions of the Ombudsman – delivering justice for individuals and groups, drawing attention to systemic issues and leveraging positive change. However, doing this

⁶Sindic de Greuges de Catalunya, Spain

⁷Integrity and Anti-Corruption Commission, Jordan

raises a number of issues including: the complexity and restriction of the legal structures governing Ombudsman activities; the sometimes arcane nature of the subject matter involved in case resolution, which can inhibit effectiveness of disclosure; and that the commitment to transparency is a cultural challenge often requiring a radical disposition.

Independence is, of course, essential to Ombudsman practice. It was selected by a fifth of respondents as the organisational value most difficult to deliver. There is often an uneasy co-existence between being independent in terms of constitutional rules on the one hand and not being financially or politically independent on the other. This juxtaposition is reported by African respondents but is not confined to that continent. In one sub-Saharan African country, for example, although 'the Constitution guarantees the independence of the Ombudsman, its links to the Ministry of Justice for budgetary and administrative purposes affect its independence'.⁸

Regarding personal skills and attributes, half of respondents thought 'being an effective manager of change' was the most difficult to deliver in their organisation. This is an emphatic sign of the turbulent times Ombudsman Officers live in. The reasons given for this can be grouped under three main categories: politically related, culturally related, and resource related.

Ombudsman Officers are constrained politically by their accountability to Parliament and (through legislation) the external determination of their goals and oversight of financial management. As far as cultural factors are concerned, several respondents pointed out that staff in their organisation had been in post for many years and can be steeped in the traditions and conservatism of civil service bureaucracy. Further, promotion to management is often on the basis of case-handling competency rather than wider management skills, which can be a further impediment to change. Clearly, Ombudsman institutions need to be agile and adapt constantly to societal developments and the needs of citizens in order to remain relevant. To do this there has to be acceptance that 'change is a constant and is often resisted by staff'.⁹ There also has to be acceptance of the importance of investment in skilled, adept management capable of articulating a vision of what the Ombudsman service wants to be, and a realistic plan for delivery. None of this is easy or formulaic – being an Ombudsman is an art not a science – especially where resources are scarce or limited and thereby reduce the possibility of effective management of change.

Over a quarter of respondents selected 'understanding the political scene' as being difficult to deliver in their organisation. This challenge can be acute in areas where there is a particularly complex, fractured and challenging political environment, sometimes complicated by the impact of war and refugees in crisis, or where there is rapid legislative change to suit political agendas without regard to the public interest. Of course, respondents to the survey found that an involvement in the prevailing political backdrop is inevitable given the constitutional position of the Ombudsman Office as a state organisation, the funding structures of Ombudsman organisations, which often depend upon the allocation of state finance, and the very nature of the citizen-focused work they are involved in. However, if political engagement cannot be avoided, it must be managed with skill and discretion. A balance therefore needs to be struck between developing sustainable dialogue and long-term relations with political stakeholders without being tied to the party-political ambitions of ministers and politicians, as this could lead to compromised independence and impartiality of Ombudsman schemes.

⁸The Ombudsman of Namibia

⁹Victorian Ombudsman, Australia

Empathy with complainants and disadvantaged groups was found to be challenging for a quarter of respondents. Displaying empathy with complainants and disadvantaged groups was seen as essential ‘because they are considered the weaker party and they have no hand in this’.¹⁰ However, as with other practices of the Ombudsman, demonstrating these skills and attributes can sometimes feel in tension with the Ombudsman’s need to be impartial and objective. Staff can become ‘case-hardened’ and at risk of focusing on formality and procedures to the detriment of acknowledging the traumatic events that a complainant may have experienced. The results from our survey suggest that this situation is particularly prevalent for organisations operating where health and social care issues are included within or alongside the public service mandate. Nonetheless, leaders need to be aware that getting the balance between empathy and objectivity right is a key issue and ‘is vital where many of our complainants are bereaved or traumatised or both’.¹¹

Finally, there was an essential need to manage stress and to be resilient. Most Ombudsman respondents see stress as part and parcel of being an Ombudsman. The emerging consensus is that it can’t be eliminated. The degree of stress is determined by a number of factors such as the nature and range of issues investigated, which can involve distressing accounts of violence, abuse or bereavement. They also include public bodies that can challenge Ombudsman schemes remorselessly, media scrutiny, pressures related to workload and availability of staff resources, and the requirement to process casework within fixed timescales.

The disposition of complainants themselves can also heighten the challenges of investigations in that their experience can lead to feelings of being ‘angry, disillusioned and sometimes downtrodden’.¹² Many complainants have been through traumatic events, in some cases experiencing bereavement. Occasionally some are described as ‘vexatious’ or in the new parlance ‘querulous’. Inevitably, some complainants can appear ‘difficult’ and what one Ombudsman calls this ‘idiosyncrasy’¹³ is stressful to staff. In any event, there is unanimity that complainants need to be treated with respect and courtesy.

An associated challenge is being resilient. For one experienced Ombudsman, stress and resilience are ‘two sides of the same coin: increased stress impacts on resilience; reducing resilience impacts on stress levels’.¹⁴ She distinguishes between personal and organisational resilience. While personal resilience can be eroded by the increased pressures on staff, organisational resilience can be undermined by lack of resources for succession planning and investment for change. All this can be debilitating, especially where there is a lack of, or limited experience in, stress management. There is also a hint of fatalism and weariness in some of the responses concerning these issues.

Towards the ‘Manchester Memorandum’ and further professionalism in Ombudsman schemes

Most respondents were clear that they had had to develop or change their predominantly participative leadership styles in light of the pandemic’s impact on their Offices’ work. First, there was acceptance that remote working required new norms and expectations since face-to-face

¹⁰Integrity and Anti-Corruption Commission, Jordan

¹¹Parliamentary and Health Services Ombudsman, UK

¹²Joint Office of Citizen Complaints for Dayton and Montgomery County, Ohio, USA

¹³The Greek Ombudsman, Greece

¹⁴Scottish Public Services Ombudsman, UK

engagement was much harder, and there was a need to learn new ways to engage and communicate. Secondly, there was a move towards a more empathetic approach towards staff colleagues in light of the dislocation and uncertainties now dominating the scene. This empathy was part of a wider change in the way in which Ombudsman leaders communicated with their staff.

There is another paradox here that respondents were not slow to grasp. On the one hand, the constraints of remote working (notwithstanding necessary refinements in on-line communications) required a more directive style. Decisions such as changes to policy had to be taken without the level of consultation that would normally take place. On the other hand, alongside the directness came an appreciation that remote working also meant the need for trust and relative autonomy for case handlers. Where leaders ended on the continuum from directness to being delegative varied, but for one Ombudsman it led to the development of 'a more permissive and empowering style'.¹⁵

In light of the challenges and significant changes faced by Ombudsman schemes, the conclusion of this study (chapter six) sets out an outline strategy (The Manchester Memorandum) for developing the professional status of Ombudsman Officers and schemes, with a focus on comparative learning and collective action. There are five elements to this strategy and they all involve use of the Venice Principles to guide a change in behaviour and practice, and the powerful network of the International Ombudsman Institute to structure it.

First, in the wake of declining public trust in state institutions, the IOI has recently encouraged its member organisations to use peer review as an important supplement to formal accountability mechanisms. Having already disseminated helpful guidance on how to conduct peer reviews, it should now recommend all members, wherever possible, to commission quinquennial five-yearly peer reviews using the Venice Principles as a guide and a benchmark.

Secondly, it is recommended that to give further authority and independence to the peer review process, Regional Boards of the IOI advertise and then construct and validate lists of approved peer reviewers. These approved peer reviewers would then be available to undertake peer reviews at the invitation of individual member schemes. Additional guidance about how to introduce this process has now been disseminated.

Thirdly, the parallel availability of the Venice Principles and five-yearly peer review opens up the possibility of the IOI emulating – in due course – the successful practice of the Global Alliance for National Human Rights Institutions (GANHRI) in benchmarking National Human Rights Institutions (NHRIs) against the Paris Principles.¹⁶ General observations and graded status (A, B or C) on the extent to which members have implemented the Paris Principles constitute guidance for NHRIs on their accreditation with GANHRI and on the implementation of the Paris Principles. They are 'also useful for NHRIs to press for the institutional changes necessary to fully comply with the Paris Principles'.¹⁷ There is now a real opportunity for the IOI to use peer review in similar fashion – with minimum bureaucracy – devising a mechanism that reports IOI member progress in implementing the Venice Principles and also creates supportive evidence for the member to press its national Parliament for development of its mandate and governance.

¹⁵Police Ombudsman for Northern Ireland, UK

¹⁶<https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

¹⁷<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/SCAGeneralObservations.aspx>

Fourth, thought-through and comprehensive management development strategies are essential to help ensure effective working. They are also necessary to support the preferred leadership styles of Ombudsman leaders. Given the diversity in size, function, mandate, resource and political culture of the respondent institutions in this study, it would be unrealistic to hope to discover a unity in the content, scope and form of delivery of development offered. There are particular concerns about smaller schemes with resource constraints and no access to international donors, which have limited access to professional development. This issue of focused continuing professional development is a key test for the gradual professionalisation of Ombudsman schemes, their case-handlers, managers and leaders. To its great credit, the IOI, alongside national Ombudsman associations and universities, has offered and conducted relevant training and development for members since at least 2011. It should now consult on the development of an accredited continuing professional development scheme constructed against competences drawn from the Venice Principles.

Fifth, is the need to develop strategies for reaching vulnerable citizens or aspiring citizens beyond the usual user groups of Ombudsman service users. The utility of the Ombudsman depends upon the effective complaint resolution, the promotion of better public policy, and demonstrating relevance and reaching out to those who are vulnerable and marginalised and have nowhere else to turn to. Being an Ombudsman is a challenging art, not a dismal science. These activities require investment, renewal, oversight and continuous exchange.

Sixth, and finally, noting the emphasis in the Venice Principles on the Ombudsman as ‘an important element in a State based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good administration’ it is important that the human rights and fundamental authority of the institution is not undermined by its ‘brand’ name ‘Ombudsman’. In chapter one we set out the highly contested debate between those who argue that ‘Ombudsman’ is an out-of-date gendered term, and those who argue that etymologically ‘Ombudsman’ is a literal translation from the original Norse without reference to or implications of gender bias. If at all possible, the IOI needs to resolve this issue by encouraging debate, taking the views of its members and acting upon those views.

Whether the proposals above – The embryonic Manchester Memorandum – are sufficient to meet the needs of a cadre under pressure is a good question. But the pandemic, eloquently described as ‘like the shadow of a great mountain’,¹⁸ will pass. Change is in the air. It is time to prepare.

Rob Behrens

Parliamentary and Health Service Ombudsman

¹⁸Adam Bodnar 2020 summary <https://wiadomosci.onet.pl/tylko-w-onecie/pandemia-jak-cien-wielkiej-gory-adama-bodnara-podsumowanie-2020->

Foreword by the President of the International Ombudsman Institute

Peter Tyndall

As an Ombudsman, Rob Behrens has consistently sought to learn from others and to share the learning of his own organisation. He has done so in part by active participation in Ombudsman networks, not least the International Ombudsman Institute (IOI). He has been a leading exponent of peer review, and led the work culminating in the IOI Best Practice Paper and seminar, as well as instigating a peer review of his own Office and leading another.

The latest manifestation of Rob's commitment to learning is this survey and its analysis. It comes at a seminal moment for us all, as the nations of the world grapple with COVID-19. Our Offices have been highly active in maintaining our oversight of public services at a time when the people of our countries rely more heavily on them than ever before. Ombudsman Offices are making sure that the most vulnerable can continue to access services, while seeking to ensure that there is no discrimination.

All of this work is taking place against a background where we too have had to address the challenges of the pandemic. Many of us have continued to provide our services while working remotely, and our networks have been maintained through video and teleconferencing.

The survey focuses in part on leadership, and this is highly significant. The Office of Ombudsman is a personal one. We each bring our individual approach to our role. As leaders of our organisations, we set the tone for the work. We need to embody the values which underpin our investigations. We have to lead, support and motivate our teams. We are the public face of the work also, and must be able to influence decision makers and politicians.

The survey shows how the Ombudsman community has adapted to maintain its effectiveness in the face of the current challenges. It reflects a determined, nimble profession committed to ensuring fairness for all of the people in our communities. The individual examples, as ever, are inspiring and bring the text to life. One observation by a Canadian colleague will stay with me for a long time. It describes the role of the Ombudsman not as an advocate for the individual but as an advocate for fairness. This is a very succinct description of the core work of the Ombudsman.

The survey has been framed in part by reference to the Venice Principles. By looking at the responses on particular issues and taking into account the age of the legislation governing our Offices, a case emerges for review and updating. There is overwhelming support for the inclusion of own-initiative powers for instance, in line with the Principles.

Finally, the survey focuses heavily on the challenges facing our Offices. These range from inadequate resourcing to difficulties in accessing necessary information. Colleagues report on having new responsibilities without the necessary resources, of having difficulty in achieving compliance with their recommendations and of the lack of a comprehensive jurisdiction. Ultimately, the survey reveals an institution which has achieved much, but which needs support and resourcing in order to operate at its full potential across the globe.

The survey is a very valuable contribution to the debate on the future development of the Ombudsman. Our thanks are due to Rob and his colleagues for giving us such substantial food for thought and for banishing any complacency. There is much for all of us to do in ensuring that people everywhere can access an institution which will vindicate their rights and hold their public services to account.

List of contributing organisations by country

- **Albania** (The People's Advocate Institution)
- **Australia** (1. Office of the Commonwealth Ombudsman 2. Ombudsman South Australia 3. New South Wales Ombudsman 4. Queensland Ombudsman 5. Victorian Ombudsman 6. Western Australian Ombudsman)
- **Bahrain** (The Ombudsman Office of the Ministry of Interior)
- **Belgium** (The Federal Ombudsman)
- **Canada** (1. Hydro One Ombudsman 2. Ombudsman Ontario 3. Ombudsperson of British Columbia 4. Veterans Ombudsman)
- **Cayman Islands** (Ombudsman Cayman Islands)
- **Cook Islands** (National Ombudsman)
- **Cyprus** (1. The Commissioner for Administration and Protection of Human Rights 2. Yuksek Yonetim Denetçisi Dairesi)
- **Czech Republic** (Public Defender of Rights of the Czech Republic)
- **Denmark** (The Parliamentary Ombudsman)
- **Ethiopia** (Ethiopian Ombudsman Office)
- **Faroe Islands** (Løgtingsins umboðsmaður)
- **Finland** (Parliamentary Ombudsman of Finland)
- **Gibraltar** (Public Services Ombudsman Gibraltar)
- **Greece** (The Greek Ombudsman)
- **Iceland** (The Althingi Ombudsman)
- **Indonesia** (Ombudsman of the Republic of Indonesia)
- **Ireland** (Ombudsman of Ireland)
- **Israel** (Israel State Comptroller and Ombudsman)
- **Italy** (1. Aosta Valley Ombudsman 2. Tuscany Region Ombudsman)
- **Japan** (The Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications)
- **Jordan** (Integrity and Anti-Corruption Commission)
- **Kosovo** (Ombudsperson Institution of Kosovo)
- **Malawi** (Office of the Ombudsman)
- **Malta** (Parliamentary Ombudsman)

- **Mexico** (Comisión de Derechos Humanos de la Ciudad de México)
- **Namibia** (Ombudsman, Namibia)
- **Netherlands** (National Ombudsman)
- **New Zealand** (Parliamentary Ombudsman)
- **Pakistan** (Provincial Ombudsman Secretariat Khyber Pakhtunkhwa)
- **Republic of China** (The Control Yuan)
- **Senegal** (Le Médiateur de la République)
- **Slovenia** (Human Rights Ombudsman of the Republic of Slovenia)
- **South Africa** (Western Cape Police Ombudsman)
- **Spain** (1. Ararteko, Ombudsman for the Basque Country 2. Síndic de Greuges de Catalunya)
- **UK** (1. Northern Ireland Public Services Ombudsman 2. Parliamentary and Health Service Ombudsman 3. Police Ombudsman for Northern Ireland 4. Public Services Ombudsman for Wales 5. Scottish Public Services Ombudsman 6. The Local Government and Social Care Ombudsman for England)
- **USA** (Joint Office of Citizen Complaints for Dayton and Montgomery County, Ohio)

Introduction

This study constitutes the second and final report on a piece of work conceived in 2019 and developed in light of the onset of the COVID-19 pandemic in 2020. It was led by the Parliamentary and Health Service Ombudsman in the United Kingdom, with support on survey design from the University of Glasgow, and with dissemination and return through the International Ombudsman Institute. An interim report was published in October 2020 under the title *The Ombudsman, coronavirus and crisis management*. An interim report.¹⁹

Although the calendar year 2020 was a challenging one for Ombudsman schemes and their users, one positive feature was the endorsement of the Principles on the Protection and Promotion of the Ombudsman Institution ('The Venice Principles') by the United Nations General Assembly in December 2020.²⁰ This means that the Principles now have international status and constitute benchmarks for Ombudsman schemes around the world. This study draws on the Venice Principles to measure the success with which schemes are meeting the challenges thrown up by the COVID-19 pandemic.

The Venice Principles are supported by the Venice Commission's Opinions on the legal frameworks for the operation of the Ombudsman institution, in relation to a number of countries where there have been challenges to Ombudsman independence, mandates and competence.²¹ Public sector organisations face a number of challenges in the early 21st century and the Ombudsman community is no exception to this. Ombudsman organisations seek to preserve and protect the rights of the populations they serve. This study outlines some of the specific challenges faced by Ombudsman schemes and details how effective functioning can sometimes be compromised by a range of differing pressures made more acute by the impact of the COVID-19 pandemic.

The findings are based on responses from the leaders of 53 Ombudsman organisations across 37 different countries. They were gathered via an online questionnaire. The questionnaire was designed by PHSO with assistance from a graduate intern from Glasgow University. It was disseminated by the International Ombudsman Institute to its members and was live for three weeks from 5 June to 26 June 2020. The questionnaire was designed to elicit responses focusing on leadership challenges faced by the Ombudsman community in the prevailing COVID-19 crisis and other crises going forward. Following the publication of the interim report in October 2020, further research was undertaken to document Ombudsman responses to the continuing pandemic.

The conclusion (chapter six) sets out the draft Manchester Memorandum with suggestions for how the international Ombudsman community can entrench the lessons learned from the pandemic and utilise the Venice Principles to further professionalise operation, practice and communication.

¹⁹<https://www.ombudsman.org.uk/publications/ombudsman-coronavirus-and-crisis-management>

²⁰<https://www.theioi.org/ioi-news/current-news/webinar-on-un-resolution-on-the-role-of-ombudsman-and-mediator-institutions>

²¹https://www.venice.coe.int/WebForms/pages/?p=02_Ombudsmen&lang=EN The Commission has issued Opinions about Armenia, Azerbaijan, Bosnia and Herzegovina, Kazakhstan, Kosovo, Luxembourg, Malta, Montenegro, the Republic of Moldova, Serbia, Republic of North Macedonia and Tunisia.

Chapter one:

The Ombudsman world in the early 21st century

Introduction

This chapter provides a contextual background to the individuals and organisations that contributed to this comparative research. In total, 53 contributions representing organisations from 37 different countries were made. The range of countries involved provides assurance that the research captures a comprehensive overview of the similarities and differences in challenges being faced by the Ombudsman community globally.

The Venice Principles (Principles on the Protection and Promotion of the Ombudsman Institution) were published by the Venice Commission of the Council of Europe (the European Commission for Democracy through Law) in March 2019 and were endorsed by the Council's Committee of Ministers in Strasbourg in May 2019. They are designed to help protect and promote Ombudsman institutions, which are recognised to 'have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms'. They cover good practice relating to appointment and removal, constitutional status, mandate, scope and powers, access, independence and budget.²² These Principles are referred to throughout this study, both as a benchmark for good practice and to identify responding organisations' current adherence to the Principles.

Since the survey was disseminated, the Kingdom of Morocco and 91 co-sponsor and additional co-sponsor nations prepared a final revised draft resolution adopted by the United Nations General Assembly on 16 December 2020. This strongly encourages Member States to adopt the Venice Principles.²³

The Resolution acknowledges the long history and important role of independent Ombudsman institutions in protecting human rights and fundamental freedoms, and promoting good governance by 'addressing the imbalance of power between the individual and the providers of public services'.²⁴ It 'strongly encourages' Member States to strengthen or endow Ombudsman institutions with 'a broad mandate across all public services, [and] necessary powers to ensure they have the tools they need to select issues to investigate'. This includes investigation of matters on their own-initiative "where provided for by national legislation".²⁵ There is also encouragement to develop appropriate outreach activities at the national level to raise awareness of the Ombudsman institution. The Resolution recognises: 'it is the right of each State to choose the framework for national institutions, including the Ombudsman and mediator ... in order to promote human rights in accordance with international human rights instruments'.²⁶

²²Principles on the Protection and Promotion of the Ombudsman Institution ('The Venice Principles'), adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019) endorsed by the Committee of Ministers at the 1345th Meeting of the Ministers' Deputies, Strasbourg, 2 May 2019. CDL-AD(2019)005 3 May 2019, p.3.

²³United Nations General Assembly, Resolution adopted by the General Assembly on 16 December 2020. 75/186 The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/373/10/PDF/N2037310.pdf?OpenElement>

²⁴Ibid, p.2.

²⁵Ibid, p.4

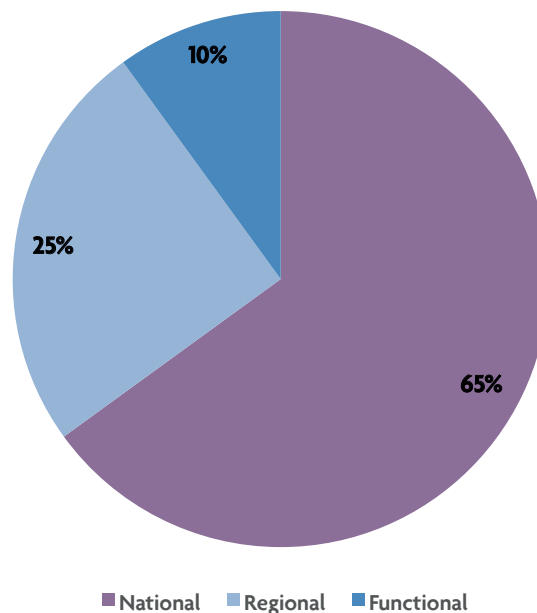
²⁶Ibid, para 2(g), para 3, p.4

Breakdown of different organisation types

The structure and jurisdiction of Ombudsman organisations vary markedly, depending on location and political culture. Of those contributing to this research, the majority (65%, n=34) have national coverage, a quarter (25%, n=13) are regionally based and a minority (10%, n=5) have functional responsibilities (that is, for an area of public administration).

Such differing mandates and approaches are acknowledged by the Venice Principles, which state that: 'The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competencies'.²⁷

Figure 1: Contributing organisation types



Of the 52 respondents,²⁸ only two (4%) have roles and responsibilities that are governed neither by legislation nor by constitutional rules.²⁹ This emphasises the constitutional legitimacy of Ombudsman institutions in administrative justice systems, something belied by the phrase 'alternate' dispute resolution.

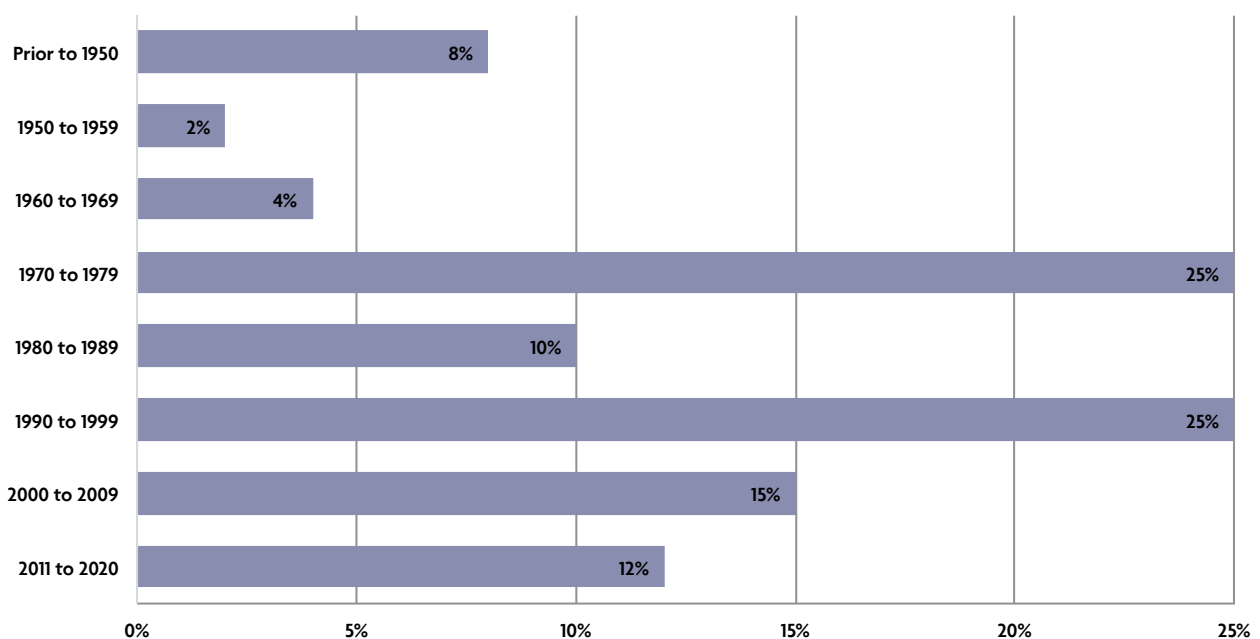
²⁷Venice Principles, principle 4, page 4

²⁸NB: One questionnaire was received too late for inclusion in the analysis. Although 53 were received, the analysis in this study is limited to 52 submissions.

²⁹This is largely consistent with the recommendations of the Venice Principles: 'The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level', Principle 2, page 3.

As the chart below indicates, a large number of the contributing Ombudsman schemes have been in existence for many years. In some cases, these schemes operate today under the same legislative/constitutional rules that were established when the schemes were founded. Sometimes the rules have failed to keep pace with recent societal changes, changing demographics or technological developments. For example, the Police Ombudsman, Northern Ireland points out that: ‘the current legislation is out of date and has not kept pace with other police oversight regimes in the UK and Ireland’.³⁰ In this vein, the Ombudsman for the Basque Country commented that there is a ‘need to update legislation and rules governing the Ombudsman and its procedures’.³¹ Similarly, the Parliamentary and Health Service Ombudsman, UK, points out that: ‘we are hampered by outdated legislation’.³²

Figure 2: Founding year of contributing organisations



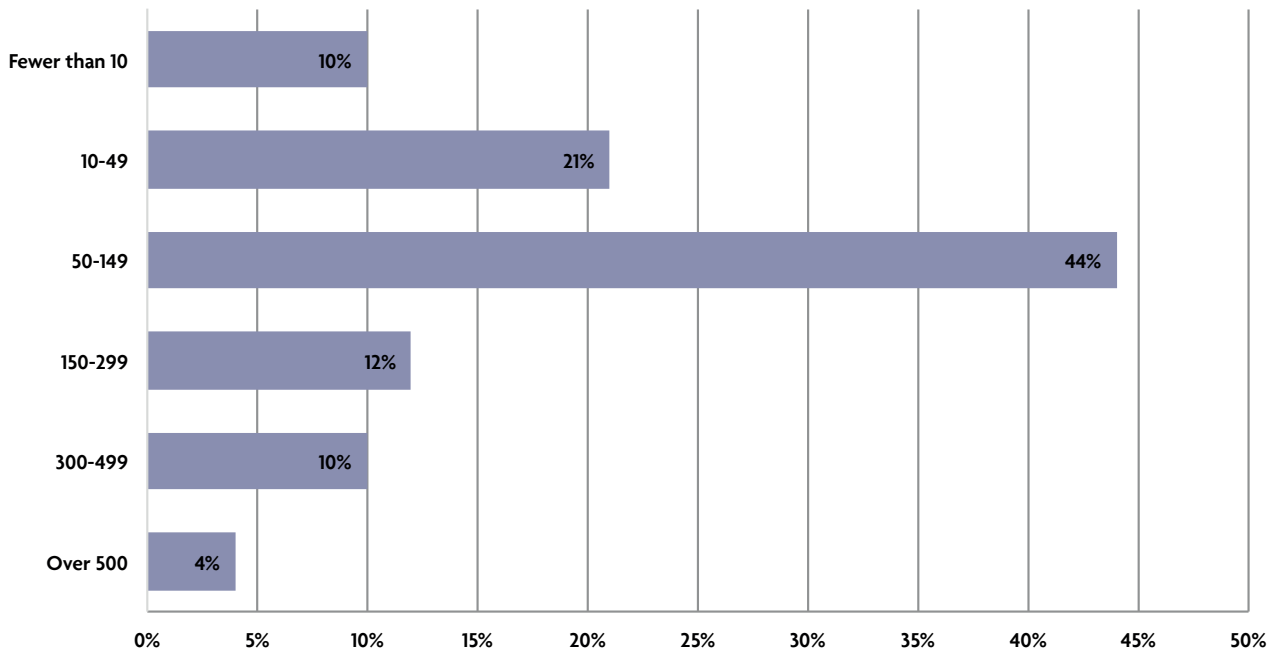
Ombudsman institutions have long been part of the fabric of accountability. As Figure 2 illustrates, 74% (n=38) of institutions in our survey were established in the 20th century and 39% (n=20) before 1980. The vast majority (83%, n=43) of Ombudsman leaders act as the Accounting Officer for their respective schemes so that they have responsibility to the national legislature for the spending of their organisation’s budget. This underlines the point made by Peter Tyndall in his Forward that the Office of Ombudsman is a personal one. Given that most of the organisations in our survey have staffing levels of over 50 (see Figure 3), the personal budgetary responsibilities and importance of appropriate resourcing are considerable. A minority of respondents report to a non-executive board within their organisations (21%, n=11).

³⁰Police Ombudsman for Northern Ireland, UK

³¹Ararteko, Ombudsman for the Basque Country, Spain

³²Parliamentary and Health Service Ombudsman, UK

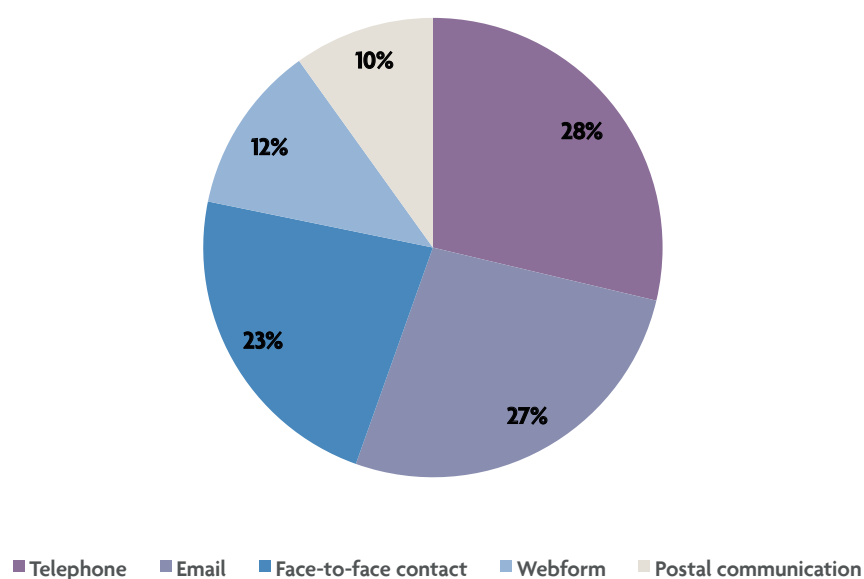
Figure 3: Size of workforce in contributing organisations



70% (n=36) of the institutions in our survey have a workforce of 50 or more, and 26% (n=13) have a workforce of 150 or more. This emphasises the importance of providing coherent training and development programmes not only to produce a capable and competent workforce, but also to move Ombudsman Officers towards the status of a profession. All contributing organisations offer their staff at least some training and development and the majority (79%, n=41) provide this through a mix of in-house delivery and external training. Although training is essential to the development of a competent and successful workforce, it comes at a financial cost and is another consideration that needs to be factored in by those who act as Accounting Officer for their organisations.

In terms of how the organisation communicates with service users, Figure 4 shows that telephone calls still generate the highest volume of inquiries and complaints (29%, n=15). This is followed by email (27%, n=14). For a sizeable proportion of respondents (23%, n=12) face-to-face meetings remain a common mode of communication. This is particularly the case for organisations based outside Europe and North America. The use of modes of communication which take advantage of more modern technology (that is, webforms) is still in the minority (12 percent, n=6). This means that moves to remote working as a result of COVID-19 are likely to have a differential impact on the disruption caused to individual schemes (see chapter two).

Figure 4: Mode of communication which generates the most inquiries/complaints



Is ‘Ombudsman’ a gender biased term?

15 women (29%) and 37 men (71%) completed the questionnaire.³³ Male respondents outnumbered female respondents across all continents with the exception of North America, where five of seven respondents were female. Discussion of gender breakdown raises the sensitive issue of terminology. Is ‘Ombudsman’ an out-of-date gendered term or etymologically a literal translation from the original Norse without reference to gender bias?³⁴ Proponents of the former view have noted that: ‘titles of office, that presume maleness as the norm (‘chairman’, ‘policeman’ etc) have an impact on the context of underlying gender bias in society and women’s lack of representation in public roles’.³⁵ By contrast, the Ombudsman of Western Australia has referred to the term Ombudsman

³³At the time of the questionnaire the Federal Ombudsman of Belgium was led by a two-person board headed by a man and a woman. Their response to the questionnaire has been coded as being from a woman.

³⁴Norwegian higher education Ombudsman quoted in Rob Behrens, Being an Ombudsman in Higher Education: A Comparative Study, European Network of Ombudsmen in Higher Education, Vienna, 2017, pp16-17. <http://www.enohe.net/wp-content/uploads/2017/06/Being-an-ombudsman.pdf>

³⁵Varda Bondy and Margaret Doyle, ‘Manning’ the Ombuds barricades’, Ombuds Research: Studying the work of Ombudsmen and women complaint handlers, 9 June 2015, <https://ombudsresearch.org.uk/2015/06/09manning-the-ombuds-barricades/>

as ‘increasingly popular because it is a unique and trusted brand name, a name that connotes impartiality, fairness, integrity and independence’.³⁶

This debate has precipitated a move towards the adoption of alternative terms to describe the Ombudsman institution, including Ombuds, Ombudsperson as well as ‘Defensor’ (Spain) and Public Protector (South Africa). In addition, the Board of Directors of the International Ombudsman Association voted to change its name to International Ombuds Association in January 2021, ‘[R]ecognizing that words matter, that impacts matter, that diversity, inclusion, and belonging are to be supported and celebrated’.³⁷ When asked for a view of the debate, one Scandinavian Ombudsman, reflecting on the creation of the Swedish Ombudsman in 1809, commented that it was ‘too soon to know’ whether the term Ombudsman should be replaced.³⁸ Given that the survey was disseminated using the term Ombudsman, and that this term is still used by the overwhelming majority of IOI members, and by the IOI itself, the term Ombudsman is used in this study except where respondents use other terms in direct quotations. However, in chapter six it is argued that debate on the issue needs encouraging and resolution.

Almost a third of respondents (31%, n=16) have been in their position for more than five years. However, most (92%, n=48) have a fixed-term appointment with an average tenure of five and a half years. For those with a fixed-term appointment, 38% (n=18) cannot be reappointed, 25% (n=12) can be reappointed but only once, and the remainder (38%, n=18) can be reappointed two or more times.

With regard to the duration of appointment and options for reappointment, not all participating organisations currently have practices consistent with the Venice Principles, which state that:

*‘The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The terms of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman’s mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.’*³⁹

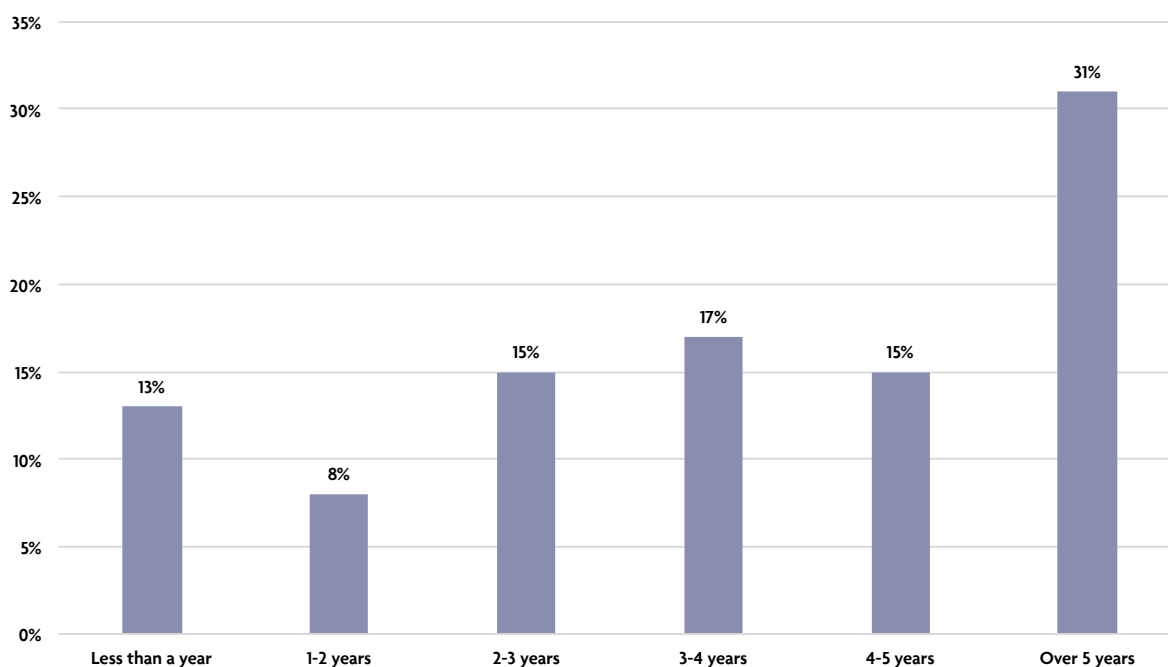
³⁶Chris Field, ‘Independence — A key principle. Presentation to the Australian and New Zealand Ombudsman Association Biennial Conference, 2010, Wellington, New Zealand, 6 May 2010, http://www.ombudsman.wa.gov.au/Publications/Documents/speeches/060510_Presentation_by_Chris_Field_to_ANZOA-2010.pdf

³⁷IOA Is Set to Become International Ombuds Association, 28 January 2021, https://www.ombudsassociation.org/index.php?option=com_dailyplanetblog&view=entry&year=2021&month=01&day=27&id=118:ioa-is-set-to-become-international-ombuds-association

³⁸Author’s private source.

³⁹Venice Principles, principle 10, page 4

Figure 5: Length of time respondent has held their current role of Ombudsman



The Venice Principles also state that: ‘the procedure for selection of candidates shall include a public call and be public, merit based, objective, and provided for by the law’.⁴⁰ In terms of how the individuals who completed the questionnaire came to be in their roles, most (54%, n=28) were appointed via a process of open competition. 21% (n=11) were appointed solely by invitation and the remainder (25%, n=13) went through a mix of the two. The appointment of some individuals has therefore, historically, been inconsistent with the guidance now set out by the Venice Principles. If the number of people not appointed on the basis of fair and open competition were to grow, this would constitute something of a threat to the legitimacy of the Ombudsman institution.

60% (n=31) of Ombudsman appointments were confirmed by the head of state following a vote in the relevant national legislature. This approach is consistent with the Venice Principles, which state that: ‘The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority’.⁴¹

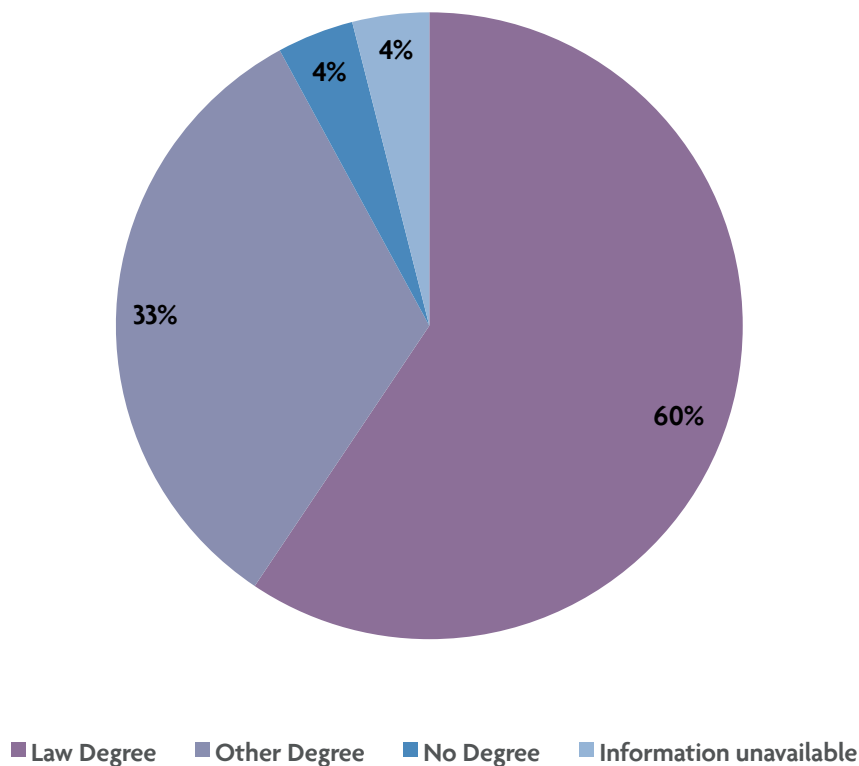
⁴⁰Venice Principles, principle 6, page 4

⁴¹Venice Principles, principle 6, page 4

Education and career backgrounds

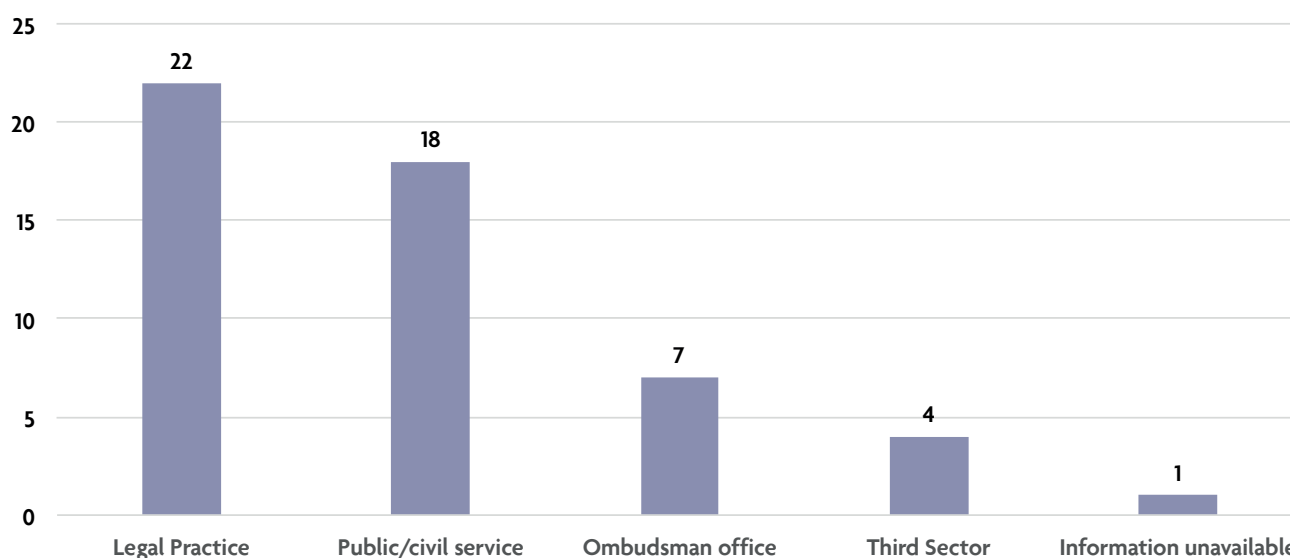
With regard to the education of respondent Ombudsman leaders, the most common qualifications likely to be held are legal-based. 60% (n=31) of Ombudsman Officers have first degrees in law, including a small number with Doctorates in Law. 33% (n=17) have a wide variety of other degrees including Political Science, Medicine, Public Administration, Environmental Science and Economics. The two Ombudsman Officers (4%) without degrees have extensive, decades-long, experience in the practice of public administration.

Figure 6: Educational background of Ombudsman Officers



As illustrated in Figure 7, nearly half (22 out of 52) of Ombudsman Officers took up their positions following a career in legal practice. They cite this as the single most important element of career experience that helped them secure their Ombudsman role. 18 Ombudsman Officers came to their Ombudsman roles following a career in public and civil services, seven from extensive pre-experience in the Ombudsman world and four from a career in the third sector.

Figure 7: Career background of Ombudsman Officers



The rich tapestry of diverse experience cited by respondents when writing about their perceived reasons for their appointments is captured in the quotations below:

'My sense is that I was appointed to my role because the Government wanted someone who had a strong understanding of how Australian Government administration actually works to provide independent oversight of it.' Office of the Commonwealth Ombudsman, Australia

'Apart from the academic qualifications and my passion in justice for vulnerable groups, my experience in judiciary helped me to be appointed by the Ombudsman.' Office of the Ombudsman, Malawi

'Drawing from the experience as a professor, chief executive of central and local government agencies and an elected representative, I am thoroughly familiar with the practices of civil service and its shortcomings, understanding first-hand the execution and performance of supervisory work.' The Control Yuan, Republic of China

'I have held senior management positions with two Ombudsman schemes. This experience, particularly with the Ombudsman schemes – and the skills and knowledge developed through these – was the most important factor in helping me be appointed to my current role.' Northern Ireland Public Service Ombudsman, UK

These backgrounds and reflections are important and will be returned to when we look at the challenges facing Ombudsman Officers and the training and development currently available to their organisations. They also feature in any discussion about how to develop the Ombudsman community from being quasi-professional to becoming professional.

Finally, 88% (n=46) of Ombudsman Officers can be removed from Office. For most organisations, however, removal from Office can only come about through serious misconduct such as criminal behaviour or corruption. In two organisations, the Federal Ombudsman, Belgium and the Office of the Ombudsman, Malawi, termination of Office can also be based on age since the appointment ends when the individual reaches the age of 65. In the main, therefore, this is consistent with Venice Principles which state that:

‘The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of “incapacity” or “inability to perform the functions of the Office”, “misbehaviour” or “misconduct”.’⁴²

Summary

Respondents to this research represent organisations in a diverse range of locations with a mix of organisational structures and jurisdictions. This diversity gives reassurance that the results provide a comprehensive overview of the challenges facing the Ombudsman community internationally. In the main, the processes by which these organisations operate are consistent with the Venice Principles. There are, however, some areas (for example, recruitment and appointment practices) where adherence is less widespread. This is problematic for an institution dependent for its legitimacy on independence and fair and open competition.

Most participating organisations have been established for many years. However, a number of them point out that the legal mandate they operate has remained unchanged over the years despite demographic and societal changes. This can create barriers to operational effectiveness.

The majority of respondents have responsibility for the spending of their organisation’s budget. Given that many of them have sizeable workforces and that widespread training is offered to staff, it is likely that appropriate financial resourcing of their organisations will present significant challenges.

Although diversity issues were not a primary line of inquiry for this research, it is notable that the majority of respondents are male. This suggests a lack of diversity in the leadership of participating organisations. We return to the contested issue of the name ‘Ombudsman’ in chapter six.

In conclusion, although the underlying aim of Ombudsman organisations is broadly consistent – to provide individual redress and preserve human rights and fundamental freedoms – the means by which these are achieved differs to reflect the circumstances found in specific countries. This is a cardinal principle of the Venice Principles.⁴³

⁴²Venice Principles, principle II, page 4

⁴³Venice Principles, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e) ‘Recognising that these Institutions have adapted into the legal and political system of the respective States; Noting that the core principles of the Ombudsman Institution, including independence, objectivity, transparency, fairness and impartiality, may be achieved through a variety of different models’. Also see Principle 4: ‘The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competences’.

Chapter two: Dealing with the COVID-19 pandemic

Introduction

The survey relating to this research was live for three weeks from Friday 5 June until Friday 26 June 2020. It was therefore completed by respondents at a time when much of the world was experiencing what would turn out to be the first wave of the pandemic. To assess emerging thoughts and concerns on this, a key section of the questionnaire dealt with responses to and proposed methods of dealing with the coronavirus. Several questions were included which gathered information about ongoing and emerging changes within organisations. Most of the questions were designed to assess how organisations felt they would need to adapt once (and if) things had returned to a more 'normal' state of affairs. These responses have been supplemented by direct exchanges with Ombudsman Offices and desk research in the light of the second (and third) waves of the pandemic and as organisational responses have developed.

Managing the challenges – ‘the shadow of a great mountain’

What confronted Ombudsman leaders has been described by the Polish Commissioner for Human Rights as: ‘one of the most important events since World War II ... a pandemic – like the shadow of a great mountain – overshadows everything that happens in Poland and Europe throughout 2020’.⁴⁴ In the context of the challenges faced, respondents were appreciative of the existence of supportive networks for Ombudsman Officers: ‘Ombudsman colleagues’ support and best practice sharing has also been – and remains – a consistent support through all these challenges’.⁴⁵

Further, while challenges might be severe, much has been achieved to overcome them. In Kosovo, for example, the institution has:

‘faced a lot of challenges over the years, in terms of limited budget, limited staff, renting offices in a remote area with difficulties of accessing from the citizens and ... non-implementation of our recommendations. However, the new legislation and reforms undertaken during my term as the Ombudsman have changed the situation tremendously. We now have ... very central public owned offices, which are easily accessible by our citizens, the budget is approved as requested by the Ombudsperson, the staff is hired according to the reforms undertaken after the new legislation entered into force, and implementation of the recommendations is getting better and better every year.’⁴⁶

Move to remote working

Many schemes moved to online, remote, working quite quickly. In Ireland:

‘We moved to online working once the lockdown commenced and have been able to respond to complaints as normal. The number of complaints we have received is broadly similar to last year.’

⁴⁴Adam Bodnar 2020 summary <https://wiadomosci.onet.pl/tylko-w-onecie/pandemia-jak-cien-wielkiej-gory-ada-ma-bodnara-podsumowanie-2020->

⁴⁵Northern Ireland Public Services Ombudsman, UK

⁴⁶Ombudsperson Institution of Kosovo

We have had to adapt some of our ways of engaging. For example, our Outreach programme has been carried out through webinars and other remote methods.’⁴⁷

In the Netherlands, almost all staff worked from home. An early aim was to collate an overview not only of complainant thinking, but of developments within Government given the ‘enormous pressure’ on Government during the pandemic. In this way, and particularly with regard to vulnerable groups:

‘the language used by the (central and local) government when informing the public is often too complex ... They are not able to understand what the government wants from them and they don’t understand what is actually happening around them.’⁴⁸

In addition, the unexpected longevity of the pandemic has meant that responses have varied according to the particular phase experienced. One national Ombudsman suggested that her scheme had moved from reactions of ‘Panic to Hopeful to Resigned’ in the course of nearly a calendar year.⁴⁹

In France, (not a participant in this survey), despite the difficulties created by COVID-19, the Defender of Rights continued to deliver its mission and service. Contact was achieved by post, courier and telephone.⁵⁰ In Israel, ‘except for a short period, the responsibilities of the staff did not lessen significantly in the move to allowing flexible hours and working from home’.⁵¹

In British Columbia, Canada, all normal services were delivered during the pandemic. However:

‘during the pandemic we have identified a limited number of public bodies at the heart of pandemic management (mostly health sector) where we have extended times for response to records requests, postponing investigations etc. This will result in need to catch up in that sector as its capacity returns.’⁵²

In Scotland, the Office was closed to visitors and staff worked remotely, continuing to fulfil their normal roles. In responding to emails, and operating a limited telephone service for inquiries, response times were affected. While there was appreciation for the challenges faced by bodies in jurisdiction, public bodies were not permitted to withdraw or suspend their requirement to accept complaints (unlike in England) because of a requirement in Ombudsman legislation for public bodies to provide a complaints service.⁵³

The pandemic led to creative thinking about the way in which complaints are handled. Some schemes reported a shift from an approach that looked at individual cases in sequence to a more thematic approach looking at COVID-19-related complaints either in specialist teams or in groups where the complained-about issues were similar.⁵⁴

⁴⁷Peter Tyndall ‘Delivering services in a Covid world’, The Ombudsman’s Casebook, Winter 2020, www.ombudsman.ie

⁴⁸National Ombudsman, Netherlands

⁴⁹Interview with a national Ombudsman in Europe, January 29, 2021

⁵⁰<https://defenseurdesdroits.fr/fr/a-la-une/2020/03/covid-19-les-equipes-du-defenseur-des-droits-restant-joignables>

⁵¹Israel State Comptroller and Ombudsman, Israel

⁵²Ombudsperson of British Columbia, Canada

⁵³COVID-19 update for public service organisations 27.12.20 <https://www.spsos.org.uk/covid-19-update-for-public-service-organisations>

⁵⁴The Local Government and Social Care Ombudsman for England, UK

Temporary redeployment of staff

COVID-19 has had a knock-on effect on many people's livelihoods across the globe and, within Ombudsman organisations, the workload of some members of staff reduced initially in light of the capacity of bodies in jurisdiction to respond to investigations. For example, in England, two Ombudsman schemes with oversight of health and social care delivery (the Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman) paused investigations between the end of March and the end of June 2020, to avoid overburdening the already stretched capacity of bodies in jurisdiction, particularly the National Health Service and social care provision.

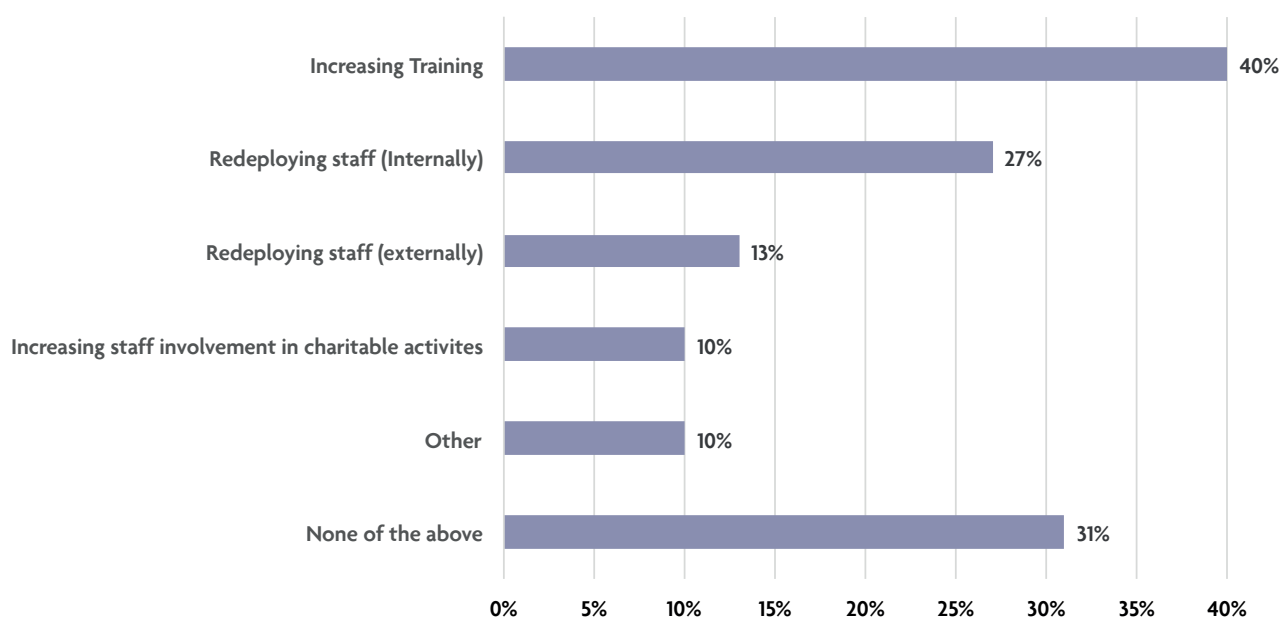
In response to such disruptions and the compromising effect they had on investigations, some Ombudsman organisations put in place strategies to temporarily reallocate investigative capacity. This included increasing the training/learning and development on offer (40%, n=21) or redeploying staff into other areas of the organisation (27%, n=14). A smaller proportion (13%, n=7) redeployed staff into other organisations directly assisting with the crisis.

The Venice Principles make clear:

*'The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics.'*⁵⁵

The risk of violating this injunction by staff reallocation was deemed low and manageable by respondents. As a precaution, some schemes took care to ensure and to demonstrate that their usual policies regarding conflicts of interest were not breached in the light of exceptional action. In general, political, administrative and media responses to these moves were seen as pragmatic and non-contentious.

Figure 8: Strategies used to redeploy staff during crisis



⁵⁵Venice Principles, principle 9, page 4

It is also notable that 31% (n=16) of respondents selected 'none of the above' indicating that many staff were not redeployed over the course of the initial crisis and that attempts were made to maintain 'business as usual' processes wherever reasonably practical.

In the second and third phases of the pandemic, there was less evidence of either Ombudsman Offices ceasing, for a temporary period, to accept complaints or reallocating staff to non-casework duties. Instead, there was concentration on making remote working effective, acknowledging that bodies in jurisdiction might not be able to stick to routine time frames in responding to requests for evidence and managing productivity where (for example) the closure of schools required parental home schooling.

Morale

The questionnaire asked no direct questions about Ombudsman staff morale, but it is unsurprising that there were references to it in respondents' comments in the survey. The COVID-19 pandemic was unprecedented in its seriousness, dislocation and impact on families for citizens across the world. This, of course, included those who worked for and led Ombudsman schemes. Some countries were more affected than others. In New Zealand, for example, the Parliamentary Ombudsman could write in June 2020: 'the crisis has passed and as of now we have no new infections. We are accordingly operating the office as normal, and we will all return on 15 June'.⁵⁶

However, in many countries with public and much of social life in lockdown, school closures and disruption to business and employment, colleagues were challenged by multi-tasking, often combining remote working with caring for children and/or elderly relatives. Work was made more difficult by the risks of travelling by public transport (where job content made remote working impossible), the imperative of social distancing in offices and the possibility of colleagues being infected by the virus and thus missing from the collective effort. All this put a premium on Ombudsman leadership (see chapter five).

In Pakistan, for example, 'the handling process of complaints was badly affected by the crisis as some of our officials suffered from it'.⁵⁷ In Scotland, there were colleagues with COVID-19 symptoms who needed to go home and isolate.⁵⁸ In Jordan, by contrast, 'there are no human injuries among the cadres working in the Commission' thanks to preventive measures including sterilising physical spaces, providing masks and replacing the employees' fingerprint system with an eye-print system.⁵⁹

Nevertheless, in the context of concerns for physical and personal safety generated by the pandemic, there were big issues of morale, mental health and wellbeing. Ombudsman leaders had to find ways of managing this without the advantage of physical presence. Strategies of regular connectivity for teams of all sizes quickly sprung into existence with the use of telephone and internet as the medium of dialogue. Two-way communication was essential. One national scheme with more than 400 staff arranged three all-staff exchanges between the Office and its leadership team during the first lockdown (April-June 2020), and one all-day interactive staff conference (December 2020), all done remotely. In a whole-office survey about the Office's handling of the

⁵⁶Parliamentary Ombudsman, New Zealand

⁵⁷Provincial Ombudsman Secretariat, Khyber Pakhunkwa, Pakistan

⁵⁸Scottish Public Services Ombudsman.

⁵⁹Integrity and Anti-Corruption Commission, Jordan

crisis, more than 90% of respondents said they felt supported by the Office and by their managers to achieve a good work/private life balance. Endorsement of the equipment and technology provided to facilitate working at home was around 80%. Activities to help cope with home working included the following:⁶⁰

Figure 9: Coping with working at home during the COVID-19 pandemic

Coping with working at home is assisted by	Percentage
Daily exercise	61%
Connecting virtually with family and friends	48%
Listening to music	41%
Reading	35%
Watching TV	35%
Cooking	33%
Gardening	26%
Other	13%

Post-crisis expectations

With regard to the volume of inquiries and complaints that organisations will receive post-crisis, half of respondents thought there would be an increase (50%, n=26), and just over a quarter (27%, n=14) expected it would remain around the same as previously. Only 12% (n=6) expected a decrease. Despite many expecting an increase in inquiries/complaints, few expected a commensurate increase in funding. Just 4% (n=2) expect an increase and, worryingly, 35% (n=18) anticipate a reduction. Just under half (48%, n=25) expected levels to remain the same.

⁶⁰Parliamentary and Health Service Ombudsman presentation to Administrative Justice Council webinar 29 April 2020 on the impact of COVID-19 on the administrative justice system, <https://www.youtube.com/watch?v=i6E2vM-3BTE&feature=youtu.be>

Figure 10: Expected volume of inquiries/complaints received post-crisis

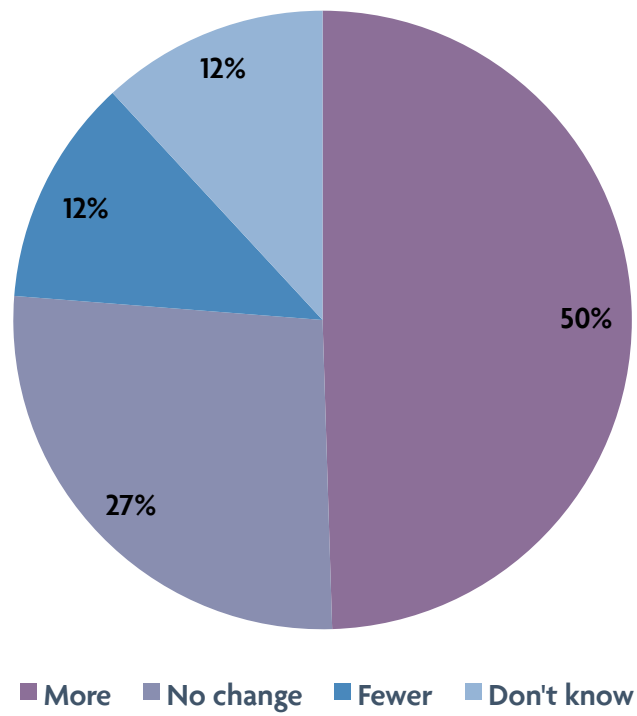
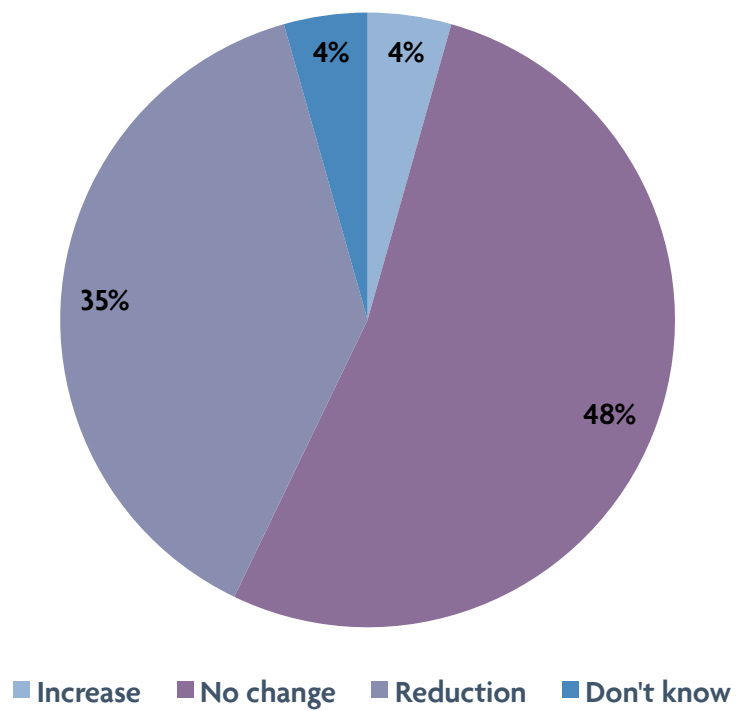


Figure 11: Expected changes to funding received post-crisis



In terms of how complaints are handled in the future, just over half (52%, n=27) believed that they would need to prioritise and prepare for different types of complaints arising from the crisis. This is likely to create added strain on existing resources whilst staff members learn and adapt to new and emerging concerns. More positively, 38% (n=20) believed that the previous pattern of complaint handling is likely to resume soon after the pandemic has ended.

In addition, four respondents (8%) felt that complaint handling processes would be subject to an 'other' likely outcome. For example, the Local Government and Social Care Ombudsman for England, UK, said: 'we will not dilute or compromise our standards and expectations post C-19, even if we have increased complaints volumes. We are therefore likely to be faced with a capacity gap leading to backlogs'. This issue of backlogs has become more prominent in the second and third phases of the pandemic.

Post-crisis, respondents were asked if they anticipate any specific cultural or organisational challenges. Many of the comments left in response to this centred around allowing staff greater flexibility in the way they work; specifically, that working remotely will be accepted as a much more common practice in the future. Similarly, a number of respondents noted making better use of technology as an essential ingredient of facilitating remote working.

Thinking of strategies to deal with matters post-crisis, the majority of respondents (65%, n=34) said they would need to prioritise investigations that relate to cases of greater severity; over a third (35%, n=18) would be using their 'own-initiative' powers to investigate areas that had not previously been looked at and just under a quarter (23%, n=12) would need to relax/extend the time limits imposed on cases which they are permitted to investigate. The Ombudsman of Ireland noted that he intended to set up a dedicated team to investigate COVID-19-related complaints. A number of other Ombudsman schemes in Europe have also adopted this approach.

Looking more closely at 'own initiative', most responding organisations (87%, n=45) are formally able to conduct inquiries on their own initiative. For example, the Parliamentary Ombudsman of Denmark estimate that they open around 70 own-initiative investigations per year based on media reports of seemingly illegal activity or patterns in casework that suggest structural problems.

Own-initiative investigations

Many organisations (40%, n=18) intend to use their own-initiative powers to address issues that have emerged as COVID-19 has progressed. Overwhelmingly, respondents were in favour of the policy that all Ombudsman schemes should have 'own-initiative' powers. 96% (n=50) of respondents agreed with this whilst the remaining 4% (n=2) had no strong view.

In general, organisations reported that they intended to monitor the handling of the pandemic and, in particular, to examine how vulnerable individuals have been treated throughout the crisis. There were therefore a variety of areas to be examined through own-initiative powers. Some of the areas currently being investigated are outlined below.

Government programmes and practices

In British Columbia, Canada, the Ombudsman investigated two ministerial orders made during the COVID-19 pandemic by the Minister of Public Safety and Solicitor General. It was found that the orders went beyond the authority assigned to him under the Emergency Program Act and were therefore contrary to law. The first allowed statutory decision-makers to waive, suspend or extend a mandatory timeframe relating to their decision-making powers. The second exempted local governments from statutory requirements related to the conduct of meetings and public hearings. The order also allowed local government meetings to be held without the public in attendance.⁶¹

In Malawi, the State President created a Presidential Taskforce to deal with the COVID-19 pandemic in May 2020. This devised a three-month National COVID-19 Preparedness and Response Plan at a cost of USD375.5 million. The Ombudsman investigated a lack of transparency and accountability by public institutions and officials on the use of funds by the Taskforce that were meant for the fight against the COVID-19 pandemic. The investigation followed a public outcry after the leak of a conversation between former Cabinet Ministers and members of the Taskforce on allowances for an activity trip related to the pandemic.⁶²

The Ombudsman's investigation revealed multiple financial irregularities and maladministration. These included: a failure to inform the public that the Taskforce started receiving allowances; irregular payment of allowances for more days than were worked; procuring goods at inflated prices and disposing of them without questioning responsible officials; irregular assigning of tasks to a large number of officers that could be done by far fewer; and using questionable receipts without evidence of delivered goods.

The European Ombudsman launched a series of own initiative inquiries in mid-2020 looking at specific aspects of the work of European Union institutions during the pandemic. These included the gathering of data linked to the COVID-19 crisis by the European Centre for Disease Prevention and Control, the EU Council's departure from transparency rules during the pandemic and the role of the European Medicines Agency in regulating medicines intended for the treatment and prevention of COVID-19.⁶³

⁶¹Extraordinary Times, Extraordinary Measures: Two ministerial orders made under the Emergency Program Act in response to the COVID-19 pandemic, Special Report, No.44, Ombudsperson, British Columbia, June 2020, https://bcombudsperson.ca/assets/media/ExtraordinaryTimesMeasures_Final-Report.pdf

⁶²Misplaced Priorities. First Report, A Report of an Investigation into Allegations concerning lack of transparency and accountability in the implementation of Malawi's National COVID-19 preparedness and Response Plan, November 2020, <https://www.ombudsmanmalawi.org/files/pdf/Misplaced%20Priorities%20Final.pdf>

⁶³Overview of European Ombudsman's initiative looking into the COVID-19 response of the EU administration | News | European Ombudsman (europa.eu) 4 January, 2021.

Support available for vulnerable populations

In New Zealand, the Parliamentary Ombudsman is part of the Independent Monitoring Mechanism (IMM), an inter-agency coalition including the Human Rights Commission and the Disabled People's Organisations' Coalition. The IMM is writing a report about disabled people's experiences during the COVID-19 emergency. It has held public meetings around the country to talk to disabled people, their families and people working in the disability sector to understand their experiences during the emergency, identify what Government agencies did well and where there is room for improvement.⁶⁴

Homelessness

In Ethiopia, the Institute of the Ombudsman has joined with UNICEF to support 200 children with hearing, visual and developmental disabilities and their families in Addis Ababa with hygiene and food items.⁶⁵

Following consultation on the principle of undertaking an own-initiative investigation into the administration of the homelessness review process by local authorities in Wales, the Ombudsman has produced revised proposals for a focused and proportionate investigation, appropriate in the context of COVID-19, involving a small sample of local authorities.⁶⁶

Residential care homes

In Slovenia, the director of a home for the elderly (DSO) approached the Ombudsman about the problem of co-ordinating visits to residents during the pandemic. One relative of a resident did not want to abide by measures to prevent the introduction of COVID-19 infections. The relative did not follow the time interval of visits, came to visit every day, would not use a protective mask, and did not follow social distancing rules. The relative justified their non-compliance with measures by claiming there was a lack of legal grounds for them and that they were a violation of human rights. The DSO did not know how to react to this and so sent two letters to Ministries requesting clarification.

As the two Ministries did not respond, the Director asked the Ombudsman for advice. The Ombudsman made clear that 'instructions' and 'recommendations' should be substantiated on an appropriate legal basis, as otherwise it is not possible to enforce obligations on the violator. The Ombudsman set out the need for a more proactive approach for precise guidelines in implementing measures to prevent the introduction and control of COVID-19 infections.⁶⁷

⁶⁴'Invitation: disabled people's experiences during COVID-19', Sun 2 Aug 2020, <https://www.ombudsman.parliament.nz/news/invitation-disabled-peoples-experiences-during-covid-19>

⁶⁵COVID-19 Response Humanitarian Situation Report #11, 23-29 May 2020, <https://www.unicef.org/ethiopia/reports/covid-19-response-humanitarian-situation-report-11>

⁶⁶Ombudsman Proposal for 'Own Initiative' Investigation into Homelessness', <https://www.ombudsman.wales/blog/2020/11/20/ombudsman-proposal-for-own-initiative-investigation-into-homelessness/>

⁶⁷Irresponsible visitor and related difficulties in implementing measures to prevent covid-19 infection, 19.10.20 <https://www.varuh-rs.si/obravnavane-pobude/primer/neodgovorni-obiskovalec-in-s-tem-povezane-tezave-pri-implementaciji-ukrepov-za-preprecevanje-okuzbe/>

In Finland, an own-initiative investigation found continuing and severe shortcomings in how elderly people were cared for and treated in municipalities. The operations of municipalities are particularly important during states of emergency as it is more difficult than usual for relatives and family members to observe the care and treatment received by elderly people suffering from dementia. In consequence, a new investigation by the Ombudsman in relation to the coronavirus epidemic aims to identify how municipalities have adjusted their practices during the state of emergency. The purpose is to identify the type of instructions that cities have issued to employees working in home care and residential services during the pandemic.⁶⁸

In Estonia, an inspection visit was undertaken of the South-Estonian Special Care Services Centre in mid-2020. The Centre caters for 86 residents with a severe, profound or permanent mental disorder and unstable remission, and offers 24-hour special care. The staff's attitude towards the residents of the care home was found to be professional and kind with good facilities. However, the fact that activity instructors were not (as required) legally trained was unsatisfactory. In addition, it was noted that the care home should more accurately document instances of placing someone in the isolation room to allow for verification.⁶⁹

At the beginning of 2021, the European Ombudsman opened an own-initiative inquiry into the role of the EU Commission in ensuring that member state Governments use EU funds with a view to promoting independent living for persons with disabilities and older persons, and transitioning away from residential care institutions. The inquiry was launched against the background of the COVID-19 pandemic, which had devastating consequences for many people in these institutions.⁷⁰

Police services

In Northern Ireland, the response of the Executive to the pandemic was to introduce new emergency regulations, The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020. This legislation impacted significantly on civil liberties including the right to freedom of expression and restrictions on peaceful assembly. Because of the emergency, the Regulations were enacted by the Assembly without consultation or legislative debate. There was widespread public concern regarding how the police enforced these regulations and whether or not discriminatory practices were evident.⁷¹

The Police Ombudsman, Marie Anderson, acknowledged that this was an entirely novel situation, for policing and for society as a whole. She received 136 complaints about the police between the end of March 2020 and the end of October 2020. A fifth of these complaints related to police enforcement of the Regulations in respect of gatherings of people such as at funerals and when

⁶⁸Deputy-Ombudsman concerned by the lack of guidelines for and supervision of elderly care, 28.4.20. https://www.oikeusasiamies.fi/en_GB/-/apulaisoikeusasiamies-huolissaan-vanhustenhuollon-ohjeistusten-ja-valvonnan-puutteista

⁶⁹https://www.oiguskantsler.ee/sites/default/files/field_document2/Inspection%20visit%20to%20the%20South-Estonian%20Special%20Care%20Services%20Centre%202020.pdf

⁷⁰Ombudsman inquiry into the use of EU funds in relation to institutional care, against backdrop of COVID-19 pandemic, 2 February 2021 Ombudsman inquiry into the use of EU funds in relation to institutional care, against backdrop of COVID-19 pandemic | News | European Ombudsman (europa.eu)

⁷¹Statutory Report Public Statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1998. An investigation into police policy and practice of protests in Police Ombudsman for Northern Ireland, UK, Published 22 December 2020 <https://www.policeombudsman.org/PONI/files/85/858a4b0b-9b99-4921-b947-5fae-248ba683.pdf>

queueing outside shops. A further tranche concerned differential treatment by police of organisers and protesters at public gatherings. The Black Lives Matter demonstrations were held in Belfast and Derry/Londonderry on 6 June 2020. There was also a largely loyalist public gathering at Belfast City Hall on 13 June 2020 held by the Protect our Monuments group.

In these circumstances, the Ombudsman departed from the routine investigation of an individual complaint and launched a Section 60A investigation, which examines current policing policy and practice. She judged this to be ‘necessary and in the public interest in order to ensure the public’s trust and confidence in PSNI (Police Service of Northern Ireland)’.⁷²

The Police Ombudsman found that in preparation for 6 June events, the PSNI attempted to persuade the organisers to cancel the protests. The operational order relating to 6 June indicates that the PSNI’s preferred outcome was to have organisers cancel the events. Further, as a result of enforcement action taken by police at these June events, a number of individuals were reported to the Public Prosecution Service (PPS) for offences relating to assisting or encouraging the commission of an offence.⁷³

By contrast, the police approach to the 13 June 2020 Protect our Monuments event was markedly different in that it was aimed at encouraging the demonstrators to gather in a COVID-19 compliant manner. Indeed, the operational policy on 13 June sought to balance the rights of demonstrators and had careful consideration for the protesters’ human rights.

This differential treatment gave rise to claims of unfairness and discrimination against those people who organised and attended the Black Lives Matter protests. These concerns were, in the view of the Police Ombudsman:

‘cogent, have substance and are justified in the circumstances. I believe that this unfairness was not intentional. Neither was it based on race or ethnicity of those who attended the event. Rather PSNI failed to balance Human Rights with the public health considerations and requirements of the Regulations.’⁷⁴

As a result, the confidence in policing among some within the Black, Asian and Minority Ethnic communities in Northern Ireland had been severely damaged.⁷⁵

Prison services

Following an investigation in Denmark, the Ombudsman found that efforts to keep COVID-19 out of prisons and halfway houses had noticeable adverse consequences for inmates and residents. For instance, inmates and residents had restrictions imposed on their permissions to work, have visits or be granted leave. In addition, newly admitted inmates and residents with symptoms were placed in isolation:

‘The tools used by the Prison and Probation Service to protect inmates from the spread of

⁷²Ibid, p.5.

⁷³Ibid, pp.8-11

⁷⁴Ibid, pp.13-14.

⁷⁵Discrimination concerns are justified, but not on grounds of race or ethnicity, 22.12.20: <https://www.policeombudsman.org/Media-Releases/2020/Discrimination-concerns-are-justified,-but-not-on->

infection appear to have worked. But at the same time they have made the conditions of people deprived of their liberty more restrictive than normal. It is a difficult balancing act. For this reason I recommend that the Prison and Probation Service review its experiences with a view to determining whether a future pandemic can be handled effectively by means of less restrictive measures.’⁷⁶

In Estonia, the Ombudsman wrote proactively to the Minister of Justice at the onset of the pandemic to ensure that the 2,400 people imprisoned in Estonia did not lose rights over the course of the exceptional circumstances of the pandemic:

‘The prohibition to daily walk in an open air and the reduction of the opportunities to call those closest to the imprisoned person to once a week are, however, excessive and may qualify as unacceptable treatment of imprisoned persons within the meaning of §18 of the Constitution and Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. When it is possible to arrange outdoor walks and the calling of those closest to the person without giving rise to a risk of infection, it should be done.’⁷⁷

Immigration

In Finland, the Government took action to restore internal border controls, close border crossings, and introduce restrictions on transport to reduce cross-border movement and slow the spread of COVID-19. The aim of this was to protect citizens’ health. However, the Ombudsman pointed out that such measures, however understandable, were in tension with the constitutional right of citizens to leave and return to the country.⁷⁸

These (largely) own-initiative investigations were wide-ranging and timely. They increased the accountability of public authorities and in a way which facilitated learning during the pandemic and before its ending. For the small minority of national and sub-national schemes without own-initiative powers (mostly in the United Kingdom), their ability to contribute to learning from the pandemic has been severely constrained by the delay in receiving individual complaints (which have to go to front-line bodies first) and by the need to process these complaints individually

⁷⁶Ombudsman: Can a future pandemic be handled less restrictively in Prison and Probation Service institutions?’ News from the Danish Parliamentary Ombudsman, 14 July, 2020, https://www.theioi.org/downloads/ctjiv/News_%20from%20the%20Danish%20Ombudsman%20-%20Can%20a%20future%20pandemic%20be%20handled%20less%20restrictively%20in%20Prison%20and%20Probation%20Service%20institutions.pdf. ‘During the COVID-19 period, visiting teams from the Ombudsman have carried out monitoring visits to the local prison of ‘Blegdamsvejens Arrest’, to the units for foreign nationals sentenced to deportation of ‘Nyborg Fængsel’, a state prison, and to the ‘Pension Engelsborg’ halfway house. In all three institutions there was frustration among inmates/residents. Some residents of ‘Pension Engelsborg’ are normally only required to be at the institution at 14 July 2020 Page 2 | 3 night. However, during the COVID-19 period they were not permitted to visit their families, go to work, have visitors – or even go for a walk. The inmates of the two prisons visited by Ombudsman representatives were also frustrated with the conditions and affected because they could not receive visits.’

⁷⁷‘Measures for the prevention of the virus causing the COVID-19 disease’ https://www.oiguskantsler.ee/sites/de-fault/files/field_document2/Measures%20for%20the%20prevention%20of%20the%20virus%20causing%20the%20COVID-19%20disease.pdf

⁷⁸Finnish Border Guard procedures in restrictions of cross-border traffic, 11.12.20: https://www.oikeusiamies.fi/en_GB/-/rajavartiolaitoksen-menettely-rajaliikenteen-rajoittamista-koskevassa-asiassa

before coming to a systemic view. In addition, Governments have sometimes been Delphic about the arrangements for public inquiries on the subject which, in turn, hampers the ability to learn from how the crisis has been handled. The experience of the pandemic and its handling has been a powerful endorsement of the value of own initiative investigations.

Post-crisis government plans

46% (n=24) of Ombudsman respondents had knowledge that their Government was planning to ensure lessons are learned from the crisis. Half of these respondents (50%, n=12) were aware that their organisation had been approached to be involved in these 'lessons learned' exercises. An unanswered question was 'when would these exercises take place?'

Summary

Although a sizeable proportion of Ombudsman respondents have been attempting to maintain 'business as usual' throughout the pandemic, others have had to pause the intake of complaints and redeploy staff. For the latter, the reduced workload of some staff members has been used as an opportunity to increase staff training.

Although half of respondents expect the volume of complaints/inquiries to increase in the pandemic's wake, only 4% anticipate an increase in funding. Many will be prioritising cases of greater severity and it is likely that recent changes to working practices (for example, remote working and increased use of technology) will become commonplace.

The vast majority of respondents are in favour of all Ombudsman organisations being granted own-initiative powers. And many of the organisations that already have these powers are using them constructively to investigate injustices experienced by vulnerable groups throughout the crisis.

Chapter three: Ombudsman challenges

Introduction

This chapter sets out the key challenges facing Ombudsman organisations, as reported by their leaders. There is clear consensus that four of the biggest challenges are a lack of public understanding of the Ombudsman’s role, having access to appropriate resourcing, meeting the expectations of complainants and service users, and inadequate mandates. Although challenges presented by corruption and political interference are less common, they still pose a problem for a minority of responding organisations.

Managing the challenges – the positive context

In the context of the challenges faced, respondents were appreciative of the existence of supportive networks for Ombudsman Officers: ‘Ombudsman colleagues’ support and best practice sharing has also been – and remains – a consistent support through all these challenges’⁷⁹

Further, while challenges might be severe, much has been achieved to overcome them. In Kosovo, for example, the institution has:

*‘faced a lot of challenges over the years, in terms of limited budget, limited staff, renting offices in a remote area with difficulties of accessing from the citizens and ... non-implementation of our recommendations. However, the new legislation and reforms undertaken during my term as the Ombudsman have changed the situation tremendously. We now have ... very central public owned offices, which are easily accessible by our citizens, the budget is approved as requested by the Ombudsperson, the staff is hired according to the reforms undertaken after the new legislation entered into force, and implementation of the recommendation is getting better and better every year.’*⁸⁰

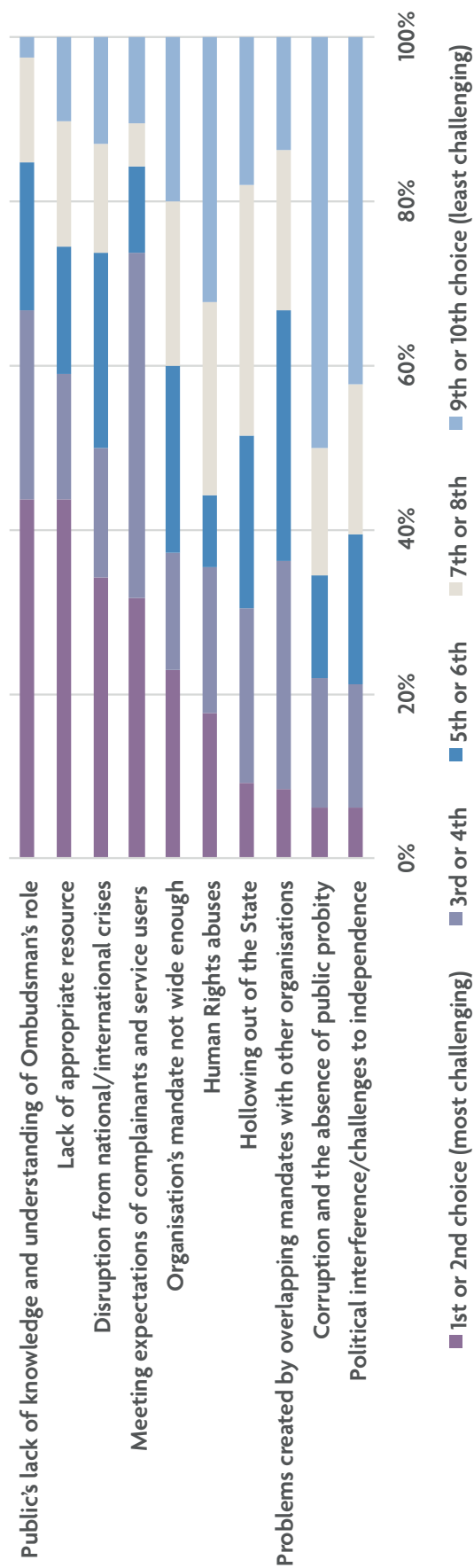
Ranking of challenges facing Ombudsman organisations

Respondents were asked to rank 10 different issues based on how challenging they were for their organisation (Figure 12, below). The patterns emerging from this indicate that both a lack of clear understanding from the public about the Ombudsman’s role and a lack of appropriate resource provide the greatest challenges (44% deemed these to be their first or second most challenging issue). Concerns about resourcing were highest in Africa (three of five respondents selected this as their first or second most challenging issue) whilst concerns about public understanding were highest in Australasia (four of five respondents chose this first or second).

⁷⁹Northern Ireland Public Services Ombudsman, UK

⁸⁰Ombudsperson Institution of Kosovo

Figure 12: Greatest challenges for Ombudsman organisations
(distribution of responses)



Public understanding

With regard to public understanding of the Ombudsman's role, a common concern of respondents is lack of public understanding that the Ombudsman is 'not an advocate for individuals but an advocate for fairness'.⁸¹ Whilst some members of the public expect the Ombudsman to take a moral stance on individual complaints, this is often at odds with and sometimes overlooks the Ombudsman's overriding commitment to conduct work impartially:

*'Correct public understanding of our work and role has proven to be a challenge. The Ombudsman is often seen as a moral authority, however there is a lack of understanding of our commitment to conduct work objectively and professionally. Due to the current global trend of political polarisation in society, complainants and service users, members of the public and even other government institutions sometimes question our impartiality, especially when dissatisfied with a particular response.'*⁸²

Respondents also noted there can be confusion about what the Ombudsman can and cannot do. Some therefore find it an ongoing challenge to ensure members of the public understand that the Ombudsman cannot investigate matters beyond its legal mandate. In Canada, for example, 'Managing public expectations is difficult when some people expect you to investigate matters beyond your jurisdiction (such as the actions of politicians)'.⁸³

Lack of public awareness of the work of the Ombudsman is also reported in Gibraltar, the Faroe Islands and Israel. Additionally, this is the case in Italy, which has no national Ombudsman, where there is broad but incomplete coverage by regional Offices, and where local Ombudsman Offices were abolished by Signor Berlusconi in 2010. In Iceland, there is:

*'a lack of awareness about the [Ombudsman] organisation and its functions and a general lack of knowledge about the laws and rules which apply to the central and local administrations – such as in terms of rules on procedural aspects, etc.'*⁸⁴

Strategies to address this in Gibraltar include the development of press releases, issuing of annual reports directly to the public, and other occasional publicity via radio and television.⁸⁵ In Tuscany, the regional Ombudsman started opening peripatetic offices to provide a more effective service to vulnerable individuals.⁸⁶ Similar steps have been taken in Israel:

*'Regional reception offices have been opened in various cities around Israel, and the Office is staffed by speakers of several languages common to immigrants and minority groups. We have reached out to social rights organisations that serve the public and invited them to refer complaints to our Office, work co-operatively with us and recognise the Ombudsman as a resource to assist the populations they are serving.'*⁸⁷

⁸¹Office of Ontario Ombudsman, Canada

⁸²Human Rights Ombudsman of the Republic of Slovenia

⁸³Ombudsman Ontario, Canada

⁸⁴The Althingi Ombudsman, Iceland

⁸⁵Public Services Ombudsman, Gibraltar

⁸⁶The Tuscany Region Ombudsman, Italy

⁸⁷Israel State Comptroller and Ombudsman, Israel

In the UK, the Parliamentary and Health Service Ombudsman has engaged in a number of initiatives to raise public awareness. These include increased communications with the media, open meetings with stakeholders and complainants, and Radio Ombudsman, a regular podcast in which Ombudsman-related topics are discussed with key individuals in the international Ombudsman and regulatory worlds.⁸⁸

Meeting expectations of complainants and service users

It is clear that many Ombudsman Offices find it very challenging to meet the expectations of complainants and service users. 32% of respondents selected this as their first or second most challenging issue. In Cyprus, for example, ‘Meeting the expectations of citizens and especially the vulnerable groups of the society and protecting their rights in a timely and effective manner is the main challenge that our Institution faces.’⁸⁹ In terms of existing complainants, this can sometimes be related to a misunderstanding of the Ombudsman’s roles and responsibilities. In Australia, the Commonwealth Ombudsman explains that the organisation attempts to continue providing a high-quality service in the face of such challenges:

‘The fact that we can only make recommendations about matters of administration leaves some complainants dissatisfied with what we can do, and our resource limitations mean we can only investigate a minority of matters that come to us. We deal with this by seeking to clearly manage expectations, looking for high impact systemic issues that we can investigate on our “own motion”, surveying complainants and agencies we oversee to test our relevance and impact, among other things.’⁹⁰

Of equal concern is the difficulty with which schemes struggle to reach those who are most vulnerable in society. Often the most vulnerable individuals in society come from disadvantaged or underprivileged groups. The paradox that those who are most in need of assistance are also the least likely to seek it out (or even be aware of the services available to them) persists for much of the Ombudsman world.

Initiatives such as those put in place in Israel or Tuscany (peripatetic offices, regional offices, employing multilingual staff, etc) all help towards bridging this gap but may not be suitable or realistic for all schemes. However, the approach outlined by the National Ombudsman, Netherlands (see below) may have wider applications for a greater range of Ombuds organisations.

⁸⁸<https://www.ombudsman.org.uk/news-and-blog/radio-ombudsman-podcast>

⁸⁹The Commissioner for Administration and Protection of Human Rights, Cyprus

⁹⁰The Office of the Commonwealth Ombudsman, Australia

Outreach case study – the Netherlands

The National Ombudsman of the Netherlands is Reinier van Zutphen. His Office was established in 1982, serves a population of 17.2 million people and employs 180 staff. The role of the Ombudsman is to help individual citizens who have experienced problems with public administration and to advise public administration on how to improve their conduct. In 2012, the National Ombudsman was awarded additional powers to handle complaints about local authorities on the islands of Bonaire, St. Eustatius and Saba.

Context and research

In order to identify vulnerable groups that the Ombudsman needs to reach but cannot always do so, the Ombudsman commissioned a programme of research that focused on two main questions:

1. Which vulnerable target groups do not know how to find the Ombudsman when they need him?
2. How can the Ombudsman increase visibility among these target groups?

Focus groups identified that the vulnerable groups which the Ombudsman should pay attention to were: young adults; migrants and refugees; the self-employed (entrepreneurs); single/young parents; and older carers/single elderly people. A communications strategy was therefore developed to determine the best means by which these groups could be reached. This strategy recommended working in partnership with intermediary groups to harness their expertise and knowledge of the vulnerable groups.

Aside from allowing a sophisticated and targeted communications strategy to be developed, the insight gained from this research was so rich that it had a range of supplementary applications. It uncovered valuable information about the specific problems that these vulnerable groups often encounter and so could also be used to help inform other key strategic goals of the Ombudsman.

Intermediaries

Within the Office of the National Ombudsman, the results led to an adjustment of the communication strategy and allowed the Ombudsman to have a much clearer idea of who the groups of vulnerable citizens are. The intermediary organisations identified as a conduit to the vulnerable groups are extremely knowledgeable about the challenges faced by the groups and are often the first point of contact when individuals from the groups find themselves in need of assistance. By raising awareness amongst the intermediaries about the Ombudsman, the intermediaries become better placed to pass this information on to vulnerable groups and encourage them to avail themselves of the services that the Ombudsman offers.

General actions

The Ombudsman has also rolled out a number of general actions that help target all vulnerable groups through intermediaries. For example, the organisation has:

- expanded its website with a dedicated section for intermediaries
- updated leaflets and brochures online
- developed the Raad Baak (counselling desk) project, in which intermediaries and the Ombudsman come into contact with each other in an accessible way.

Communication strategy by target group

At the forefront of all communications, the Ombudsman's mission and vision is placed front and centre. However, depending on the target group, a different focus is often placed on the vision statement to allow the messaging to fit as well as possible with the relevant target group.

In addition to a general strategy, the research helped develop a specific strategy for each vulnerable target group with specific related actions. As resources prevent the Ombudsman from approaching all target groups at once, the Office has started with two groups they are already familiar with: single, elderly people and young families. These targeted strategies are being used to test and refine the communications approach used and any learning from this will be fed into future communication strategies.

Building on the Netherlands' experience and widening the scope of their research

Learning from the research undertaken by the National Ombudsman of the Netherlands is important since ensuring that the most vulnerable groups are aware of the Ombudsman is a key concern for all Ombudsman institutions.

Through this learning there is potential for more effective and sophisticated communications strategies to be developed and a realistic prospect that Ombudsman organisations are reaching the groups most in need of their services.

An essential corollary to reaching out to and better serve organisations' diverse demographic populations was suggested by one respondent who pointed out that plans are in place aimed at 'creating a demographically representative organisation at all levels'. This involves focusing on staff recruitment policies to build a workforce composed of individuals that are more fully reflective of the society it aims to serve. This will help work towards having a more empathetic workforce capable of a deeper understanding of the experience, culture and shared understanding of under-represented groups.⁹¹

⁹¹Parliamentary and Health Service Ombudsman, UK

Related to the issues and circumstances of investigations are the complainants themselves who can be ‘angry, disillusioned and sometimes downtrodden’.⁹² Many complainants have been through traumatic events, in some cases experiencing bereavement. This has to be respected at all times. Occasionally some are described as ‘vexatious’ or ‘querulous’.⁹³ Inevitably then, complainants can appear ‘difficult’ and what the Greek Ombudsman calls their ‘idiosyncrasy’ is stressful to staff.⁹⁴ This can be debilitating especially where complaint handlers are working remotely and away from their support networks, and where there is a lack of or limited experience in stress management.⁹⁵

The challenge of querulous complainants, researched with care and insight by the Scottish Public Services Ombudsman, is addressed by a number of key preventive measures. These include having a clear and well-disseminated policy setting out expectations of service users in exchanges with Ombudsman staff. Second, as well as supporting and investing in staff who handle complaints, it is essential that organisations provide support to staff who are complained about. Recent research by Dr Chris Gill and Carolyn Hirst has highlighted the impact on staff of being complained about. The research shows that individuals complained about have reported negative changes to their work practice, health and wellbeing.⁹⁶ In subsequent research to support the construction of the new Complaints Standards in England, reference was made to the detrimental impact on staff in this situation. A practice manager in the National Health Service explained:

‘It’s difficult for the member of staff being complained about, and it’s how we support them. It’s alright saying “look, we’ll learn from this”; but I think they go away and it is really personal for them because it is a complaint about them. [...] It is quite upsetting for them.’⁹⁷

Lack of appropriate resource

Lack of appropriate resourcing is also a major challenge for most Ombudsman Officers. In an extreme case, in Malawi, ‘the resources allocated to the Office barely cover[ed] administrative costs’.⁹⁸

Similarly, in Pakistan:

‘Third world economics are usually marked by resource constraint and face competitive demands by the public sector institution for financial allocations. The funds allocated mostly fall short of the requirements. This imbalance makes it incumbent upon the office to neutralise it through strict management and optimum utilisation of the available resources in order to save the institutional performance from adverse effects.’⁹⁹

⁹²Joint Office of Citizen Complaints for Dayton and Montgomery County, Ohio, USA

⁹³Dr Gordon Skilling, Querulous Complainants, December 2017 <https://www.spsso.org.uk/sites/spsso/files/csa/Querulous%20Complainants%20WEB.pdf>

⁹⁴The Greek Ombudsman, Greece

⁹⁵National Ombudsman, Cook Islands

⁹⁶Being Complained About: Good Practice Principles and Guidelines, University of Glasgow/Hirstworks, February 2019, https://www.gla.ac.uk/media/Media_636618_smxx.pdf

⁹⁷Making Complaints Count: Supporting complaints handling in the NHS and UK Government Departments, PHSO, Ordered by the House of Commons to be printed on 15 July 2020 HC 390, <https://www.ombudsman.org.uk/sites/default/files/%28HC%20390%29%20-%20Making%20Complaints%20Count-%20Supporting%20complaints%20handling%20in%20the%20NHS%20and%20UK%20Government%20Departments.pdf>

⁹⁸The Office of the Ombudsman, Malawi

⁹⁹The Provincial Ombudsman, Pakistan

And in the Republic of China:

*'The budget of ombudsman institutions is of central significance for their effective functioning and independence ... (our) budget is not protected as it should be ... each year, the Control Yuan often faces the dilemma of being forced to cut its budget during the review session, which virtually impedes the normal operation of the supervisory authority.'*¹⁰⁰

In a number of smaller schemes such as Cyprus (North), the Cayman Islands, the Cook Islands, Iceland, and the Faroe Islands, the lack of resource can prevent the appointment of qualified staff. For the Cayman Islands Ombudsman this 'leaves the Deputy Ombudsman and Ombudsman bearing the load throughout the investigation process and particularly when it comes to producing the final reporting letters or own motion reports'.¹⁰¹

In Iceland, a lack of resources has curtailed individual investigations and resulted in more systemic own-initiative investigations. These take more time and are judged 'a less effective tool than otherwise would be possible'. In addition, lack of funding has also resulted in the Ombudsman not being able to publish all of his findings and conclusions.¹⁰²

But the problem of adequate resource is not confined to smaller schemes. In the UK:

*'[strategic] objectives require significant investment in infra-structure, professional development, programme management, effective communication and policy development, just at the time when the budget of PHSO was cut by 25% over three years.'*¹⁰³

A number of respondents reported being given additional responsibilities but not the resources to support this activity. This was the case in South Australia and Finland. In Finland, there were:

'No additional resources to take care of the OPCAT (the UN Optional Protocol to the Convention against Torture, added to the Ombudsman remit in 2014) or the CRPD function (UN Convention on the Rights of Persons with Disabilities, added in 2016).'

As a result, there is a 'heavy and increasing workload and administrative resources in the Office are sparse'.¹⁰⁴

Funding structures will often be provided solely by the national legislature and there will be limited options to add to this from other funding streams. Some respondent organisations have been able to circumvent these strictures by collaborating with international donors and other agencies for financial support. For example, in Malawi, the Ombudsman 'engages Parliament and development partners for extra funds'.¹⁰⁵ Similarly, in Albania, the People's Advocate has 'broad mandates and inadequate financing. There is collaboration with international donors and other agencies for external expertise and financial support'.¹⁰⁶

¹⁰⁰The Control Yuan, Republic of China: 'considering the overall financial situation and budget control of the state in recent years, the budget of our institution has not grown in proportional to our increasing workload, making it challenging to perform our duties.'

¹⁰¹Ombudsman Cayman Islands

¹⁰²The Althingi Ombudsman, Iceland

¹⁰³Parliamentary and Health Service Ombudsman, UK

¹⁰⁴The Parliamentary Ombudsman of Finland

¹⁰⁵The Office of the Ombudsman, Malawi

¹⁰⁶The People's Advocate Institution, Albania

Given the timing of the survey, it is also notable and entirely understandable that 34% of respondents felt that routine activity being disrupted by national/international crises is a significant challenge. The impact of COVID-19 is discussed in more detail in chapter two of this report.

The problems of mandates

Respondents reported a number of challenges around their mandates. In this section, challenges of the mandate not being wide enough, of the mandate being too wide, and of overlapping mandates are brought together. 23% of respondents selected their organisation's mandate not being wide enough as their first or second choice. In the case of Ireland, the jurisdiction is judged wide 'but not fully comprehensive':

*'While prisons are due to come within jurisdiction, clinical judgement remains excluded. Formerly state-provided services such as public transport and utilities are also excluded. The legislation is not compliant with the Venice Principles particularly regarding independence.'*¹⁰⁷

In the United Kingdom, where there is no joined-up Public Service Ombudsman in England, the mandate is also out of line with the Venice Principles and has been judged 'out of time'.¹⁰⁸ According to the Ombudsman:

*'We are campaigning continuously for a new legislative mandate which would create one single public services ombudsman rather than the current fragmented landscape, with powers of own-initiative, where the MP filter (requiring complainants to approach the Ombudsman through their MP) is abolished, and where the Ombudsman has regulatory oversight over the complaints process of front-line service deliverers in public and health service administration.'*¹⁰⁹

As far as the Northern Ireland Police Ombudsman is concerned, 'The current legislation is out of date and has not kept pace with other police oversight regimes in the UK and Ireland'.¹¹⁰ In Namibia, the Ombudsman also reports outdated legislation, in this case the Ombudsman Act 7 of 1990. In Belgium, the Ombudsman lacks ex-officio powers resulting in 'the Court of Audit questioning our legal mandate to perform systemic inquiries, reaching out to the most vulnerable citizens, [and] protecting whistle-blowers effectively'.¹¹¹

In Spain, in the Basque country, there is also a need for revised Ombudsman legislation to address a lack of mediation powers, a lack of supervisory powers over private sector entities delivering public services, and the need to streamline procedures on the basis of the complexity of a case.¹¹² In Gibraltar, own-initiative powers have been approved by resolution of Parliament but the formal legislation has not been enacted.¹¹³ In Senegal, the Médiateur draws authority from statute law rather than constitutional law.¹¹⁴ In Canada, while the mandate of the Veterans Ombudsman is being

¹⁰⁷Ombudsman of Ireland

¹⁰⁸Jim Martin, former Scottish Public Services Ombudsman, quoted in Richard Kirkham and Chris Gill, (Eds) A Manifesto for Ombudsman Reform, Palgrave Macmillan, 2020, p.5.

¹⁰⁹Parliamentary and Health Service Ombudsman, UK

¹¹⁰Police Ombudsman for Northern Ireland, UK

¹¹¹The Federal Ombudsman, Belgium

¹¹²Ararteko, Ombudsman for the Basque Country, Spain

¹¹³Public Services Ombudsman, Gibraltar

¹¹⁴Le Médiateur de la République, Senegal

reviewed, there is no current prospect of the Ombudsman reporting to Parliament rather than the Minister.¹¹⁵

Alongside the issue of restrictive mandates, a small number of respondents believed their mandate was too wide for them to be effective. In the Cayman Islands, for example,

*'The mandate of the office is too wide. We also deal with complaints by the public about police conduct, whistleblowing, freedom of information and data protection. It is very difficult to find qualified staff (lack of non-financial resources).'*¹¹⁶

Respondents also reported problems with overlapping mandates. In South Australia, the introduction of an Independent Commissioner Against Corruption (ICAC) has involved an overlapping jurisdiction and an expectation that the Ombudsman should assist ICAC in his law enforcement role. For the Ombudsman, this demonstrates a lack of appreciation by law makers of the Ombudsman's administrative law context and focus on administrative improvement.¹¹⁷

The most serious example of overlapping mandates occurred in Cyprus where Maria Stylianou-Lottidou, Commissioner for Administration and the Protection of Human Rights, reported that the independence of the institution was under threat from another institution.¹¹⁸ This relates to the insistence of the Auditor-General in Cyprus on carrying out an administrative audit of 'the Ombudswoman's office' when he only had the authority to perform financial audits. In the words of Andreas Pottakis, Greek Ombudsman and member of the IOI World Board:

*'An audit of the financial administration of an ombudsman can be carried out only as to the legality of the expenditure and not the expediency and the manner in which an office will decide to handle its cases; not the way it will decide to administer its budget.'*¹¹⁹

Human rights abuses

While not all Ombudsman institutions were established as human rights bodies, many have been designated a National Human Rights Institution in their country, and some have taken on the role of National Preventative Mechanism under the Optional Protocol to the Convention against Torture (OPCAT).¹²⁰ Some national Ombudsman schemes work alongside the designated National Human Rights Institution and most have human rights at the core of their public service operations. The Northern Ireland Public Service Ombudsman, for example, has co-operated with the Northern Ireland Human Rights Commission to produce a human rights approach to complaint handling.¹²¹

In the last few years, national and sub-national Ombudsman Officers have come under pressure and/or attack for championing human rights issues in a number of countries, including Kosovo, Indonesia,

¹¹⁵Veterans Ombudsman, Canada

¹¹⁶Cayman Islands Ombudsman

¹¹⁷Ombudsman South Australia

¹¹⁸The Commissioner for Administration and Protection of Human Rights, Cyprus

¹¹⁹Cyprus Mail, 15 December 2019, <https://cyprus-mail.com/2019/12/15/auditor-general-interference-in-ombudswomans-office-an-infringement/>

¹²⁰Peter Tyndall, 'The Role of Ombudspersons and National Human Rights Institutions', European Forum 26 August 2019, <https://www.ombudsman.ie/news/human-rights-under-pressu/>

¹²¹NIPSO, Human Rights Manual, 2016 <https://nipso.org.uk/site/wp-content/uploads/2017/02/NIPSO-Human-Rights-Manual.pdf>

Mexico, Pakistan, Slovakia and Poland.¹²² The Commissioner for Human Rights (Ombudsman) in Poland, established in 1987, not a participant in this survey, has a specific role to safeguard the freedoms and rights of persons and citizens. The Ombudsman has carried out these functions with zeal and determination and at some risk to his personal safety.

The Ombudsman took up post in 2015, shortly before the election of a new, populist, right-wing Government. What followed was a Government attack on independent institutions and on the values of liberal democracy. For example, the independence of the Constitutional Court and the judiciary were restricted, the ruling party subordinated the operation of the Prosecutor's Office and the civil service, and the secret services were given more power to gather telecommunications data and conduct surveillance. In addition, there was increasing political control of state media and mechanisms aimed at preventing torture and degrading treatment became inefficient.¹²³

Against this backdrop, the Polish Ombudsman drew attention to these developments and championed the rectification of human rights abuses. He attempted to make his Office accessible for people with disabilities, stood up in defence of LGBTI rights when 30 cities and provinces in Poland declared 'LGBT-free-zones', and when *Gazeta Polska*, a pro-Government newspaper, distributed 'LGBT free zone' stickers in its publications.¹²⁴ He also expressed concern about the arrest and treatment of a man suspected of murder in Mrowiny:

*'there can be no consent to unworthy treatment of a person. Or the abuse of repressive measures, humiliation, demonstrating the strength and violence of the state apparatus towards the individual. And especially for building an atmosphere of lynching by the authorities and representatives of authorities, which were established to protect the rights and dignity of citizens. All citizens.'*¹²⁵

The Ombudsman made clear that:

*'entire groups of people are excluded and humiliated in Poland – these are homosexual and transgender people, migrants, women and NGO activists who deal with their rights – although the Constitution guarantees us equal treatment and prohibits discrimination, we are still trying to exclude these people from social space as if they did not deserve the protection of Poland.'*¹²⁶

He also reminded people of complicity by some Poles during the Holocaust.¹²⁷

¹²²Peter Tyndall, op.cit, 2019

¹²³Adam Bodnar, Warsaw, 31 October 2018 BERGEN KEYNOTE SPEECH on receipt of the Thorolf Rafto Award, <https://s3-eu-west-1.amazonaws.com/rafto-documents/Speeches/Keynote-speech-Adam> ; Threats to human rights rising in Poland, Ombudsman says by Reuters Wednesday, 19 June 2019, <https://news.trust.org/item/20190619104858-mkvvs>

¹²⁴<https://www.hrw.org/world-report/2020/country-chapters/european-union#94880b>

¹²⁵<https://www.rpo.gov.pl/pl/content/oswiadczenie-rpo-adama-bodnara> Statement by Adam Bodnar Ombudsman. 21.6.2019.

¹²⁶Statement to Senate Committee, 9 July 2019 <https://www.rpo.gov.pl/plcontent/do-konca-kadencji-bede-bronil-obywateli-rpo-przed-komisja-senacka>

¹²⁷Polish rights official under fire for saying Poland took part in Holocaust, 23 June 2017, <https://www.timesofisrael.com/polish-human-rights-official-under-fire-for-holocaust-remark/>

As far as 2020 was concerned, in the view of the Ombudsman, the Polish Government used the cover of the COVID-19 pandemic to introduce a number of further restrictions on civil rights:

*'in particular on freedom of movement, freedom to organise peaceful assemblies, freedom of conscience and religion ... The guarantees of certain social rights, in particular the right to health, the right to social welfare and the right to education, have been challenged. Many people have lost their lives due to errors in the organization of the health care system.'*¹²⁸

These statements unleashed a sustained campaign of threats, intimidation and attacks from the Polish Government, the media and parts of civil society against Dr Bodnar. For example, Polish public TV brought a lawsuit against him as an individual in response to a statement he made on the topical issue of hate speech in his function as Ombudsman. The Deputy Foreign Minister described his statement about the Holocaust as 'scandalous' and untrue and claimed that it 'disqualifies him from public life'.¹²⁹ The Speaker of the Senate noted the range of the Ombudsman's interventions and called upon him to resign 'for the sake of peace'.¹³⁰

These attacks were of such concern that they prompted interventions by the International Ombudsman Institute (on numerous occasions), the Venice Commission, the European Network of National Human Rights Institutions,¹³¹ the Global Alliance of National Human Rights Institutions, the European Commission and the European Ombudsman. A fact-finding mission to Poland led to a critical report by the International Ombudsman Institute in 2016. The report expressed concerns about judicial independence, the waiving of the immunity of certain independent institutions, including the Ombudsman, significant financial cuts to the Ombudsman's Office, and a petition to remove Dr Bodnar from Office in light of his support for LGBTI rights.¹³² The Venice Commission, the IOI, and the European Commission all drew attention to the failure of the Polish Government to appoint a successor to Dr Bodnar when his term expired in September 2020, leaving Dr Bodnar as 'Acting Ombudsman'. This threatened the continuity of the Office's operations.¹³³

¹²⁸'A pandemic like the shadow of a great mountain.' Adam Bodnar 2020 summary <https://wiadomosci.onet.pl/tylko-w-otecie/pandemia-jak-cien-wielkiej-gory-adama-bodnara-podsumowanie-2020->

¹²⁹Human rights chief criticised for saying 'Polish nation' took part in Shoah, June 23 2017, <https://jewishnews.timesofisrael.com/human-rights-chief-criticised-for-saying-polish-nation-took-part-in-shoah/>

¹³⁰The Ombudsman presents annual information for 2018 to the Senate committee, 9 July 2019. <https://www.rpo.gov.pl/content/do-konca-kadencji-bede-bronil-obywateli-rpo-przed-komisja-senacka>

¹³¹Joint Statement by ENNHRI and GANHRI in Support of Adam Bodnar, the Polish Commissioner for Human Rights <https://ennhri.org/wp-content/uploads/2019/09/Joint-Statement-by-ENNHRI-and-GANHRI-in-Support-of-Adam-Bodnar-the-Polish-Commissioner-for-Human-Rights.pdf>. The European Network of National Human Rights Institutions (ENNHRI) and the Global Alliance of National Human Rights Institutions (GANHRI) are alarmed and deeply worried by reports that the Polish Commissioner for Human Rights, Dr Adam Bodnar, is facing a civil action brought by a public TV station against him in his personal capacity for a statement made in his professional capacity as the Head of a National Human Rights Institution (NHRI). Such civil action is incompatible with the international commitments of the Republic of Poland

¹³²Ombudsman Under Threat. Report by the International Ombudsman Institute (IOI) Following a Fact Finding Mission to Warsaw, Poland from 18 - 20 July 2016 https://www.theioi.org/downloads/apb5d/Final%20ReportPoland_21_10_2016.pdf

¹³³'The Venice Commission is concerned by the risk of paralysis of the Ombudsman institution of Poland', 12 October 2020, <https://www.venice.coe.int/webforms/events/?id-3012>; 'Uninterrupted term of office until a new head of the Ombudsman institution is elected – the IOI's stance' 19 October 2020, <https://www.rpo.gov.pl/en/content/uninterrupted-term-office-until-new-head-ombudsman-institution-elected-ioi-s-stance>; Tomasz Bielecki, 'EU Commission urges Poland to make sure that the institution of the Ombudsman remains independent' 11 January 2021. <https://wyborcza.pl/7,173236,26419140,eu-commission-urges-poland-to-make-sure-that-the-institution.html>

The personal toll on the Ombudsman was not inconsiderable, even with the clear and active support of numerous international bodies. He noted that ‘I have defended human dignity and I will defend it in all circumstances. This results from my constitutional and statutory duty, but also from my internal conviction.’¹³⁴ Later that year, he felt moved to explain in a Reuters interview:

*‘I have a few principles which help me, but they also make it more difficult. Firstly – don’t get offended. Secondly – don’t attack people personally. Thirdly – in spite of everything look for things which bring people together rather than dividing them ... Sometimes I feel isolated ... An ombudsman as the person who speaks up for the values of the liberal democratic world can have a sense of isolation.’*¹³⁵

While Poland was not a direct contributor to the current study, challenges over human rights abuses were also set out by survey respondents in Pakistan and Mexico. In Pakistan, for example, human rights abuses are wide-ranging. The Ombudsman notes that children face rights violations by agencies in respect of their education, child labour, guardianship, child marriage, involvement in armed conflicts, child trafficking, and juvenile justice.¹³⁶

The submission from the Mexico City Human Rights Commission (MCHRC) came in the context of chastening and systemic human rights violations in Mexico. These include violations committed by security forces – including extra-judicial killings, torture, enforced ‘disappearances’ and abuses against migrants. They also include murder of human rights defenders and abuse concerning sexual orientation, gender identity and disability.¹³⁷

In this crisis situation, MCHRC has found it necessary to work in co-ordinated fashion with different institutions at the three levels of government, at the international level and with civil society, notwithstanding the complexity of implementing strategies emerging from inter-institutional work. The MCHRC seeks to articulate dialogue and trigger co-ordination between other authorities, international and civil society organisations and the victims themselves. It has opened an Office in each of Mexico City’s mayoralties, and signed collaboration agreements with them. It has provided support for the construction and implementation of regulatory frameworks and public policies. Examples include providing technical assistance so that the human rights approach is considered in an integrated manner, and developing training programmes aimed at public servants and other social actors related to the human rights agenda.¹³⁸

Hollowing out of the state

Lack of public understanding about the role of the Ombudsman can be exacerbated by a ‘hollowing out of the state’. This is a process identified and labelled in the 1990s to describe the way in which services once paid for and provided by the state are now produced by a network of contracted

¹³⁴Ibid.

¹³⁵Alan Charlish, Anna Wlodarczak-Semczuk, Poland’s rights commissioner on faultlines of divided country August 13, 2019 <https://www.reuters.com/article/us-poland-rights/polands-rights-commissioner-on-faultlines-of-divided-country-idUSKCNIV316A>

¹³⁶Provincial Ombudsman Secretariat, Khyber Pakhtunkhwa, Pakistan.

¹³⁷Human Rights Watch, World Report 2020: Mexico, <https://www.hrw.org/world-report/2020/country-chapters/mexico>

¹³⁸Comisión de Derechos Humanos de la Ciudad de México, Mexico

providers, sometimes as a result of privatisation.¹³⁹ In this process ‘the state’ loses the personification which it formerly generated through citizen contact with public servants. This process is compounded by what is called ‘the universalisation of digitisation’ in the Annual Activity Report of the French Défenseur des Droits. The result is that public services are ‘disappearing’ leading to ‘a dangerous, widespread sense of rupture between users – the disadvantaged in particular – and public services’.¹⁴⁰

While there was no French involvement in the questionnaire, a number of respondents noted that the political climate their organisations currently find themselves in is one in which an increasing number of public services are being privatised and/or digitised.¹⁴¹ This makes the lines of public understanding and accountability ever more blurred. The Local Government and Social Care Ombudsman for England, UK, outlined the difficulties they have faced over recent years:

*‘Over the last decade we have had our resources cut by over 40%, despite already being underfunded to deliver our work. As more and more public services have been outsourced and privatised the lines of public understanding and accountability have become ever more blurred.’*¹⁴²

And, regardless of public or private provision, as the Estonian Ombudsman commented at an IOI workshop on Human Rights in the Digital Age: ‘The individual has to be at the centre [of engagement], and not technology’.¹⁴³

¹³⁹R.A.W. Rhodes, ‘The Hollowing out of the State: the Changing Nature of the Public Service in Britain’, *The Political Quarterly*, April, 1994.

¹⁴⁰Défenseur des droits, Annual Activity Report 2018, 11 March 2019 <https://www.defenseurdesdroits.fr/en /rapports-annuels/2019/10/annual-activity-report-2018>

¹⁴¹Computer technology is rapidly penetrating all aspects of society: the process known as «digitalisation». Public sector authorities are no exception and are introducing various forms of digital services, or «e-government». This can increase efficiency and convenience but there is also a downside for the citizen. The digitalisation of government services is sometimes at the cost of other forms of contact. Moreover, the design of the services does not always take account of the end user’s wishes and requirements. The National Ombudsman, Ombudsman for Children and Ombudsman for Veterans Annual Report 2019 ORGANISE OVERSIGHT! <https://www.nationaleombudsman.nl/system/files/bijlage/Annual%20report%202019.pdf>

¹⁴²Local Government and Social Care Ombudsman for England, UK

¹⁴³<https://www.theioi.org/ioi-news/current-news/ioi-workshop-on-human-rights-in-the-digital-age>

A case study of multiple challenges – Pakistan

Regardless of their scope and nature of jurisdiction, many Ombudsman Offices face similar challenges. The Khyber Pakhtunkhwa Provincial Ombudsman in Pakistan has been subject to a wide range of these challenges and often in extreme fashion. The manner in which this impacts on the Ombudsman service is summarised below.

Established in 2010, the Khyber Pakhtunkhwa Provincial Ombudsman serves the whole province of the Khyber Pakhtunkhwa in Pakistan (capital Peshawar), an area with a population of around 14 million people.

Use of information technology

Information technology has revolutionised the world and the working practices of countless organisations. The move towards digitisation of records and increased use of information and communication technology (ICT) not only boosts staff efficiency but also ensures more accurate record keeping. However, the switch over to using such technologies is incomplete for the Ombudsman and, in most cases, is at a rudimentary stage. As such, the ability for the Office to take full advantage of these technologies is still a long way off.

Capacity building

The Ombudsman is in dire need of capacity building for staff involved in conducting investigations, report writing, and drafting of recommendations. Specifically, they need to be trained in effective writing skills and equipped with solid ICT skills and rigorous investigation techniques.

Resource constraints

The two needs of digitisation and capacity building would normally be seen as routine activity, but paucity of resources turns them into serious challenges. Third world economics are usually marked by resource constraint and intense competition by public sector institutions for financial allocations. The funds allocated mostly fall short of the requirements. This imbalance means that the organisation needs to adopt stringent management approaches and to be careful to optimise the use of the resources available in a bid to stave off any downturn in operational performance.

Resolution of grievances and compliance

The Ombudsman faces challenges to arrive at agreements and resolutions which the parties involved in accept are fair. The compliance and execution of these agreements and related recommendations on complaints also pose a daunting challenge to the Ombudsman. Being a quasi-judicial forum, in cultural terms the Ombudsman's recommendations lack the force of a judicial decree. This can make it difficult to ensure they are complied with. In turn, this non-compliance and lack of execution of recommendations can compromise the Ombudsman's authority and cause resentment amongst complainants.

Absence of statutory powers

There is a marked tendency of Government to curb and curtail the jurisdiction of the Ombudsman Office. In Pakistan, the Government withdrew the powers initially vested in the Ombudsman to execute recommendations on his own. In the absence of statutory powers to impose penalties for non-compliance, contempt proceedings also appear futile, counter-productive and self-defeating.

Human rights

Instances of human rights abuses are wide-ranging. In particular, the Ombudsman notes that children face rights violations by agencies with regard to education, child labour, guardianship, child marriage, involvement in armed conflicts, child trafficking and juvenile justice.

Distortion of facts and bottlenecks

The Ombudsman also has to face delays when asking organisations to provide the true facts relating to a complaint (rather than a distorted version of events which paints the organisation in a misleadingly flattering light). In addition, organisations can be non-responsive throughout investigations, which prolongs and disrupts the complaints process. For example, hearings to determine the viewpoints of organisations have to be adjourned due to their non-attendance. This causes unnecessary delay in attempts to resolve complaints in a timely fashion and makes it difficult to run the day-to-day business of the Ombudsman effectively. The Government is usually reluctant to intervene and provide assistance to mitigate these issues.

The result of all of the above is a cumulative challenge to the authority and power of the institution.

Political interference and challenges to independence

Less challenging amongst the majority of respondents were issues such as political interference, challenges to independence from other stakeholders, or corruption and the absence of public probity. We need to proceed with caution here. First, Ombudsman Offices in countries where there is manifest political interference and challenge to Ombudsman independence were not always part of the respondent group, and so their account is missing. Second, the challenges respondents were asked to rank were not separate and discrete categories. For example, what in one account is a human rights abuse can, in certain circumstances, also be seen as a challenge to Ombudsman independence.

Nevertheless, political interference and challenges to independence still appear to present a significant challenge in Albania and Pakistan (for political interference) and Malta and Cyprus (North) (for corruption). For example, with regard to political interference, the Provincial Ombudsman, Pakistan points out that:

‘there is a tendency of Government to curb and curtail the Jurisdiction of an Ombudsman ... in the case of my Office, the Government withdrew the powers initially vested in the Ombudsman to execute recommendations on his own.’¹⁴⁴

In Malta, the Ombudsman reported: ‘Issues with access to full information and the failure of the administration to discuss the Ombudsman reports in Parliament. We are discussing these main issues with the Venice Commission’.¹⁴⁵ As we will see, these matters were indeed taken up by the Venice Commission (see chapter six).

The Queensland Ombudsman in Australia makes the important and subtle point that the key characteristic of ‘independence’ essential to the Ombudsman ‘brand’ and reputation has been sullied by the application of the term by Governments to emphatically non-independent bodies:

‘The main challenge relates to the term “ombudsman” being used by governments and private sector, because of the history, reputation and achievement, for roles not meeting the level of independence or impartiality of parliamentary ombudsman. Governments have also allowed the independence of the role to be eroded by statutory provisions empowering ministers to direct ombudsman functions.’¹⁴⁶

As far as issues of probity more generally are concerned, some respondents found that it can be difficult to ensure that organisations accept and implement the changes that the Ombudsman has recommended. For example, the State Comptroller and Ombudsman, Israel, encounters, ‘non-co-operation of public bodies, some of which may obstruct the Ombudsman’s reports in Parliament’. Steps taken to deal with such non-co-operative bodies include holding face-to-face meetings with the heads of the relevant organisations, ‘and, if necessary, will summon them to appear before the Audit Committee of the Israeli Parliament’.¹⁴⁷

Summary

Despite the huge diversity in contextual political culture and organisational difference, Ombudsman organisations are united by common challenges of a lack of public understanding of their role, meeting expectations of service users, resource and imperfect mandates. All of this combines to mean that vulnerable people in all jurisdictions often never connect with the Ombudsman. Super-imposed on this commonality are the small number of countries where brutal human rights abuses – Poland, Mexico and Pakistan – place the Ombudsman (and many others) in physical peril. This particular outrage is not susceptible to merely in-country correction, and needs comradely support and intervention from international Ombudsman Officers and their networks. In the case of Poland, at least, this has been the case, but this is not to underestimate the pressure on brave, beleaguered, upstanding Ombudsman colleagues. To repeat the under-stated words of Dr Adam Bodnar: ‘Sometimes I feel isolated ... An ombudsman as the person who speaks up for the values of the liberal democratic world can have a sense of isolation’.

¹⁴⁴Provincial Ombudsman Secretariat Khyber Pakhtunkhwa, Pakistan

¹⁴⁵Parliamentary Ombudsman, Malta

¹⁴⁶Queensland Ombudsman, Australia

¹⁴⁷State Comptroller and Ombudsman, Israel

Chapter four: Organisational values, personal skills and attributes

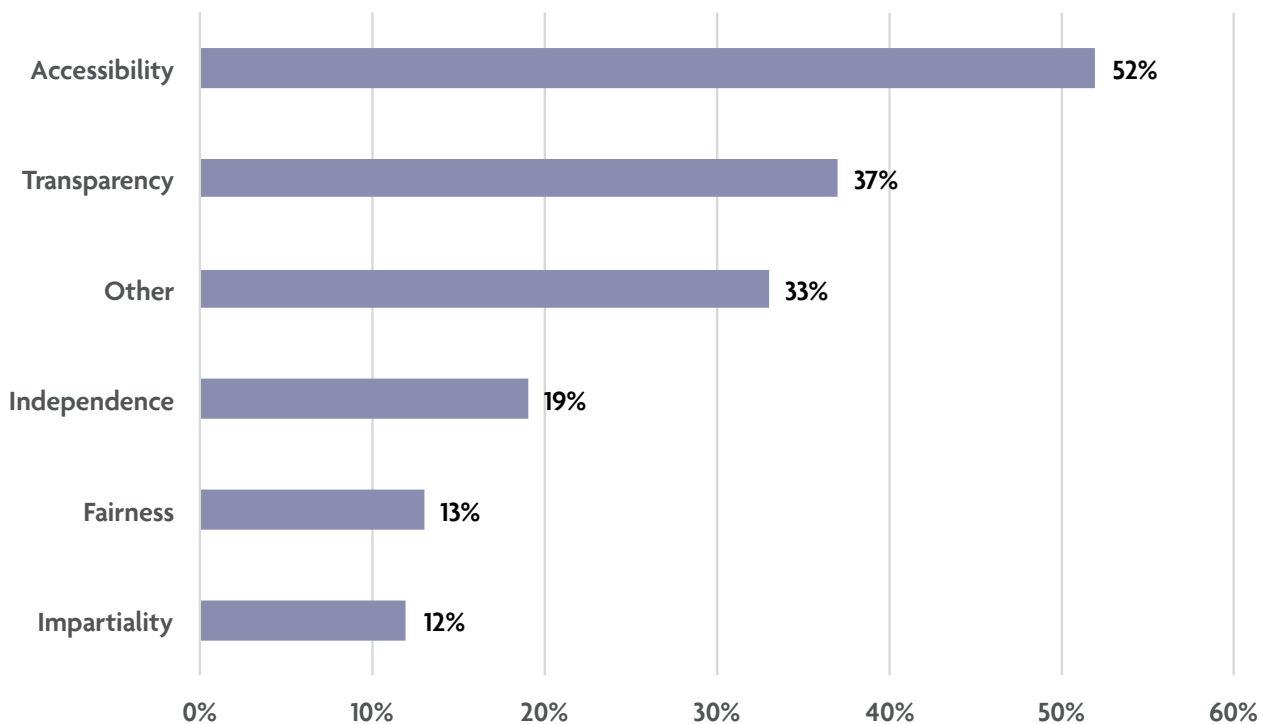
Introduction

In this research, respondents were provided with a list of organisational values, and one of more personal skills and attributes. They were then asked to select those which they felt were most difficult to deliver within their organisation. These are questions which go to the heart of the practice of Ombudsman leaders. While there is general consensus about the importance of a range of values and skills relevant to Ombudsman schemes, it is more problematic to place the values and skills in rank order. This is because the values and skills are sometimes in tension with each other and because responses change in reaction to changing political, social and organisational circumstances. In managing (for example) the trade-offs between transparency and confidentiality, or empathy and impartiality, there is no 'rule book'. Ombudsman leaders, never departing from an ethical approach, must manage ambiguity.

Organisational values

Ensuring that organisations are accessible and that their leaders are transparent were singled out as being the most difficult to deliver. In terms of organisational values, over half of respondents (52%, n=27) said that accessibility is the most difficult to deliver in their organisation.

Figure 13: Core organisational values (rated by difficulty to deliver)



Accessibility

According to more than half of all Ombudsman respondents, the most difficult value to deliver is accessibility. There are a number of reasons for this. The general context is that, in the words of the Catalanian Ombudsman, 'The [Ombudsman] institution is not well enough known amongst society. We need to find ways to reach the most vulnerable'.¹⁴⁸ In similar vein, the Netherlands Ombudsman suggests that 'People who need us often do not even know we exist, or do not have time to reach out, or find it challenging to write us'.¹⁴⁹ This is not easy because the most vulnerable include culturally, religiously and linguistically diverse groups and others (for example, refugees and asylum seekers) who may also be disadvantaged. In the words of the Ombudsman of the Basque Country, Spain, 'Many complainants belong to vulnerable groups (marginalised, homeless, illegal foreigners) who have difficulties to communicate or even manage in official languages'.¹⁵⁰ There is the additional problem of the physical remoteness of many Ombudsman Offices.

Strategies to address these issues include outreach work, the application of new technologies to reach people remotely and the construction of diverse workforces capable of reaching and communicating with the communities they serve. The success of these strategies is partly dependent on having the necessary financial and non-financial resource to be able to reach out. It is also dependent on having a mandate that facilitates connecting with communities through (for example) the ability to conduct own-initiative investigations.

In New Zealand, accessibility 'is a big issue – particularly with a large indigenous population. We are now moving towards more accessible contact with our Office particularly with use of social media'.¹⁵¹ Similarly, In Australia, 'Culturally and Linguistically Diverse [CALD] and other disenfranchised cohorts within the community are less likely to know of their right to seek our assistance'.¹⁵² Even when 'many in the community are aware of the Office, most will not access the Office, preferring legal processes through the courts, where legal aid is available'.¹⁵³

In Ireland:

*'The typical users of Ombudsman services are often articulate and comfortably off. Reaching out to people who are poor, from minority ethnic groups, disabled, lack internet access or who do not have English as a first language is always a challenge. Specific outreach programmes are run to challenge this, for instance with refugees and asylum seekers.'*¹⁵⁴

Physical remoteness of the Ombudsman Office is noted by many respondents. In British Columbia, Canada, for example:

'We are physically in one location and serve a geographic area the size of Europe (albeit much smaller population!) Awareness of our Office is low and thus some people who have problems

¹⁴⁸Sindic de Greuges de Catalunya, Spain.

¹⁴⁹Netherlands National Ombudsman, Netherlands

¹⁵⁰Ararteko, Ombudsman for the Basque Country, Spain

¹⁵¹Parliamentary Ombudsman, New Zealand

¹⁵²New South Wales Ombudsman, Australia

¹⁵³Queensland Ombudsman, Australia

¹⁵⁴Ombudsman of Ireland

*with government don't know they can complain to us. Our limited communications budget and the collapse of traditional media as mechanisms to reach the public have made this more difficult.'*¹⁵⁵

Lack of physical presence across large political territories is also reported in Malawi, the Czech Republic, Canada and Kosovo. In Malawi, 'The Office has only four region[al] offices while the country has 28 districts. Some people cannot access services of the Office due to cost of traveling'.¹⁵⁶ In the Czech Republic, 'From the practical sense the Office of the Public Defender of Rights is situated in Brno which does not lie in the heart of the Czech Republic'.¹⁵⁷ In Canada, the Veterans Ombudsman reports the challenge of reaching disenfranchised veterans without the means or wherewithal to contact us.¹⁵⁸

In Kosovo:

*'Although the Ombudsperson Institution ... operates with a headquarters in Pristina and seven other regional Offices ... we fear that there are people in the remote areas who cannot access our institution and address their complaints for their violated rights. This is the reason we have used a lot our own-initiative investigations which consists of systematic human rights violations in the country ... cover[ing] the rights of people in the rural areas as well.'*¹⁵⁹

Strategies to address these challenges include outreach work discussed above (see, for example, the case study on the Netherlands' approach, chapter three) and the deployment of own-initiative powers so that some of the burden of approaching the Ombudsman with a specific complaint is removed by the ability of the Ombudsman to address, *sua sponte*, the issues of vulnerable groups. New and emerging technologies can also help. One strategy is to develop a stronger presence on social media platforms to increase awareness and enhance accessibility for difficult-to-reach groups.

This approach is not a panacea since it will still fail to raise awareness amongst those less likely to have access to ICT (for example, indigenous populations, prisoners or elderly people). But it can help towards bridging the gap for many. Additionally, the creation of diverse workforces is fundamental in enabling Ombudsman Offices to be more representative of and, in turn, more empathetic towards the communities they serve. It therefore complements all of the above.

The above strategies are, however, hampered by limited resource and constraints of mandate. Resources are an issue in Australia, at Commonwealth level, where 'Resource limitations across a very wide field of jurisdiction limit what we can do'¹⁶⁰ and also at state level where 'Limited funds make necessary outreach very difficult'.¹⁶¹ In England, the Local Government and Social Care Ombudsman has 'no budget to promote our role or raise public awareness, and the jurisdictional overlaps with other schemes and regulatory bodies create a maze of confusion for the public'.¹⁶²

¹⁵⁵Ombudsperson of British Columbia, Canada

¹⁵⁶Office of the Ombudsman, Malawi

¹⁵⁷Public Defender of Rights of the Czech Republic

¹⁵⁸Veterans Ombudsman, Canada

¹⁵⁹Ombudsperson Institution of Kosovo

¹⁶⁰Office of the Commonwealth Ombudsman, Australia

¹⁶¹Victorian Ombudsman, Australia

¹⁶²The Local Government and Social Care Ombudsman for England, UK

In addition, constraints of mandate can negatively impact on accessibility. In Wales ‘It is a constant worry that we fail to help the hardest to reach/most vulnerable – I am hopeful that own-initiative powers [recently granted by the Welsh Government] will help overcome this.’¹⁶³ In England, complaints about Government departments must go first to a Member of Parliament, the so-called ‘MP filter’. This has been described by the Parliamentary oversight committee of the Ombudsman, with unparalleled frankness, as ‘iniquitous’:

*‘The continuing prohibition of direct access for all complaints is the denial of equal access to administrative justice and is an anachronism which is at odds with the expectations of today’s citizens. This defies all logic. It disempowers citizens, obstructs access to their rights, and deters people from making complaints.’*¹⁶⁴

In the view of the UK Parliamentary and Health Service Ombudsman, ‘As long as the MP filter prevents direct access, we will struggle to meet the requirements of the cherished Venice Principles’ or create appropriate accessibility.’ This is not for the want of endeavour or creativity:

*‘we have a Diversity and Inclusion Strategy to create access for disabled complainants, and an outreach practice which sends the Ombudsman and colleagues out into the community most weeks. We now routinely facilitate Microsoft Teams and direct access meetings and try to depart as much as possible from paper transactions. We know from data that older people and vulnerable people in the community are less likely to complain. And our new Strategy is working on ways of directly addressing this. Fundamentally, the Ombudsman has to be seen as part of the community, not remote from it.’*¹⁶⁵

A recurring theme in the feedback gathered via this research is therefore the paradox of it being more difficult to reach the people in greatest need. There is a general worry amongst many respondents that their organisations will fail to reach the most vulnerable sections of society.

¹⁶³Public Services Ombudsman, Wales

¹⁶⁴House of Commons Public Administration Select Committee (PASC), Time for a People’s Ombudsman Service, Fourteenth Report of Session 2013–14, HC 655, 28 April 2014, para 55–56. <https://publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/655/655.pdf>

¹⁶⁵Parliamentary and Health Service Ombudsman, UK

Case study – The Republic of Indonesia

The National Ombudsman Commission of Indonesia was created by Presidential Decree in 2000. It serves a population of 275 million people. One of the largest national Ombudsman services in the world, it has over 500 staff members and covers the more than 17,000 islands that make up Indonesia. This creates obvious difficulties in obtaining access to good quality public services and indeed to the Ombudsman service. There are 24 representative offices throughout the country.

According to the Ombudsman, the three greatest challenges facing the Commission are corruption and the absence of public probity, a lack of appropriate resources, and the disruption to routine activity by national and international crisis. Like the majority of sister schemes, further challenges include promoting comprehensive knowledge and understanding about the scheme to the public and agencies in jurisdiction, and establishing trusted networks with civil society organisations.

The Ombudsman has powers of ‘own-initiative’ investigation and uses a detection phase to help identify which areas of investigation should be focused on. In this, proposals for areas of investigation can be raised by colleagues before the Plenary of Ombudsman Members decide which to take forward.

In relation to COVID-19, the Ombudsman plans to launch a systemic investigation looking at medical waste treatment, the distribution of vaccines and the distribution of non-cash food assistance.

In addition, the Ombudsman launched an online complaint centre for people to file reports about unsatisfactory public services during the pandemic. The centre processes complaints about, amongst other things, social safety net programmes, health services, financial services, and the transportation system.

The Commission benefits from capacity-building projects with the Netherlands National Ombudsman and a number of Dutch universities. Its development provision for staff includes training on investigations, mediation and conciliation, ‘mystery shopping’, systemic review, leadership, and the components of a ‘fair treatment approach’. This focuses on improving the attitude of civil servants towards citizens from one of suspicion into one of empathy and shared interests. It aims to reduce litigation and administration costs by encouraging public authorities and citizens to work together to find alternative solutions.

Transparency

A 2018 OECD Report on The Role of Ombudsmen in Open Government reiterated the role that Ombudsman Institutions can play in delivering openness and transparency:

*'First, as an actor of a country's or territory's institutional framework, OIs [Ombudsman Institutions] can apply open government principles to their own functioning. This can include enhancing the transparency and accountability of their activities, management and budget, but also engaging stakeholders in pursuing their mandate more effectively. Secondly, as an institution that interacts with citizens, oversees if their rights have been respected and provides policy recommendations, OIs can not only contribute to, and inform the country's or territory's open government strategies and initiatives, but they can also monitor and contribute to the implementation of these reforms and hold the government accountable for them.'*¹⁶⁶

Ombudsman Officers understand the importance of transparency. It exists 'So that all your decisions are clear to everyone and accessible'.¹⁶⁷ However, achieving transparency was judged difficult for many Ombudsman organisations (37%, n=19) because of competing priorities. There is a balance to be struck between delivering transparency alongside the inherently confidential nature of the investigative work that Ombudsman services are involved in:

*'The balance here is between secrecy and transparency. We are required on the one hand to work in secret and maintain confidence but on the other, to convey confidence because we are transparent in the way we go about our task.'*¹⁶⁸

*'... we need to continuously invest effort into public understanding of our impartiality. In order to follow this aim, transparency of our work is important. However due to the large workload and sensitivity of private information, this can be challenging.'*¹⁶⁹

*'Combine respect for legal prescriptions on professional secret and confidentiality in the conduct of investigations and aspiration to the highest standards of transparency on the activities of the institution and outcome of inquiries.'*¹⁷⁰

The benefits of publishing information arising from casework are clear. Most importantly, publication can be used as a means by which to highlight the core function of the Ombudsman – delivering justice for individuals and groups – and at the same time drawing attention to systemic issues and leveraging positive change.

However, doing this raises a number of issues. First, the complexity of the legal structures governing Ombudsman activities and the sometimes arcane nature of the detailed subject matter involved in case resolution can inhibit attempts at disclosure. In the words of the Public Defender of Rights in the Czech Republic: 'It is very difficult to explain particularly complicated legal problems to complainants'.¹⁷¹

¹⁶⁶The Role of Ombudsmen in Open Government, OECD Working Paper on Public Governance No. 29, 2018

¹⁶⁷Integrity and Anti-Corruption Commission, Jordan

¹⁶⁸Parliamentary Ombudsman, New Zealand

¹⁶⁹Human Rights Ombudsman of the Republic of Slovenia

¹⁷⁰The Federal Ombudsman, Belgium

¹⁷¹Public Defender of Rights of the Czech Republic

Secondly, in some cases the Ombudsman is governed by law restricting disclosure. For example, in Victoria, Australia, ‘My Act requires me to conduct my work in private, with no public interest exemption; it can be very difficult to explain [our] role with such restrictive legislation’.¹⁷² Similarly, the counterpart state institution in Queensland reports: ‘Confidentiality provisions limit my capacity to talk about the work of the Office and publish material which would educate the public and politicians’.¹⁷³ And in police Ombudsman offices, the lack of transparency is marked. In the Western Cape, South Africa:

*‘We are not allowed to share our reports and detailed information with the media. Often, this is exactly what people want to know and due to our confidentiality [requirements], we may not share details of our investigation and often our good work, with the media.’*¹⁷⁴

Similarly, in Northern Ireland, there are severe legal and cultural constraints:

*‘There is no ability to publish investigation reports and in particular reports of own motion investigations and referrals of serious matters from police are circulated on a limited basis (to the Police Service Northern Ireland [PSNI] and the Department of Justice and Policing Board) and not published. The office practice has been not to advise a complainant or police officer of the nature of the Police Ombudsman’s recommendation made to the PSNI or Prosecution Service. Strategic Recommendations for policy change are not published and neither is the follow up action or response of PSNI.’*¹⁷⁵

In summary, and again following Northern Irish experience, ‘Statutory restrictions on sharing information – whilst appropriate and there for very good reasons – often makes transparency – or perceptions of transparency – difficult to meet in terms of stakeholder expectations’.¹⁷⁶

In Israel, there is no statutory duty to share relevant material unearthed in investigations with complainants and, in addition, material is withheld to incentivise co-operation by public bodies:

*‘The difficulty arises due to privacy issues respecting the complainant and third parties potentially affected by the outcome of the complaint investigation. In addition, the Ombudsman will not give complainants or other parties internal documents received from the public bodies subject of the complaints, in order to ensure co-operation by public bodies with our Office and for other reasons. In this regard it should be noted that the Office is exempt from providing such material under the Freedom of Information Act, and anyone requesting material must apply directly to the public body.’*¹⁷⁷

In the same vein, the Parliamentary Ombudsman in Malta reports that: ‘We have recently experienced a concerted effort from the administration to withhold information especially since the coming into effect of the GDPR’.¹⁷⁸ Sometimes, however, it is the Ombudsman’s complainants who ‘often request anonymity and sometimes it is not easy to preserve identity and personal data when

¹⁷²Victorian Ombudsman, Australia

¹⁷³Queensland Ombudsman, Australia

¹⁷⁴The Western Cape Police Ombudsman, South Africa

¹⁷⁵Police Ombudsman for Northern Ireland, UK

¹⁷⁶Northern Ireland Public Services Ombudsman, UK

¹⁷⁷Israel State Comptroller and Ombudsman, Israel

¹⁷⁸Parliamentary Ombudsman, Malta

requesting information to the authority involved in the alleged act of maladministration'.¹⁷⁹

Third, commitment to transparency is a cultural and strategic challenge as well as having a legal dimension. For the Parliamentary and Health Service Ombudsman, UK:

*'Being transparent is a big, cultural, technical, strategic challenge. Initiatives that were judged "improbably amusing" when I arrived three years ago – Open Meetings, Radio Ombudsman, open lines to the media – are now firmly embedded. We will start a process to publish summaries of almost all case decisions on-line from the end of the financial year. We also now share clinical advice we rely on with the parties in health cases. We are hampered by outdated legislation which requires us to investigate in private, but inspired by initiatives in other countries to welcome in television.'*¹⁸⁰

The cultural challenge is especially heightened by the absence of 'real external accountability mechanisms'. When these are not present, staff can 'see themselves as above reproach and not needing to explain their actions'.¹⁸¹ This is a worrying phenomenon.

A relatively high (33%, n=17) proportion of respondents selected 'other' when asked which organisational values were difficult to deliver. In most cases, concerns here were around the organisation's ability to produce high-quality reports and investigations within agreed timelines in the face of resourcing issues. For example, the Ombudsman of the Cayman Islands reported: 'Our true challenge remains producing quality investigations and reports'.¹⁸²

One respondent (Israel State Comptroller and Ombudsman, Israel) highlighted the issue of equal treatment, which sometimes arises as a by-product of Ombudsman intervention:

*'An inherent tension in the work of the Ombudsman is concern that due to the Ombudsman's intervention, the complainant may receive preferential treatment over other members of the public. When this concern arises, the Ombudsman will point out to the complained-against body the need to adopt or clarify the proper procedures to the staff and ensure equal treatment of the public.'*¹⁸³

Independence

Independence is the *sine qua non* of Ombudsman practice. It was selected by around one in five (19%, n=10) respondents as the value most difficult to deliver. There is often an uneasy co-existence between being independent in terms of constitutional rules on the one hand and not being financially or politically independent on the other. This juxtaposition is reported by African respondents, but not confined to that continent. In Namibia, for example, 'although the Namibian Constitution guarantees the independence of the Ombudsman, its links to the Ministry of Justice for budgetary and administrative purposes affect its independence'.¹⁸⁴ In Malawi:

¹⁷⁹Ararteko, Ombudsman for the Basque Country, Spain

¹⁸⁰Parliamentary and Health Service Ombudsman, UK

¹⁸¹New South Wales Ombudsman, Australia

¹⁸²Ombudsman Cayman Islands

¹⁸³Israel State Comptroller and Ombudsman, Israel

¹⁸⁴The Ombudsman of Namibia

*'The Office is not financially independent and usually politicians bully the Office on service delivery investigations as politicians are usually the culprits. For instance, recently Members of Parliament were seemingly not happy because the Office is investigating local development funds managed by members of Parliament.'*¹⁸⁵

In South Africa:

*'Since our [police ombudsman] Office is created within a Government department, we are not truly independent in terms of our processes. Although we have complete control over how our budget is spent, we still have to procure all requirements through the Department of Community Safety.'*¹⁸⁶

There have been attacks on the independence of national Ombudsman Officers in a number of countries in Europe, most notably in Poland and Cyprus. Polish colleagues did not submit responses to this questionnaire, but their experience is significant in looking at the difficulties of being independent.

In Poland:

*'Dr Adam Bodnar, the Polish Ombudsman appointed a Deputy to address LGBTQ issues. In response, the Government sought to drastically reduce his budget. More recently, he spoke out about hate speech following the killing of the Mayor of Gdansk. He was then sued as an individual by the State TV Company.'*¹⁸⁷

In Cyprus, the Ombudsman's independence has similarly been threatened:

*'Our Institution recently faced in the field of Independence, the efforts of the Auditor General of the Republic of Cyprus to investigate the way the Ombudsman is exercising her powers to assign, delegate and oversee the work performed by the Officers. In view of my refusal to allow such investigation to take place, the Auditor General referred the matter to the Attorney General and asked for my prosecution. With IOI's intervention the Attorney General agreed with the IOI's opinion and stopped the threat.'*¹⁸⁸

Other national Ombudsman Officers have not experienced direct threats such as these, but the possibilities are not remote. In Ireland:

*'The staff of the Office are civil servants – albeit appointed by the Ombudsman, and this can lead to perceptions of lack of independence. The budget is provided by the Government, albeit voted on by the Parliament. None of these issues have caused difficulties in recent years, but they have the potential to do so.'*¹⁸⁹

¹⁸⁵Office of the Ombudsman, Malawi

¹⁸⁶Western Cape Police Ombudsman, South Africa

¹⁸⁷Speech by Ombudsman and President of the International Ombudsman Institute (IOI) Peter Tyndall, European Forum, 26 August 2019, <https://www.ombudsman.ie/news/human-rights-under-pressure/>

¹⁸⁸The Commissioner for Administration and Protection of Human Rights, Cyprus. See Cyprus Mail <https://cyprus-mail.com/2019/12/15/auditor-generals-interference-in-ombudswomans-office-an-infringement/>

¹⁸⁹Ombudsman for Ireland

Fairness

Seven respondents (13%) selected fairness from the list of organisational values most difficult to deliver. Some schemes have struggled to put in place the mechanisms to ensure fairness:

*'Only recently has the Office introduced a representations process for public statements to allow individual police officers to comment on draft reports when criticised in a draft public statement. The police misconduct regulations in Northern Ireland do not permit hearings to be chaired by independent persons and the disciplinary hearings (comprised of senior police officers) are held in private and held at police HQ.'*¹⁹⁰

Fairness then is not just a 'bright idea' but a principle that needs to be reflected in the detail of working rules and regulations. Additionally, there is the issue of public confidence. Although it can be difficult to assure complainants and other parties involved that the Ombudsman is being fair, the Slovenian Human Rights Ombudsman points out that: 'we want the public and everyone we work with to understand that our opinions are based on carefully investigated facts and due application of Slovenian and international law'.¹⁹¹ In New Zealand, the Ombudsman adds that:

*'This can be very subjective, and in endeavouring to strike the right balance, either side can feel not listened to or maligned. The factors setting the platform for fairness themselves need to be clear, firm and transparent, and we need to be assertive about why we have come to the conclusion that we have.'*¹⁹²

Impartiality

Demonstrating and achieving impartiality can also be particularly challenging, although it was only selected as an organisational value of concern by a minority of respondents (12%, n=6). Sometimes, committed, experienced, Ombudsman investigators have strong views about policy issues they have trouble leaving to one side,¹⁹³ or preconceived notions which must be managed.¹⁹⁴

There are particular problems in jurisdictions with small populations, where, in the vernacular, 'everyone knows each other'. In the Cook Islands, for example:

*'In a country with approximately 17,000 people ... the majority are virtually related to each other by means of blood relation, marriage, adoption and association with community, traditional sport, cultural, religion etc.'*¹⁹⁵

This raises the spectre of perceived or actual conflicts of interest compromising impartiality. In the Faroe Islands, 'Impartiality is not a difficult factor in general to handle but, given the small size of the community (50,000 inhabitants), the question must be dealt with on some occasions'.¹⁹⁶ Similarly, the Basque country 'is a relatively small country [within Spain] and it is sometimes difficult to keep the right balance between personal and professional relationships'.¹⁹⁷

¹⁹⁰Police Ombudsman for Northern Ireland, UK

¹⁹¹Human Rights Ombudsman of the Republic of Slovenia

¹⁹²The Parliamentary Ombudsman, New Zealand

¹⁹³New South Wales Ombudsman, Australia

¹⁹⁴Ombudsman Cayman Islands

¹⁹⁵National Ombudsman, Cook Islands

¹⁹⁶Løgtingsins umboðsmaður, Faroe Islands

¹⁹⁷Ararteko, Ombudsman for the Basque Country, Spain

For Ombudsman schemes that service a larger population, and which are also not immune from suggestions of conflicts of interest, issues can arise in attempting to create a level playing field between complainants and the organisations they complain about:

‘Formally and culturally, we are impartial but have more to do to address the imbalance of power between (often poorly resourced) complainants and formidably supported bodies in jurisdiction. We have developed policy ... to create equivalence between the evidence (often not written down) of complainants and the often weighty written evidence of hospitals. But we have more to do in terms of training and leadership to deliver this.’¹⁹⁸

The importance of this issue was raised in an independent review for PHSO of the commissioning of clinical advice in health service cases that:

‘heard from a number of complainants that they felt their evidence and testimony were given less weight than the organisations complained about and that they felt “disbelieved by default”. Caseworkers noted that it could be difficult to weigh evidence from both sides: organisations being investigated often have more written evidence than the complainant, who at times has their personal testimony alone. The Review was clear that contemporaneous clinical records are often an essential element of the evidence informing our decision. However, they heard that we could be clearer on how these are balanced against personal recollection and how the balance might shift in cases where such clinical evidence is missing or disputed.’¹⁹⁹

Guidance to address this key issue was published by PHSO in May 2020.²⁰⁰

Taking steps to address concerns about fairness and impartiality is difficult enough. Convincing sceptical complainants of the effectiveness of doing so adds another layer of complexity to the challenge, not least because while ‘fairness’ and ‘impartiality’ have common sense meanings, they are essentially contested concepts.

Personal skills and attributes

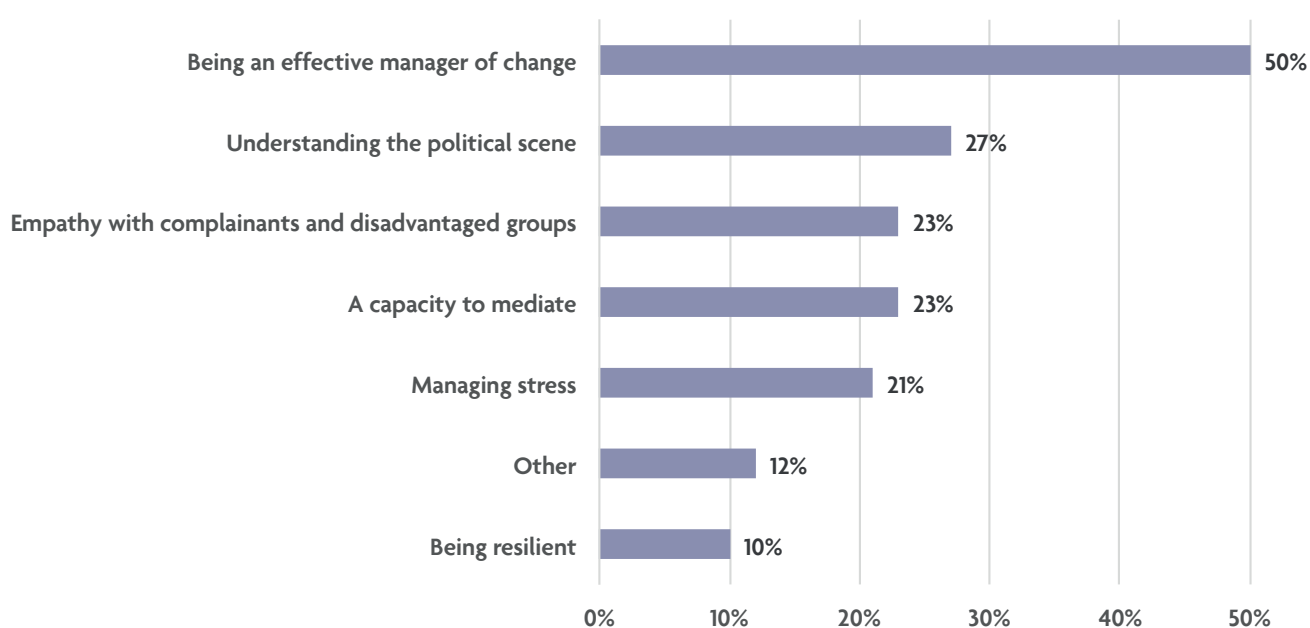
From a list of personal skills and attributes, half (50%, n=26) selected being an effective manager of change as the most difficult to deliver in their organisation. This is an emphatic sign of the turbulent times Ombudsman Officers live in.

¹⁹⁸Parliamentary and Health Service Ombudsman, UK

¹⁹⁹Clinical Advice Review: Final report and our response, <https://www.ombudsman.org.uk/publications/clinical-advice-review-final-report-and-our-response/balancing-evidence-and-ensuring-everyone-understands-how-we-use-it->

²⁰⁰Guidance for Balancing Evidence <https://www.ombudsman.org.uk/sites/default/files/Balancing%20Evidence%20Guidance.pdf>

Figure 14: Key skills and attributes (rated by difficulty to deliver)



Being an effective manager of change

Ombudsman Offices are constrained politically by their accountability to Parliament and the related requirement on them to fulfil statutory functions. In addition, since most Ombudsman schemes do not have the power to make binding decisions, they are also dependent on the co-operation of bodies in jurisdiction to comply with their recommendations. Each of these constraints has the potential to impact on the Ombudsman's capacity to deliver meaningful change, and this capacity is itself constrained by available resources.

Each one of the above constraints is reported by Ombudsman respondents as being problematic. As far as giving an account to Parliament is concerned, a number of respondents had imposed upon them in their founding statute the 'corporation sole' model in which accountability to Parliament – in all its aspects – lies with the Ombudsman personally. This places immense pressure on individual Ombudsman Officers, as the New Zealand Parliamentary Ombudsman explained: 'As Chief Ombudsman I am also Chief Executive and find performing the ombudsman task as well as being a manager often introducing change, is very demanding'.²⁰¹

In related fashion, the Scottish Public Services Ombudsman points to the challenges of simply meeting the statutory duties imposed upon her organisation:

*'As an organisation it is difficult as constant fire-fighting to deliver statutory functions leaves little time to explore and deliver change generated by our own design. Often the change having to be managed is imposed by the external environment or budgetary constraints over which we have little control or choice.'*²⁰²

²⁰¹Parliamentary Ombudsman, New Zealand

²⁰²Scottish Public Services Ombudsman, UK

Where the legal duty is elevated above the resolution of individual complaints and focuses on prescribed human rights standards, the challenge of effectively managing change can become even greater. For example, the Síndic de Greuges (the Catalan Ombudsman) has championed human rights development with unflinching perseverance, but ‘Notwithstanding the fact that 80% of our individual resolutions are fully complied with by the administration, it is harder to achieve systemic change in public policies that are not consistent with the best human rights standards.’²⁰³ In other countries, the Ombudsman’s mandate is restricted to the investigation of individual complaints only. This can mean ‘it is more difficult to bring about systemic changes in public bodies.’²⁰⁴

Sometimes, of course, these statutory duties may be outdated. Many Ombudsman organisations’ responsibilities are governed by complex and often outdated legislation. Mandates may not have kept pace with societal changes but are still used as the template which organisations must operate within. Necessary reform can be de-prioritised by the national legislature due to other, competing, demands. Campaigning to have legislation updated is a long, arduous and time-consuming process, as Ombudsman Officers in Ireland, England, and Gibraltar have discovered.

The third constraint, the absence of binding powers for Ombudsman schemes, or even the competence to set precedents in case decision-making, is an additional challenge because of the significant effort needed to achieve compliance or wider impact. In Iceland, for example, where the compliance rate with the Ombudsman’s decisions is over 90%:

*‘Although central and local administration generally follows the Ombudsman’s conclusions ... it is evident that the authorities do not monitor the Ombudsman’s conclusions and handling of cases in general – that is in terms of cases that do not pertain to the authority in question especially, sometimes meaning that the Ombudsman has to provide his opinions on similar cases repeatedly.’*²⁰⁵

Managing effective change is also affected by cultural and human resources factors. Several respondents pointed out that some staff in their organisation have been there for many years. Although their years of dedicated service are to be welcomed and bring a richness of experience to the organisation, without being carefully managed, there is also a risk that the organisation can fall into a pattern of complacency and be reluctant to innovate or embrace new initiatives. Such issues appear to be a concern for a number of Ombudsman schemes. Sometimes, as in Italy, Ireland, and Malawi, the problem emanates from bureaucratic torpor:

*‘It is very difficult to make changes due to all the bureaucratic rules that condition administrative action, including the action of the Ombudsman and of her/his Office.’*²⁰⁶

*‘The civil service ethos of the Office has many positive attributes, but it can make change management more difficult. Change requires huge reserves of patience.’*²⁰⁷

*‘Some Officers are not willing to change and fiercely criticise proposed changes and even frustrate change initiatives.’*²⁰⁸

²⁰³Síndic de Greuges de Catalunya, Spain

²⁰⁴Israel State Comptroller and Ombudsman, Israel

²⁰⁵The Althingi Ombudsman, Iceland

²⁰⁶Tuscany Region Ombudsman, Italy

²⁰⁷Ombudsman of Ireland

²⁰⁸Office of the Ombudsman, Malawi

In Spain and also in Greece: ‘There is resistance to accept changes and move out of traditional patterns and comfort zones.’²⁰⁹ In Australia:

*‘I think there is a risk in Ombudsman Offices that people stay for many years, put in dedicated service, but can on occasion fall into a form of self-congratulatory complacency. I am actively and methodically seeking to enliven and evolve the Office, but it is a challenging process.’*²¹⁰

Conversely, other respondents report having high levels of turnover: ‘The organisation has gone through significant change in the executive team and Board of Directors. Because of the employee turnover, the implementation of recommendations to address systemic issues is difficult.’²¹¹

Part of the challenge of motivating and retaining staff is about having effective and skilled staff management. A number of Ombudsman schemes have historically recruited staff members into senior roles based on their technical ability alone rather than on their skills and experience to manage change. In Northern Ireland for example: ‘The Senior Management Team [of the Police Ombudsman] do not have the skills and experience to manage change as they have been promoted for technical ability’.²¹² The implementation of projects designed to effect change within the organisation has therefore often been unsatisfactory. In the same way, in England:

*‘PHSO suffered historically from having bold plans but extremely poor skills in project and programme management. This drained staff morale and led to a loss of skilled colleagues who preferred to move. Now we have bold plans looking ahead significantly and sophisticated programme management which values continuous user engagement to prevent change fatigue. There is no magic in this, only hard work and investment in corporate services capacity. As a result we are transforming and rejuvenating an enterprise with effectiveness and confidence. We have joined-up programmes, new and working complaints management IT systems and (Covid-driven) a suite of IT stock which facilitates remote (home) working. Our staff want to be co-producers, consulted, participant and partners in the enterprise. Our confidential staff surveys tell us that they are.’*²¹³

There was external recognition of this turn-round with two major national awards to PHSO, the ‘Best change management initiative’ in the UK public sector awarded by the Chartered Institute for Personnel Development (CIPD) in 2019, and the Public Finance Team of the Year 2020 in Central Government and National Bodies, awarded by the journal Public Finance, and the Chartered Institute for Public Finance and Accounting (CIPFA).²¹⁴

Clearly, Ombudsman institutions need to be agile and adapt constantly to societal developments and the needs of citizens in order to remain relevant.²¹⁵ To do this there has to be acceptance that ‘change is a constant and is often resisted by staff’.²¹⁶ There also has to be acceptance of the importance of investment in skilled, adept, management capable of articulating a vision for what the

²⁰⁹Ararteko, Ombudsman for the Basque Country, Spain; The Greek Ombudsman, Greece

²¹⁰Office of the Commonwealth Ombudsman, Australia

²¹¹Hydro One Ombudsman, Canada

²¹²Police Ombudsman for Northern Ireland, UK

²¹³Parliamentary and Health Service Ombudsman, UK: ‘Govan Mbeki famously noted ‘Comrades –effective time-keeping is the first principle of the Revolution’.

²¹⁴<https://www.cipdpmas.co.uk/best-change-management-initiative/>; <https://publicfinanceawards.co.uk/2020-winners-2/>

²¹⁵The Federal Ombudsman, Belgium

²¹⁶Victorian Ombudsman, Australia

Ombudsman service wants to be, and a realistic plan of delivery. None of this is easy or formulaic, especially where resources are scarce or limited. In terms of vision, for example, the Mexico City Human Rights Commission has settled on promoting a new vision of restorative justice which 'has involved training the human resource, as well as making changes in the modalities of usual work that the Commission had. It has been a great challenge to work under this new modality'.²¹⁷ In terms of realistic planning and implementation, Ombudsman Officers in Finland and Northern Ireland report frankly that implementation is immensely difficult:

*'Constant very heavy workload (of the staff, the head of administration and the Ombudsman and the two Deputy Ombudsmen, with no possibilities to delegate the handling of cases to, e.g. senior lawyers), makes it difficult to develop the working methods and the organisation of the Office.'*²¹⁸

*'Again, I put a huge emphasis on this and have achieved significant change – but this [implementation] has been challenging and time-consuming and longer than I would have hoped because of pre-existing and long-standing culture and resistance to quick and meaningful change. Not by all – or even most – but by a significant proportion.'*²¹⁹

And in all of the above, resource availability is a critical success factor. When budgets and personnel are limited, anything beyond delivering the organisation's statutory duties can be extremely difficult. Instituting real change to improve the long-term functioning of the organisation often has needed to be de-prioritised in favour of the organisation's immediate day-to-day responsibilities. The Scottish Public Services Ombudsman spoke for many of her colleagues in finding that:

*'constant fire-fighting to deliver statutory functions leaves little time to explore and deliver change generated by our own design. Often the change having to be managed is imposed by the external environment or budgetary constraints over which we have little control or choice.'*²²⁰

Understanding the political scene

Over a quarter of respondents (27%, n=14) selected 'understanding the political scene' as being difficult to deliver in their organisation. This challenge can be acute in areas where there is: 'a particularly complex, fractured and challenging political environment',²²¹ further complicated, as in Jordan, by the impact of war and refugees in crisis,²²² or where, as in Malta and Cyprus, there is rapid legislative change to suit partisan political agendas.²²³ In Pakistan, politicians are said to have hindered the development work of the Provincial Ombudsman.²²⁴ In Ontario, Canada, 'the election of a populist government drastically changed the landscape and initially posed threats to the existence and operation of the Office'.²²⁵

²¹⁷Comisión de Derechos Humanos de la Ciudad de México, Mexico

²¹⁸Parliamentary Ombudsman of Finland, Finland

²¹⁹Northern Ireland Public Services Ombudsman, UK

²²⁰Scottish Public Services Ombudsman, UK

²²¹Northern Ireland Public Services Ombudsman, UK; Ethiopian Ombudsman Office

²²²Integrity and Anti-Corruption Commission, Jordan

²²³Parliamentary Ombudsman, Malta; Yuksek Yonetim Denetçisi Dairesi, Cyprus

²²⁴Provincial Ombudsman Secretariat Khyber Pakhtunkhwa, Pakistan

²²⁵Ombudsman Ontario, Canada

Even in comparatively stable political environments, the existence of the Ombudsman as an institution of the state generates sensitive dilemmas. In Denmark, for example:

*'The Danish Ombudsman is independent from Parliament when exercising his functions. There is a clear tradition that politicians do not criticise the opinions of the ombudsman. However, we have seen cases where parties not being in government have suggested that the ombudsman should open cases. None of the suggestions has been inappropriate. Still, the mere fact that discussions are ongoing in the press may make it difficult to appear neutral both when deciding to open a case and when deciding not to.'*²²⁶

And in Belgium: 'The political context has been very complicated and unsettled in the last decade ... making it difficult to set up a sustainable dialogue between the institution and political stakeholders and to build on long-term relations.'²²⁷

In small jurisdictions, 'almost everything one does has a political slant that needs to be managed appropriately.'²²⁸ In addition, in the Faroe Islands, 'national and local political interests are often intertwined and not always in line with the official policy of any given party, and can sometimes unite parts of party policy lines that do not normally correlate.'²²⁹ In all of this, there is a continuing dilemma for Ombudsman Officers, expressed concisely by the Victorian State Ombudsman in Australia: 'if you get too close to it [politics] you risk becoming part of the problem, too far and you don't understand it.'²³⁰

In summary, respondents to the survey find that an involvement in the prevailing political backdrop is inevitable given the constitutional position of the Ombudsman Office as a state organisation, the funding structures of Ombudsman organisations, which often depend upon the allocation of state funding, and the very nature of the citizen-focused work they are involved in. If political engagement cannot be avoided, it must be managed with skill and discretion. This means forging sustainable dialogue and developing long-term relations with political stakeholders without being tied to the party-political ambitions of Ministers and politicians, which compromise independence and impartiality.

Of course, being a body created by Government is no excuse for departing from unbiased decision-making.²³¹ And Ombudsman Offices should be clear, and are clear, that this is no easy task. Following the Cayman Islands Ombudsman: 'The power of moral suasion involves a great deal of diplomacy in order to produce meaningful results.'²³²

Empathy with complainants and disadvantaged groups

Empathy with complainants and disadvantaged groups was found to be challenging for 23% (n=12) of respondents. Displaying empathy to complainants and disadvantaged groups was seen as vital 'because they are considered the weaker party and they have no hand in this'.²³³

²²⁶The Parliamentary Ombudsman, Denmark

²²⁷The Federal Ombudsman, Belgium

²²⁸Public Services Ombudsman, Gibraltar

²²⁹Løgtingsins umboðsmaður, Faroe Islands

²³⁰Victorian Ombudsman, Australia

²³¹Western Cape Police Ombudsman, South Africa

²³²Ombudsman Cayman Islands

²³³Integrity and Anti-Corruption Commission, Jordan

However, as with other practices of the Ombudsman, demonstrating these skills and attributes can sometimes feel in tension with the Ombudsman's need to be impartial and objective. Staff can become 'case-hardened' and at risk of focusing on formality and procedures to the detriment of acknowledging the traumatic events that a complainant may have experienced. The results from our survey suggest that this situation is particularly prevalent for organisations operating where health and social care issues are included within or alongside the public service mandate:

*'We have traditionally placed great value on our rational, analytical skills, underpinned by absolute objectivity and impartiality. For some staff, there feels to be a tension between those essential attributes and the need to display empathy with complainants.'*²³⁴

*'I put huge emphasis on this but the approach does not sit well with many people and a long-standing element of the organisation's culture, which is focused a lot more on formality and a legalistic approach.'*²³⁵

*'Historically, PHSO has been over-reliant on an interpretation of impartiality which displays itself sometimes "as reluctant to be emotionally involved" and somewhat bureaucratic. We have devoted significant resource to encouraging and skilling staff to demonstrate empathy without becoming partisan. This is vital where many of our complainants are bereaved, traumatised or both. As one of our former complainants explained to our Annual Open Meeting, "your case handlers were traumatised by my trauma [at losing my son] and not knowing how to cope with it." In addition, despite significant progress in the areas of disability, LGBT rights, and gender, we need to do more to make PHSO diverse at all levels so we have the cultural experience to understand and combat discrimination.'*²³⁶

What is called 'case hardening' is an issue also identified in Ireland and in the Office of the Northern Ireland Police Ombudsman. In Ireland:

*'Understanding that people have been upset by an outcome of their interaction with a public service is important even where the service did not make a mistake. It's very important to show leadership by modelling appropriate behaviour in this sphere.'*²³⁷

More generally, the aim will be for the Ombudsman to try to achieve the best outcome with proportionality and fairness to all parties,²³⁸ but, as in the Czech Republic, 'The approach to different complainants and their problems as well as the understanding of their problems is very challenging'.²³⁹ In New Zealand, empathy is seen as a legal, cultural and historical requirement:

*'We monitor the United Nations Convention on the rights of people with disabilities. We also have a treaty going back to 1840 requiring indigenous people ... [and] ... the colonising English to work in partnership. But there is an imbalance of opportunity and wealth in this country which requires us to be constantly empathetic.'*²⁴⁰

²³⁴Local Government and Social Care Ombudsman for England, UK

²³⁵Northern Ireland Public Services Ombudsman, UK

²³⁶Parliamentary and Health Service Ombudsman, UK

²³⁷Ombudsman of Ireland

²³⁸The Ombudsman Office of the Ministry of Interior, Bahrain

²³⁹Public Defender of Rights of the Czech Republic

²⁴⁰Parliamentary Ombudsman, New Zealand

By exception, in Denmark,

*'We look at the law and our scrutiny of a case might be less intense if the administrative decisions are based on e.g. a medical or psychological assessment. Hence, we are often in the situation that we cannot help a complainant even if we feel that the complainant might not have received the best possible treatment from the administration.'*²⁴¹

The policy point here is that: 'The Danish ombudsman is a watchdog with teeth, but with discerning taste buds in practice ... the dominant focus of the ombudsman is general administrative law legislation and principles'.²⁴² This puts an emphasis on procedural requirements rather than the lived experience of the complainant.

Where there is a focus on empathy, the challenge (in Malawi) is not made easier by complainants sometimes not understanding 'the Office's challenges and regard the Office as just like other government entities which provide empty promises and do not care about citizens and service concerns'.²⁴³ Similarly for the Police Ombudsman in Northern Ireland: 'Some disadvantaged groups are hard to reach and see us as a state institution. The title "Police" Ombudsman suggests we are part of the [Police Service of Northern Ireland] PSNI'.²⁴⁴

A capacity to mediate

A number of schemes see value in a mediation approach, some are in the early stages of its formal development, and many more use mediation approaches in an informal, ad hoc, manner as part of their approach to case resolution. Some respondents have either no mandate to mediate or no capacity to do so. A number do not see the relevance of mediation to the kind of investigative work they do.

Formal mediation is outside the mandate of schemes in parts of Canada, Australia, Spain, and in New Zealand:

*'We don't have the mandate to do so.'*²⁴⁵

*'Formal mediation is not part of our role. Rectification of agency errors is usually achieved by engagement and "threat" to publish in serious cases.'*²⁴⁶

*'Lack of powers to act as a mediator.'*²⁴⁷

In British Columbia, Canada:

'We don't have a mandate to mediate – rather we focus on our statutory role of investigating government fairness. Dispute resolution is not our object although it is a frequent effect of our investigations as our process often leads to better understanding and communication.'

²⁴¹The Parliamentary Ombudsman, Denmark

²⁴²Michael Gotze, 'The Danish Ombudsman. A national watchdog with selected preferences' Utrecht Law Review, Volume 6, Issue 1(January) 2010, <http://www.utrechtlawreview.org/>, pp. 33,41.

²⁴³Office of the Ombudsman, Malawi

²⁴⁴Police Ombudsman for Northern Ireland, UK

²⁴⁵Veterans Ombudsman, Canada

²⁴⁶Queensland Ombudsman, Australia

²⁴⁷Ararteko, Ombudsman for the Basque Country, Spain

Sometimes both complainants and government would like us to act as a mediator and that is not our role. This can demand different skill sets than that of investigators and risk of perceptions of individual advocacy or role confusion.’²⁴⁸

Similarly, in Slovenia, in carrying out the role of a mediator it can be ‘challenging to adopt an independent position without the interference of personal beliefs and preconceptions. More training on this will be necessary in the future’.²⁴⁹ In New Zealand:

‘We have no express ability to mediate and on some occasions where I have endeavoured to bring my own family court background into resolution of issues, some complainants have been uncomfortable with the process, and concerned, as a result of legal advice.’²⁵⁰

Where there is scope for mediation, it can be restricted by lack of or limited mediation training,²⁵¹ or time pressures are said not to allow for setting up mediations.²⁵² For the Northern Ireland Police Ombudsman, investigators have struggled to get opportunities to use mediation as the context may not allow this:

‘Police complaints may come as a result of complainants being subject to criminal charges. Investigators have the same powers as a constable and can arrest officers and people who are not co-operating. Culturally mediation may be seen as a softer option.’²⁵³

In Finland, mediation is used very rarely – ‘only a few individual lawyers have adopted informal methods of examining cases e.g. by telephone calls; no training about mediation is available.’²⁵⁴ Similarly, in the Republic of China:

‘written complaints are handled in line with the principles of legality, reasonability, and prudence per the “Principles for Handling Reported Cases” ... These principles stipulate the methods by which the Control Yuan handles written complaint reports, including investigations, commissioning inquiries, communications with the relevant authorities for reference and handling, replying to the complainant, or referring the matter to the relevant Control Yuan committee. Thus far, we have not handled any cases from written complaints through mediation. As the nation’s ombudsman, the Control Yuan shoulders the responsibility of protecting human rights. In response to the public’s expectations and after years-long research and planning, the Organic Law of Control Yuan National Human Rights Commission was formally implemented on 10 December, 2019, and the Control Yuan National Human Rights Commission (NHRC) is scheduled to inaugurate on Aug. 1st, 2020 ... If the NHRC deems it necessary, it may assist in negotiation and settlement in accordance with its authority or based on the request of the parties to resolve through mediation.’²⁵⁵

This leaves a cohort of Ombudsman schemes that see mediation skills as complementary to investigative skills rather than in tension with them. In Belgium, for example, ‘Early resolution

²⁴⁸Ombudsperson of British Columbia, Canada

²⁴⁹Human Rights Ombudsman of the Republic of Slovenia

²⁵⁰Parliamentary Ombudsman, New Zealand

²⁵¹National Ombudsman, Cook Islands

²⁵²Ombudsman South Australia, Australia

²⁵³Police Ombudsman for Northern Ireland, UK

²⁵⁴Parliamentary Ombudsman of Finland

²⁵⁵The Control Yuan, Republic of China

mechanisms or fast-track procedures have become an important part of the activities of an ombudsman institution and have made mediation skills more important among the staff'.²⁵⁶

Even so, integrating mediation into more traditional approaches is not without its challenges, as experience in England shows:

*'When I arrived at PHSO in 2017 I reckoned the organisation was 10 years behind counterpart bodies in not supplementing formal adjudications – written case outcomes following investigation – with significant attempts at early resolution and mediation. It's not one or the other but the capacity to draw on both styles. After a significant period of research, staff training and piloting we are now able to deploy early resolution and mediation in a way which strengthens what our offering is. Unlike other bodies our mediation is in-house, not commissioned from external bodies. The organisational culture has benefited and developed from this investment.'*²⁵⁷

Managing stress and being resilient

Most Ombudsman respondents see stress as part and parcel of being an Ombudsman. The view emerging from Cyprus, the USA and Slovenia, for example, is that while stress can be managed, it can't be eliminated:

*'The complex role of the Ombudsman and the various challenges that she/he faces on a daily basis although very important and challenging can be very stressful. Being able to manage the stress is a challenge that needs to be successfully addressed by all Ombudsman [schemes].'*²⁵⁸

*'We are in the complaint-resolution business. Every person who contacts our office has a problem, and is suffering, angry, disillusioned, and sometimes downtrodden. The nature of the work can bring stress to staff.'*²⁵⁹

*'Our work deals with difficult topics and can have a significant influence on the lives of others, including vulnerable individuals. That is why stress cannot be avoided and must be managed in a sustainable way.'*²⁶⁰

The degree of stress is determined by a number of factors. These include the nature of issues investigated which, exceptionally, include the involvement of investigators in situations of violence and abuse.²⁶¹ They also include challenges from public bodies about Ombudsman decisions,²⁶² media scrutiny, associated pressures related to workload and availability of staff resources,²⁶³ and the pressure of the time element. All of these are, borrowing the fine under-statement of the Jordanian Integrity and Anti-Corruption Commission, 'sometimes a hindrance'.²⁶⁴

²⁵⁶The Federal Ombudsman, Belgium

²⁵⁷Parliamentary and Health Service Ombudsman, UK

²⁵⁸The Commissioner for Administration and Protection of Human Rights, Cyprus

²⁵⁹Joint Office of Citizen Complaints for Dayton and Montgomery County, Ohio, USA

²⁶⁰Human Rights Ombudsman of the Republic of Slovenia

²⁶¹Comisión de Derechos Humanos de la Ciudad de México, Mexico; Israel State Comptroller and Ombudsman, Israel

²⁶²Israel State Comptroller and Ombudsman, Israel

²⁶³The People's Advocate Institution, Albania

²⁶⁴Integrity and Anti-Corruption Commission, Jordan

An associated challenge is being resilient. For Rosemary Agnew, the Scottish Public Services Ombudsman, stress and resilience are: ‘two sides of the same coin: increased stress impacts on resilience; reducing resilience impacts on stress levels.’²⁶⁵ Agnew distinguishes between personal and organisational resilience:

*‘Personal resilience is being eroded by the increased pressure on staff, increasingly challenging behaviours of service users, reducing (in real terms) resources, [and] stress. Organisational resilience is being undermined by lack of resources for succession planning and investment for change that has longer-term benefits in terms of efficiency and quality.’*²⁶⁶

Of great concern is the sense of fatalism reflected in some of the responses about fortifying resilience:

*‘Sometimes pressure is huge to a point of breakdown. In the end sometimes we feel like just let be regardless of the negative effects.’*²⁶⁷

*‘When rights are affected it’s very difficult to be resilient.’*²⁶⁸

The Israel State Comptroller and Ombudsman summarises the position in stark fashion:

*‘An occupational hazard of complaint investigation is dealing with difficult and vexatious complainants, which require the investigator to have a high level of resilience and a “thick skin”. At the same time, the subject of the complaint may resent the Ombudsman’s questions and “interference”, and even question the Office’s authority to investigate the complaint. Maintaining a professional demeanour as well as an inner calm in the face of unjust criticism by the complainant and/or unwarranted attacks by the public body, is no easy task.’*²⁶⁹

Summary

It is no surprise that accessibility and being an effective manager of change are considered by Ombudsman leaders to be two over-riding challenges in their practice. Where there is an absence of routine, effective outreach engagement, the users of Ombudsman services are often (but not always) ‘articulate and comfortably off’. In addition, the survey showed extensive political, cultural and resource barriers to effective change management. Further, Ombudsman leaders have a very fine line to walk in navigating the political scene, fractured as it can be by pandemic, populism, war and refugee crises. This was summed up astutely by the Ombudsman of Victoria, Australia with the observation that: ‘If you get too close to it [politics] you risk becoming part of the problem, too far and you don’t understand it’. It is no wonder then that stress and the need for resilience strategies preoccupy the thoughts of respondents.

All of this puts a premium on the need for innovative and useful management development programmes for Ombudsman leaders and their work colleagues. To this we now turn.

²⁶⁵Scottish Public Services Ombudsman, UK

²⁶⁶Scottish Public Services Ombudsman, UK

²⁶⁷Office of the Ombudsman, Malawi

²⁶⁸Yuksekk Yonetim Denetçisi Dairesi, Cyprus

²⁶⁹Israel State Comptroller and Ombudsman, Israel

Chapter five:

Leadership styles and management development

Introduction

A variety of ideal-type leadership styles have been set out in theories of leadership. These are defined and named differently depending on the theorist but here can be summarised as: (1) autocratic; (2) participative or collective; (3) delegative; (4) transactional; and (5) transformational. In the real world of Ombudsman practice, Ombudsman leaders are appropriately eclectic. While they may be disposed to a favoured approach, many utilise characteristics from each of the styles above. This depends on their own background and length of tenure (see chapter one), the size and resources of their institution, the development phase the institution finds itself in, and the external circumstances the institution has to deal with. Obviously, in countries where there is by law a collectivity of Ombudsman leaders at any one time - although not respondents to our survey, Sweden has four 'Parliamentary Ombudsmen'²⁷⁰ and Austria has a three-person Board 'who work together in a collegial way'²⁷¹ - the tendency to operate collectively is built into the organisation's rules, culture and practice.

Autocratic leadership allows a leader to personally impose expectations and define outcomes. It is a successful approach when the leader is the most knowledgeable person in the team and can be used effectively when team members need clear guidelines. However, although it is a time-efficient strategy, and fits well with Ombudsman governance models of 'corporation sole' where the Ombudsman is personally accountable to Parliament for the organisation's decisions and activities, the idea of it can stifle creative input from the team.

Participative or collective leadership styles are more democratic as they involve team members throughout the organisation in decision-making processes. Team members therefore tend to feel included, engaged and motivated to contribute. Although the leader commonly has the last word in the case-work decision-making processes. Although inclusive, the style will only work effectively where there is broad agreement on the vision and values of the organisation. Without this consensus, disagreements can be time-consuming and even acrimonious.

Delegative leadership styles ensure that formal delegation of responsibility is allocated throughout the organisation to team members. This is important in larger Ombudsman schemes where the notion in 'corporation sole' that the Ombudsman personally makes all casework and financial decisions is a practical impossibility and a constitutional fiction. The style can be successful where team members are highly competent in their functional fields, take responsibility and enjoy engaging in individual work. Again, without management and leadership intervention, disagreements amongst team members can cause tension and acrimony and divide a group, possibly leading to poor motivation and low morale.

Transactional leaders use 'transactions' such as rewards or punishments to incentivise compliant team member behaviour. The leader sets clear goals and team members know how they will be rewarded for achieving the goals. This leadership style is suited well to workplaces where

²⁷⁰<https://www.jo.se/en/About-JO/The-Ombudsmen/>

²⁷¹<https://ennhri.org/our-members/austria/>

long-established routines and procedures need to be followed in an efficient manner, but can be less appropriate when making radical changes to an organisation.

In transformational leadership styles, leaders construct a vision, values and associated plans through consultation with stakeholders both within and outside the organisation. These outcomes or roadmaps have the capacity to inspire colleagues, and encourage and empower them to work to achieve the associated goals. Transformative leadership is particularly useful where an organisation has been in crisis or needs to change direction radically. Since the leader serves as a role model for the vision, their personal behaviour and practice has to complement required corporate behaviour.

Figure 15: Preferred leadership styles

Ombudsman Leadership Style prior to Pandemic	Number/Percentage of respondents
Autocratic	8 (15%)
Participative/collective	22 (42%)
Delegative	11 (21%)
Transformational	6 (12%)
Transactional	0 (0%)
No response	5 (10%)
Total	52

The ‘allocation’ of the respondents to one of the five leadership styles (Figure 15, above) is a subjective task, but follows a careful appraisal of their own descriptions of how they operate. 22 schemes (42%), by far the largest number, described their leadership style as participative or collective. The descriptions they gave of their approaches included:

*‘inclusive, consultative, collaborative, self-reflective and learning, timely, decisive’*²⁷²

*‘participatory ... coaching ... innovative’*²⁷³

*‘Ability to involve staff and making clear what I expected from them’*²⁷⁴

*‘Democratic leadership’*²⁷⁵

*‘Democratic style’*²⁷⁶

²⁷²Western Australian Ombudsman, Australia

²⁷³Veterans Ombudsman, Canada

²⁷⁴Tuscany Region Ombudsman, Italy

²⁷⁵Office of the Ombudsman, Malawi

²⁷⁶The People’s Advocate Institution, Albania

'Open, trusting, collaborative, democratic' ²⁷⁷

'visible, approachable, empowering and establishing clear direction' ²⁷⁸

Amongst these 22, the Ombudsman of Ireland's leadership style is emphatically hybrid, embracing deliberately (it seems) not only a collective approach but also a transformational one:

'My style is generally collegiate, but I can be more directive where it is appropriate or where issues are time-critical. In general, I am a consensus builder. I believe in being visible and approachable. My style is values driven, with a strong emphasis on vindicating rights and providing justice. I have worked by choice in public services, and my commitment to them informs my interaction with my team. I have always looked to improve the organisations I lead, and in part, do so by being outwardly focused and open to innovation from elsewhere. I aim to visibly value my team, and to praise and acknowledge their work.' ²⁷⁹

11 schemes met the criteria described as being delegative. Here, even well-known and widely respected Ombudsman leaders are content to adopt a style which eschews charismatic interventions and emphasises the large role of professional case handlers:

'I would describe my pre-crisis leadership style as mostly of the democratic type, with some laissez-faire elements (i.e. if possible, input of employees considered and generally no strict office policies).' ²⁸⁰

'Staff members are given the appropriate time and platform to provide their own, independent proposal as to how a certain case will be handled by the Ombudsman. When a proposal has been made the Ombudsman himself, or other senior personnel, will, if necessary, make comments and engage in a dialogue with the relevant staff member as to the approach which will be taken in any given case. It should be noted that all conclusions are put forward in the name of the Ombudsman himself.' ²⁸¹

In this category, while the Síndic de Greuges in Catalonia accurately describes his leadership style as delegative, and 'trusting in a strong team of motivated professionals', there is nothing delegative about his championing of human rights in the context of the contested referendum on Catalan independence and its consequences. On this and other issues, the Ombudsman has waged a transformative battle and led from the front of his organisation.²⁸² So this is another example of a hybrid leadership style.

Eight scheme leaders seem to place themselves within the category of autocratic:

'Uncontestable leadership in the country.' ²⁸³

²⁷⁷Local Government and Social Care Ombudsman for England, UK

²⁷⁸Northern Ireland Public Service Ombudsman, UK

²⁷⁹Ombudsman of Ireland

²⁸⁰Human Rights Ombudsman of the Republic of Slovenia

²⁸¹The Althingi Ombudsman, Iceland

²⁸²Peer Review of the Síndic de Greuges de Catalunya April 2020, 4.1.12-4.1.16 'The Síndic's focus on human rights is in line with both its legislation governing human rights and the emphasis in the Venice Principles on the defence of human rights. It is also noteworthy that the ex officio action powers afforded to the Síndic also offer wide-ranging investigative potential. These powers have been put to good use through the production of insightful monographic reports.' https://www.sindic.cat/site/unitFiles/7457/Peer%20review_SGC_abril_2020.pdf

²⁸³Le Médiateur de la République, Senegal

*'Democratic leadership style supplemented by paternalistic leadership style (in accordance with related laws and regulations, e.g. the Control Act and the Organic Law of the Control Yuan).'*²⁸⁴

*'Direct participation and involvement in all cases attended by the Commission. It is a very present and involved leadership in each of the work stages of the Commission.'*²⁸⁵

*'Think/act flexibly and creatively untrammelled by precedent.'*²⁸⁶

*'My leadership style is characterized by the following qualities: vision, integrity, dedication, magnanimity, humility, openness, creativity, fairness, assertiveness and a sense of humour.'*²⁸⁷

There were seven leadership styles that might reasonably be called transformative:

*'I am of the opinion that my actions and the methods of leading the Ombudsperson Institution of Kosovo fall the most between the strategic and coaching leadership style. I made sure to let my team know my strategic vision and objectives and showed the map on how to achieve them while providing coaching and giving direction to help them unlock their potential and contributing to the overall success of the institution.'*²⁸⁸

*'Visionary! Relatively relaxed and approachable, focused on the big picture. Own initiative and user experience as well as public service improvement. Leadership team have focused on improving culture of the organisation – with significant success.'*²⁸⁹

*'Low-key, listening, collaborative, team-player, authentic, values-based, conversational, visible, encouraging, evidence-based, strategic and operational.'*²⁹⁰

*'I place emphasis on the importance of making our office and its services accessible to populations worthy of promotion and to all, and on the improvement of the interface between the complaints of the public reaching the Ombudsman and the state audit of the State Comptroller. From the specific we can learn about the general.'*²⁹¹

²⁸⁴The Control Yuan, Republic of China

²⁸⁵Comisión de Derechos Humanos de la Ciudad de México, Mexico

²⁸⁶The Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications, Japan

²⁸⁷Ombudsman, Namibia

²⁸⁸Ombudsperson Institution of Kosovo

²⁸⁹Public Services Ombudsman for Wales, UK

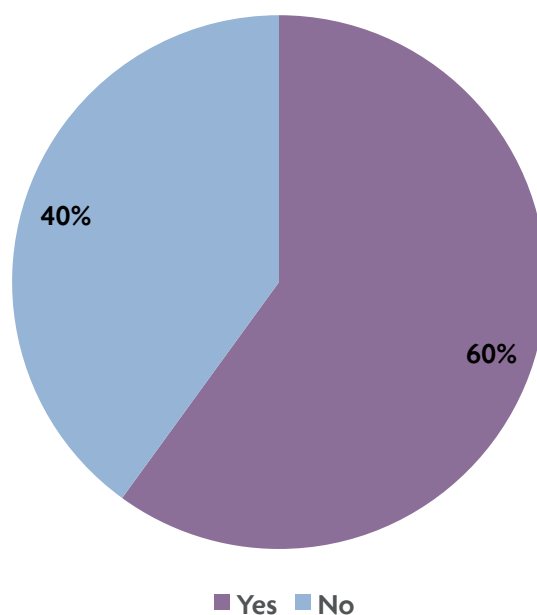
²⁹⁰Parliamentary and Health Service Ombudsman, UK

²⁹¹Israel State Comptroller and Ombudsman, Israel

Learning: the development of Ombudsman leadership styles

Respondents to the survey were asked if they had adapted their leadership style in light of the prevailing crisis (or if they intended to do so following the crisis). As illustrated by Figure 16, 60% (n=31) responded in the affirmative.

Figure 16: Proportion of respondents adapting their leadership style in response to the crisis



Clearly, most respondents were of the opinion that they needed to adjust their leadership style in the light of the pandemic's impact on the work of their Offices. Firstly, there was acceptance that remote working required new norms and expectations since face-to-face engagement was much harder,²⁹² and there was a need to learn new ways to engage and communicate.²⁹³ Second, there was a move towards a more empathetic approach to staff colleagues in the light of the dislocation and uncertainties now dominating the scene:

*'I need to be clear but empathetic on how we will work as of next week, recognising that some staff have had life-changing experiences.'*²⁹⁴

*'People (Staff) first. During the global pandemic, the situation keeps changing and the world becomes more conflicting. There has been a great deal of incomplete information. People are facing an uncertain future. At this moment, I would love my staff and colleagues to know that their health and well-being matter most. The organisation has their backs and their hardships deserve appreciation. A healthy workplace, mentally and physically, is also the main driving force for the Control Yuan to address public grievances.'*²⁹⁵

²⁹²The Parliamentary Ombudsman, Malta

²⁹³Human Rights Ombudsman of the Republic of Slovenia; Office of the Commonwealth Ombudsman, Australia

²⁹⁴Parliamentary Ombudsman, New Zealand

²⁹⁵The Control Yuan, Republic of China

The increased visibility of empathy in leadership styles was part of a wider change in the way in which Ombudsman leaders communicated with their staff. Since physical presence was not possible, as Peter Tyndall, Ombudsman of Ireland, explained: 'I have aimed to be visible in other ways, both through regular telephone contact, video-conferencing, written pieces and so on'.²⁹⁶ In Ontario, Canada, this manifested itself in an increased appreciation of the value of listening to staff and surveying them on their views, and in Finland it led to more emphasis on information exchange.²⁹⁷ In the United Kingdom:

*'It's not as easy to provide visible leadership under lockdown, but IT substitutes make it not impossible either. Written communication and oral messages (Radio Ombudsman extended to staff guests) have become more important. Everything else works as effectively (I think).'*²⁹⁸

There is a paradox here that respondents were not slow to grasp. On the one hand, the constraints of remote working, notwithstanding necessary refinements in on-line communications,²⁹⁹ required a more directive style:

*'Adapted slightly in the initial stages to become more directive. Quick and significant decisions were required – I still took input but I could not involve to the same degree as normal on all of these decisions.'*³⁰⁰

*'I am slightly more authoritative, emphasising the vision and purpose of the office to maintain staff focus and motivation while working remotely and in isolation.'*³⁰¹

*'In any crisis, particularly one where people cannot meet face to face, there is a need for senior leaders to step up and make difficult decisions, often at pace and without the usual level of consultation and collaboration. This has of course been necessary during this period. I have also had to adopt different channels and approaches to maintain influence and connection in setting the strategic direction of the organisation during the crisis.'*³⁰²

The emphasis here is on being:

*'... more directive (but not much more). This was particularly important in the early days when colleagues were looking for reassurance that the leadership team had a plan, and a handle on the situation. Decisions such as temporary changes to policy ... had to be taken without the same level of prior consultation that we would normally have.'*³⁰³

On the other hand, alongside the directiveness came an appreciation that remote working also meant the need for trust and relative autonomy for case-handlers. One Ombudsman leader explained the need to create the right conditions and culture to work independently from home and 'provide a work environment where responsibility and professional autonomy go hand in hand'.³⁰⁴

²⁹⁶Ombudsman of Ireland

²⁹⁷Ombudsman Ontario, Canada; Parliamentary Ombudsman of Finland

²⁹⁸Parliamentary and Health Service Ombudsman, UK

²⁹⁹Comisión de Derechos Humanos de la Ciudad de México, Mexico; Ethiopian Ombudsman Office

³⁰⁰Northern Ireland Public Services Ombudsman, UK

³⁰¹Ombudsman South Australia, Australia

³⁰²The Local Government and Social Care Ombudsman for England, UK

³⁰³Scottish Public Services Ombudsman, UK: 'Lockdown has also meant working harder to be accessible, giving more time to general communication, simply in order to remain as accessible as before lockdown.'

³⁰⁴Løgtingsins umboðsmaður, Faroe Islands

In the words of Marie Anderson, Police Ombudsman for Northern Ireland, ‘I have developed a more permissive and empowering style’.³⁰⁵

In general, respondents to the survey noted the importance of clear and concise communication throughout the crisis. Where formerly their preferred approach may have been rooted more in informal communication within the office environment, the absence of this has meant that there has been a bigger need for formal communication with all staff. Both oral and written communication have become more important and many respondents are availing themselves of new ICT to ensure messaging and exchange of views is as effective as possible.

Management development

In light of the challenges and significant changes faced by Ombudsman schemes as reported in this survey, thought-through and comprehensive management development strategies are essential to help ensure effective working. They are also necessary to support the preferred leadership styles of Ombudsman leaders. Given the diversity in size, function, mandate, resource and political culture of the respondent institutions, it would be unrealistic to hope to discover a unity in the content, scope and form of delivery of development offered. There is nevertheless the issue of whether or not there is a need for a minimum level of continuing professional development compatible with the status of a national or sub-national Ombudsman institution.

Figure 17: Training delivery methods

	Number	Percentage
A mix of in-house delivery/external training	41	79%
External training organisation delivery	9	17%
In-house delivery	2	4%
Total	52	100%

Figure 17 above shows that a combination of in-house delivery and external training is the predominant way in which Ombudsman schemes deliver their training/continuing professional development. But the manner of delivery hides the rich variety of offerings in terms of content and form. At one end of the scale are Ombudsman schemes that have put a premium on the value of skills and management in increasing core professional skills and changing organisational culture. Such schemes include Iceland, the Commonwealth of Australia, the United Kingdom, the Netherlands, Catalonia, Jordan and Israel. In Iceland, there is a four-fold approach to training and professional development:

‘[First] re-educational programmes, such as short courses, either during working hours or outside of them, through collective contracts struck between the organisation and members of staff.

³⁰⁵Police Ombudsman for Northern Ireland, UK

*The collective contracts also include provisions on paid leave for re-educational purposes. Also [and second], members of staff may ... pursuant to an institutional agreement between members of staff and the organisation, use up to 40 hours per year for educational purposes, such as teaching, seeking courses, etc. Here, it should also be noted that traditionally the Ombudsman's members of staff are in good connection with the local universities and, if interested, are given opportunity to teach in those institutions. Third, upon agreement with the Ombudsman a staff member may be allowed leave without pay in order to seek further education. Additionally [and fourth] it should be noted that an emphasis has been put on maintaining a close relationship with the other Nordic Ombudsman organisations, and staff members have been able to attend short seminars and meetings there.'*³⁰⁶

For the Commonwealth of Australia Ombudsman, diverse training is available:

*'We place a lot of emphasis on investigations skills, report writing, complaint handling, a range of mandated training around privacy, fraud and the like, and we support staff to undertake legal studies, leadership development and other relevant disciplines at tertiary level.'*³⁰⁷

In addressing the need for a corporate upgrade in skills and an organisational culture to support a new vision and values, the Parliamentary and Health Service Ombudsman in the UK developed:

*'a comprehensive programme of training and professional development, delivering 1,711 days of formal training (on average 4 full days per staff member) in 2019-20: induction training for all staff; exemplary skills for leaders and managers; accreditation for senior caseworkers; a professional skills programme for case handlers; training in communication skills and dealing with vicarious trauma; equality, inclusion and diversity skills development; apprenticeships; sponsored academic and professional development; and regular lunchtime workshops with speakers from around the world.'*³⁰⁸

Building on a comprehensive change programme carried out by his predecessor,³⁰⁹ Netherlands Ombudsman Reinier van Zupthen now has a suite of development opportunities:

*'In available training, mediation techniques, dialogue techniques, dealing with complex complaint behaviour, BI writing skills and training for team-building etc are standardised. There is budget for each staff member to follow a course/training tailored for his or her position.'*³¹⁰

In Catalonia (Spain), staff are continuously encouraged to attend courses, both in-house and external: 'Most of the advisor staff are trained lawyers and attended courses to keep up with the latest legal issues. Likewise, courses are offered on instrumental matters, such as foreign language, informatics, management, etc'.³¹¹

In Jordan, the Commission 'has a specialised directorate that defines the needs of the organisation as

³⁰⁶The Althingi Ombudsman, Iceland

³⁰⁷Office of the Commonwealth Ombudsman, Australia

³⁰⁸Parliamentary and Health Service Ombudsman, UK

³⁰⁹Gabriella Bekman, Secretary General Bureau National Ombudsman, 'Change programme National Ombudsman of the Netherlands' https://www.nationaleombudsman.nl/uploads/change_programme_national_ombudsman_of_the_netherlands_dublin_version.pdf

³¹⁰National Ombudsman, Netherlands

³¹¹Síndic de Greuges de Catalunya, Spain

needed and continuously in proportion to the nature of work and its development'.³¹² And in Israel:

*'New workers undergo an intensive, 40-hour in-house course designed to acquaint them with the work of the Ombudsman. The course includes lectures and workshops. All workers participate in internal and external courses and workshops on subjects relevant to their work. The Office also offers in-house lectures and workshops on specific topics and skills, and invites outside experts to speak or give workshops on issues related to the Ombudsman's work.'*³¹³

The submissions sparkled with examples of good practice. With most schemes, there is no sense that training and development are marginal or merely tolerated activities. In Slovenia, staff enjoy:

*'wide access to training programmes. Participation in external training, including international, is generally supported and encouraged. Internal training is also organised on identified topics of interest. Employees, enrolled in post-graduate and other study programmes, are able to take paid leave and make other accommodations at work to facilitate their studying.'*³¹⁴

In Kosovo, there is creative use of donor funding for human rights training:

*'The Ombudsperson Institution of Kosovo's staff, thanks to a lot of donor projects from which it benefitted, has been able to provide training in almost every sphere of human rights from the best experts of UN [United Nations], CoE [Council of Europe] and EU [European Union], which impacted a lot their professional work and outstanding performance. Every year we do a needs assessment with regard to the capacity building for the staff (especially new hired staff) and according to their needs for advancing their knowledge in certain areas, training is provided ... When needed, in house training is organised as well.'*³¹⁵

In smaller schemes there are obvious resource and capacity problems. Gibraltar addresses this with close links with universities.³¹⁶ The Cayman Islands sends its staff to training in the United Kingdom and Canada.³¹⁷ In Tuscany, staff have undertaken courses provided by Parliament and the Tuscany regional administration, a human rights programme at Padua University, and a course on ADR at the Commerce Chamber of Siena Arezzo ('at their own expense').³¹⁸ In addition to in-house training, Albania uses the capacity of the state school of public administration, and training offered by agencies and NGOs working in the field of human rights.³¹⁹

There has been, in addition, a hugely impressive array of training provision from national and international Ombudsman networks. In Canada, the Forum of Canadian Ombudsman has developed Ombuds Essentials, a five-day certificate programme in conjunction with Osgoode Hall Law School.³²⁰ In the UK the Ombudsman Association commissioned Queen Margaret University (QMU) Edinburgh to run professional award and certificate programmes, and QMU also runs a master's degree in dispute resolution.³²¹

³¹²Integrity and Anti-Corruption Commission, Jordan

³¹³Israel State Comptroller and Ombudsman, Israel

³¹⁴Human Rights Ombudsman of the Republic of Slovenia

³¹⁵Ombudsperson Institution of Kosovo

³¹⁶Public Services Ombudsman Gibraltar

³¹⁷Ombudsman Cayman Islands

³¹⁸Tuscany Region Ombudsman, Italy

³¹⁹The People's Advocate Institution, Albania

³²⁰<https://10times.com/osgoode-fco-certificate-essentials-for-ombuds>

³²¹<https://www.qmu.ac.uk/media/4663/b1068-professional-award-in-ombudsman-and-complaint-handling-practicel.pdf>

Training by the International Ombudsman Institute has been available since at least 2011,³²² and is used extensively by survey respondents. This has included high-level seminars on mediation, service delivery, data protection regulation, torture prevention, accountability and ethics, complaints handling practices, and dealing with unreasonable complainants. It also included the celebrated and much-travelled ‘Sharpening your Teeth’ programme, devised by the Office of the Ombudsman in Ontario, Canada, covering advanced investigative training.³²³

Whether this cornucopia of training and development provision guarantees – in its current form – two essentials is a moot point. First, does it guarantee the necessary skills and management development required for a set of agile, user-friendly, accessible public Ombudsman institutions upon whom citizens rely when justice and rights appear to have been denied?

Secondly, bearing in mind that: ‘One has only to look at other somewhat more mature professions to see that they each zealously define and defend their titles and practice requirements’,³²⁴ is the embryonic Ombudsman profession doing enough to promote minimum standards and protect the integrity of the Ombudsman brand? These questions are touched on in the next (and final) chapter.

Summary

Although results indicate that respondents were most likely to describe the leadership style as participative or collective, many appear to employ elements from a variety of styles. Indeed, over the course of the pandemic, most respondents adapted their leadership style to function more effectively in a world where remote working and infrequent face-to-face contact had become the norm.

Many examples of training mechanisms were outlined by respondents but key questions remain about whether what is currently provided is sufficient to address the seriously complicated challenges facing Ombudsman leaders in the pandemic and after; and whether, as an embryonic profession, the Ombudsman community is doing enough collectively to define competences and core skills.

³²²<https://www.theioi.org/ioi-activities>

³²³<https://www.ombudsman.on.ca/training>

³²⁴Bruce MacAllister, ‘Five Current Challenges that pose opportunities to improve and consolidate the Ombuds profession’, *The Journal of the California Caucus of College and University Ombuds*, 2016, <https://journal.calcaucus.com/abstracts-2016.html>

Chapter six:

Conclusion – towards the Manchester Memorandum

Ombudsman Offices have survived the COVID-19 pandemic, though at the time of writing it has not yet concluded. The pandemic has concentrated their minds on their core purposes and heightened the sense of challenge to deliver rights for citizens and non-citizens. From the survey we see that Ombudsman leaders are engaged in an art, not a science. In the real world of Ombudsman practice, leaders are appropriately eclectic. They need to strongly defend fundamental rights and to be clear about leadership strategies and strategic direction. However, at the same time, they also need to resolve paradoxes and deal with ambiguities: engaging in political activity but without being partisan or engaged in party politics; being fair and empathetic but also being impartial and standing up for justice; and leading their own staff through remote working by a combination of direction and empowerment.

The study shows Ombudsman leaders focused on business as usual wherever possible; being adept at adjusting to meet the challenges of dislocation of public services and the consequent extension of casework backlogs to the detriment of complainants. There has been a creative use of the power of own-initiative investigations. Leaders have stood up to the challenge of ‘speaking truth unto power’ through the dark shadow of the pandemic. In some cases, they have done this in the face of intimidation and the threat of violence. There is a clear understanding, constrained by the realities of the pandemic, of the need to make Ombudsman services accessible beyond traditional users who tend to be articulate and comfortably off. This involves a further paradox in reaching those vulnerable people who are least likely to have heard of the Ombudsman.

One issue barely discussed or argued over in the current conversations is the need for Ombudsman Officers to develop their professional status to ensure continued transformation as situations change and new needs emerge.³²⁵ Modern professionalism is concerned with channelling vocation to safeguard consistent standards of entry, continuing professional development and oversight to ensure that ‘the public interest’ is not a rhetorical device, but literally in the interests of the public or groups who use Ombudsman services.³²⁶ While other, ‘more mature professions ... zealously define and defend their titles and practice requirements’,³²⁷ the record suggests that Ombudsman Officers do not necessarily do so.³²⁸

In the case of national and sub-national Ombudsman Officers, the reason for this reticence may lie in the overwhelming preponderance of legal qualifications and backgrounds amongst Ombudsman

³²⁵John McMillan, Future Directions for Ombudsman Offices – Four Trends, Two Reflections, presentation to the Australian and New Zealand Ombudsman Association (ANZOA) Conference, Wellington, New Zealand, 30 April 2014, <https://www.oaic.gov.au/media-and-speeches/speeches/future-directions-for-ombudsman-offices-four-trends-tworeflections>

³²⁶Nick O’Brien and Mary Seneviratne, *Ombudsmen at the Crossroads. The Legal Services Ombudsman, Dispute Resolution and Democratic Accountability*, Palgrave Macmillan, 2017, pp.7-10.

³²⁷Bruce MacAllister, ‘Five Current Challenges that pose opportunities to improve and consolidate the Ombuds profession’ *The Journal of the California Caucus of College and University Ombuds*, 2016, <http://journal.calcaucus.com/>

³²⁸Rob Behrens, *Being an Ombudsman in Higher Education. A Comparative Study*, European Network of Ombudsmen in Higher Education, Vienna, Austria, 2017, pp.74-80, <http://www.enohe.net/wp-content/uploads/2017/06/Being-an-ombudsman.pdf> abstracts-2016.html

leaders,³²⁹ and a sense that further professional status is not necessary. But Ombudsman and lawyer are not co-terminous terms and there is much Ombudsman activity in the area of ‘moral suasion’, the non-legal terrain, where authority is the currency rather than coercive power.

In these circumstances, and given the challenges faced by Ombudsman schemes through the pandemic and afterwards, reflection on incremental moves towards enhanced professional status would be appropriate and worthwhile. What follows are shards of ideas, emerging from the study and its consequences, which are practical, broadly consensual and emphatically deliverable. At this stage they are the ideas of this Parliamentary and Health Service Ombudsman report alone.

Using the Venice Principles

The adoption of the Venice Principles in 2019, and their subsequent endorsement by the General Assembly of the United Nations at the end of 2020, gives the diverse world of national and sub-national Ombudsman institutions a welcome strategic focus and coherence. The clear exhortation to adopt the Principles is balanced, as the General Assembly Resolution points out, by acknowledgement that: ‘it is the right of each State to choose the framework for national institutions, including the Ombudsman and mediator, and which is best suited to its particular needs at the national level’.³³⁰ The Principles are not what Michael Oakeshott once called, disparagingly, bright ideas of rationalist abstractions.³³¹ Rooted in the long history of Venice Commission Opinions on the operation of multiple national Ombudsman schemes, they have emerged from the lived and concrete experience of national schemes under threat.

These Opinions are authoritative and influential. For example, in a recent Opinion about significant constitutional and legislative change in Malta, directly impacting on the status and mandate of the Office of the Ombudsman, the Opinion successfully encouraged the Maltese Government to significant legal and constitutional changes.³³² These now ‘give the Maltese Ombudsman a high place when assessing the compliance of his institution to the Venice Principles’.³³³ The IOI played a welcome and important role in campaigning for the Venice Principles to be adopted by the UN General Assembly in December 2020, and this adoption now gives the Principles significant status beyond Europe.

In light of the challenges and significant changes faced by Ombudsman schemes, there is a need for an outline strategy, the Manchester Memorandum, to develop the professional status of Ombudsman Officers and schemes with a focus on comparative learning and collective action. All the elements to this strategy involve use of the Venice Principles to guide a change in behaviour and practice, and the powerful network of the International Ombudsman Institute to structure it.

³²⁹See chapter one

³³⁰UN General Assembly Resolution 75/186, 16 December 2020, para 3, p.4.

³³¹Michael Oakeshott, ‘Political Education’, in *Rationalism in Politics and other essays* (first published 1962), Methuen, London and New York, 1967, Reprinted 1981, pp.111-136.

³³²Malta Opinion on ten acts and bills implementing legislative proposals subject of opinion CDL-AD(2020)006 Adopted by the Venice Commission at its 124th Plenary Session (Online, 8-9 October 2020)

³³³Anthony Mifsud, Parliamentary Ombudsman (Malta)

Peer review

First, a clear challenge emerging from the study is the need for Ombudsman schemes to balance their independence with their accountability. Independence from political interference (including appointment and termination of Office) and operational decision making (including case-handling) are clearly of critical importance to the credibility of schemes. But so too are accountability mechanisms, normally based on internal and external audit mechanisms, regular reporting to Parliament and sometimes on the availability (exceptionally) of judicial review of case decisions.

Ombudsman schemes can also benefit from advice from management consultants but this can be an expensive exercise and management consultancy does not always function effectively in narrow and discrete areas of public administration for want of expertise. In this context, and against a background of Ombudsman schemes turning to elements of self-regulation to address ‘a trend of declining trust in state institutions and a need for ombuds to do more to demonstrate their trustworthiness’³³⁴ there has been growing interest in Ombudsman peer review.

Of course, there are many different models of Ombudsman Office in existence across the world, of different sizes and scope, each with their own processes and operating models. Ombudsman Offices operate at national, regional and service-specific levels in many countries and function across public and private sectors. This divergence can make comparison, value for money analysis and peer review difficult to achieve. However, it is important that Ombudsman Offices have the opportunity to learn from each other – ranging from best practice in processing and producing high-quality casework, assessing good performance and public value, the benefits of the ‘Demosprudential Ombud’³³⁵ model and how to draw out important insight from cases under investigation.

A peer review approach has recently been used by some Ombudsman Offices within the International Ombudsman Institute (IOI) community to help assess these areas. The reviews, undertaken by fellow Ombudsman Offices, have been important in identifying areas of good performance; validating where processes and outcomes are working well; ascertaining what measures are best used in the Ombudsman setting to assess value for money; validating the processes used in individual cases and helping Offices understand where further improvements can be made. Examples of recent peer reviews include the 2018 study of the Parliamentary and Health Service Ombudsman (UK)³³⁶ and the 2020 peer review of the Síndic de Greuges, the Ombudsman of Catalonia.³³⁷

While it is important to say that peer review is not a panacea, and that there may be occasions where experts outside the sector will be able to provide more useful insight, a programme of five-yearly reviews for members of IOI, where institutions are benchmarked against the Venice Principles, would be a significant step towards greater institutional self-awareness and shared

³³⁴Chris Gill, Accountability and improvement in the ombuds sector: the role of peer review, 27 September 2019, <https://ukaji.org/2019/09/27/accountability-and-improvement-in-the-ombuds-sector-the-role-of-peer-review/>

³³⁵Margaret Doyle and Nick O’Brien, Reimagining Administrative Justice. Human Rights in Small Places, Palgrave Macmillan, 2020, pp.89-108

³³⁶Peter Tyndall, Caroline Mitchell, and Chris Gill, Value for Money Study, Report of the independent peer review of the Parliamentary and Health Service Ombudsman Peter Tyndall, Caroline Mitchell, and Chris Gill, 12 November 2018. https://www.ombudsman.org.uk/sites/default/files/Value_for_Money_report_final.pdf

³³⁷Rob Behrens, Catherine De Bruecker, James Hand and Donald Cardon, Peer Review of the Síndic de Greuges de Catalunya April 2020. https://www.sindic.cat/site/unitFiles/7457/Peer%20review_SGC_abril_2020.pdf

learning. Having already disseminated helpful guidance on when peer reviews might be useful and how to conduct them,³³⁸ the IOI should also now consider recommending all members, wherever possible, commission five-yearly peer reviews using the Venice Principles as a guide and a benchmark.

Secondly, to give further authority and independence to the peer review process, Regional Boards of the IOI should advertise and then construct and validate lists of approved peer reviewers. These approved peer reviewers would then be available to undertake peer reviews at the invitation of individual member schemes. In the interests of genuine comparative learning, selection of peer reviewers should not be confined to the region the Ombudsman scheme is located in. The IOI's European Board has recently approved and disseminated additional guidance on how to introduce this process.

Thirdly, the parallel availability of the Venice Principles and five-yearly peer review opens up the possibility of the IOI to emulate – in due course – the successful practice of the Global Alliance for National Human Rights Institutions (GANHRI) in benchmarking National Human Rights Institutions (NHRIs) against the Paris Principles.³³⁹ General observations and graded status (A, B or C) on the extent to which members have implemented the Paris Principles constitute guidance for NHRIs on their accreditation with GANHRI and on the implementation of the Paris Principles. They are 'also useful for NHRIs to press for the institutional changes necessary to fully comply with the Paris Principles'.³⁴⁰ There is now a real opportunity for the IOI to use peer review in similar fashion – with minimum bureaucracy, devising a mechanism that reports IOI member progress in implementing the Venice Principles and also creates supportive evidence for the member scheme to press its national Parliament for development of its mandate and governance.

Towards accredited continuing professional development

Chapter five addressed the contribution made by the International Ombudsman Institute and other Ombudsman networks to the training and development of Ombudsman Officers. This is a significant supplement to the extensive programmes and opportunities national and sub-national schemes provide for their own staff. While a small number of larger schemes have access to their own in-house learning and development teams, and one or two have begun to formally accredit training and development against a matrix of necessary skills and competences, these are exceptions.

It may be that that in surveying the scene, this writer is one of those 'provoked by the absence of order and coherence which appears to them to be its dominant feature'. Such people are said to 'have no feeling for the warmth of untidiness but only for its inconvenience ... Like Apollo when he saw Daphne with her hair hung carelessly about her neck, they sigh and say to themselves: "What if it were properly arranged?"'³⁴¹ But untidiness has its limits where it impedes competence and a level of skills development necessary to protect fundamental rights against an oft-times over-bearing State. Again, (and fourthly), there is an opportunity for the International Ombudsman Institute here. That is, to research and consult on a competency framework for Ombudsman Officers and having

³³⁸Guide to Peer Reviews, IOI Best Practice Paper – Issue 4 – April 2020 https://www.theioi.org/downloads/o35t/BPP_Issue%204_Peer%20review%20guidance_May%202020.pdf

³³⁹<https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

³⁴⁰<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/SCAGeneralObservations.aspx>

³⁴¹Michael Oakshott, 'On Being Conservative' in *Rationalism in Politics and other essays* (first published 1962), Methuen, London and New York, 1967, Reprinted 1981, pp.185-6

established it, to accredit relevant skills development and training programmes which deliver the necessary skills and experience. This would be a series of incremental steps, building on current practice, in a movement towards guaranteeing professional development and edging Ombudsman cadres from embryonic to professional status.

To its great credit, the IOI, alongside national Ombudsman associations and universities, has offered and conducted relevant training and development for members since at least 2011. It should now consult on the development of an accredited continuing professional development scheme constructed against competences drawn from the Venice Principles. There is a useful precedent here with the Ombudsman Association's Casework Competency Framework.³⁴² There is also the example of the soon to be International Ombuds Association's suite of training programmes 'designed for new Ombuds', its core courses in mediation theory and skills, conflict theory and applications, and effective communication, its specialised courses and online learning and webinars.³⁴³

In this context, what would go into the framework and what programmes would be accredited is a matter for consultation and debate following a needs analysis not dissimilar to the survey for this report. Clearly, the need for competence in scoping, investigative skills, drafting of decisions and effective communication would be non-controversial. But there are other issues, highlighted in this report, which deserve serious consideration too if the Ombudsman community is to meet emerging challenges. One is the importance of developing mediation skills to complement adjudication skills and widen the skills portfolio of case handlers. A second is the need to address instances of complainant querulousness or vexatiousness, which causes stress and anxiety to good and honourable case workers and manifests itself in behaviour in terms of rudeness, hostility, aggression, unfounded allegations of corruption, and threats of violence. Each of these behaviours might be understandable in the context of what is going on for a complainant, but is never acceptable and requires effective management.³⁴⁴

A fifth issue is the need to develop strategies for reaching vulnerable citizens or aspiring citizens, beyond the usual user groups of Ombudsman service users. The utility of the Ombudsman depends upon effective complaint resolution, the promotion of better public policy, and demonstrating relevance and reaching out to those who are vulnerable and marginalised and have nowhere else to turn. Being an Ombudsman is a challenging art, not a dismal science. These activities require investment, renewal, oversight and continuous exchange.

Sixth, and finally, noting the emphasis in the Venice Principles on the Ombudsman as 'an important element in a State based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good administration' it is important that the human rights and fundamental authority of the institution are not undermined by its 'brand' name Ombudsman. In chapter one we set out the highly contested debate between those who argue that 'Ombudsman' is an out-of-date gendered term, and those who argue that etymologically 'Ombudsman' is a literal translation from the original Norse without reference to or implications of gender bias.

³⁴²Ombudsman Association, Casework Competency Framework, 2019, <https://www.ombudsmanassociation.org/docs/CaseworkerCompetencyFramework2019.pdf>

³⁴³<https://www.ombudsassociation.org/foundations-courses>; <https://www.ombudsassociation.org/core-courses>; <https://www.ombudsassociation.org/webinars-online-learning>

³⁴⁴Dr Gordon Skilling, Querulous Complainants, SPSO, December 2017 <https://www.spsso.org.uk/sites/spsso/files/csa/Querulous%20Complainants%20WEB.pdf>

The IOI needs to resolve this issue by encouraging debate, taking the views of its members and acting upon those views.

Whether the proposals above – the embryonic Manchester Memorandum – are sufficient to meet the needs of a cadre under pressure is a good question. But the pandemic, eloquently described as ‘like the shadow of a great mountain’³⁴⁵ will pass. Change is in the air. It is time to prepare.

³⁴⁵Adam Bodnar 2020 summary <https://wiadomosci.onet.pl/tylko-w-onecie/pandemia-jak-cien-wielkiej-gory-adama-bodnara-podsumowanie-2020->

End-word by the European Ombudsman Emily O'Reilly

I congratulate Rob Behrens and his team for this valuable insight into the role of Ombudsman institutions across the globe and at a time when the need for citizen trust in public administrations has rarely been greater and the meaning of our role as 'watchdog' never more clear.

This pandemic has posed the strongest of challenges to all of our offices causing us truly to reflect on our performance and on the outcomes of that performance. It has, in a sense, given us laboratory conditions in which to examine our capacity to have a positive impact on the lives of those we serve when so many of those people are fearful for themselves, for their families, for their communities and for their futures.

Since the start of the pandemic, I have heard many remarkable stories of colleagues rising to that challenge, whether by making sure that the most marginalised people, from migrants to prisoners, are not forgotten, speaking out against administrative over-reach when it comes to curtailment of freedoms, or ensuring that disadvantaged children still get access to food when their schools are closed.

The pandemic will also allow us to see whether the challenge of making the public aware of our work – referenced as a problem by a high number of colleagues – impacted on our ability to assist citizens during this time. Or did citizens reach out even more, anxious to find an independent and effective voice to help them to navigate through the crisis?

Equally, how did the administration respond to us? Were we viewed as an authoritative actor that needed to be heard and responded to, or as an inconvenience that simply added to an expanded workload?

What did it teach us about how an Ombudsman can have the biggest impact? It is clear that the power to conduct own initiative investigations is a vital one, allowing an Ombudsman to act on systemic problems when she or he judges that the problem demands attention. It is certainly an important power in the armoury of the European Ombudsman as few EU citizens are aware of the office but can nonetheless benefit from our work in the broader public interest.

The survey also prompts questions about how successful we are or indeed how one might measure 'success'. Is an Ombudsman who gets all their recommendations accepted better than one who doesn't? How can influence and cultural change be measured? The 'successful' Ombudsman might make easy recommendations while the less 'successful' colleague actually challenges the administration, driving change over time, a less tangible marker of success and not amenable to easy classification.

Equally is it even possible to be a 'weak' Ombudsman in a developed democracy with a strong respect for the rule of law and an appreciation of the Ombudsman within that democratic architecture? Or is an Ombudsman serving in an authoritarian state – hostile to the rule of law – inevitably 'weak' because she or he might struggle to get any traction in their work?

Is it the Ombudsman that makes the administration 'good' or the administration that makes the Ombudsman 'good'? Do we succeed not just or even because of our own personal and professional attributes but rather because we may be fortunate enough to operate in a jurisdiction where everyone agrees to 'play the game'? Because when the rules of that game change, even the bravest defenders of citizens' rights can find their voices silenced or ignored.

The Venice Principles have given us a template for excellence and should be used by all of us perhaps to take a fresh look at where stands the institution both individually and collectively and particularly after this most challenging time has passed.

What is needed alongside those Principles is some tough and rigorous thinking about the role itself, how it can be made more coherent, comprehensible and above all relevant. The pandemic has given us a wake-up call when it comes to seeing our institutions as they really are – for good and for ill – and we should use that learning to drive positive change.

That challenge of stepping outside the box and collectively reimagining our role and our relevance is where our future reflection should be directed.

Appendix: Survey questions

International Ombudsman survey on leadership in crisis

Introduction

Dear colleagues,

Thanks for taking the time to complete this questionnaire. It is designed specifically for leaders of all Ombudsman institutions, national human rights agencies and their equivalents who are members of the International Ombudsman Institute.

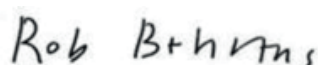
As we adjust to the changing circumstances presented by the ongoing coronavirus crisis it is timely to take stock of where we are as an Ombudsman community and look at how to identify and deal with the leadership challenges of both the current crisis and other crises going forward. That is what this questionnaire is designed to capture. Depending on the level of detail you give in your answers, it should take 20-25 minutes to complete.

By collating your thoughts on these topics, we will be able to share areas of common concern alongside examples of innovative approaches to deal with emerging issues. And we'd like to add further context to these findings by asking about your personal leadership style in addition to your organisation's working practices and approach to governance.

The questionnaire is split into four main sections:

- Section 1 – About you and your organisation
- Section 2 – Ombudsman challenges
- Section 3 – Dealing with the coronavirus crisis
- Section 4 – Leadership styles

Yours faithfully,



Rob Behrens

Parliamentary and Health Service Ombudsman, United Kingdom

Section 1 – About you and your organisation

Personal

In which country is your organisation based?

Please note that this questionnaire is targeted at the Ombudsman or equivalent him or herself. For brevity and consistency, the term Ombudsman is used throughout.

Which Ombudsman organisation do you lead and represent?

What is your gender identity?

Man | Woman | I identify in another way | Prefer not to say

(Only answer if I identify in another way selected in above question)

Please specify

At birth, were you assigned ...

Male | Female | Prefer not to say

Which of the following best describes your organisation?

National Ombudsman | Regional Ombudsman | Functional Ombudsman

(i.e. with responsibility for an area of industry or public administration)

How long have you been in your current position as Ombudsman?

Less than a year | 1-2 years | 2-3 years | 3-4 years | 4-5 years | Over 5 years

Appointment

Please set out briefly your qualifications below.

Please provide a brief description of your employment and career experience identifying what you think was most important in helping you be appointed to your current role.

Which of the following best describes the process by which you were appointed to your role?

Open competition | Appointment by invitation |

A mix of open competition/appointment by invitation

Was your appointment confirmed by the Head of State following a vote in your national legislature (e.g. parliament or national assembly)?

Yes | No

(Only answer if no selected in above question)

Who were you appointed by?

Is your appointment on a fixed term basis?

Yes | No

(Only answer if yes selected in above question)

What is the duration of this term?

(Only answer if appointment is on a fixed term basis)

How many times, if any, can you be reappointed to the role?

0 (cannot be reappointed) | 1 | 2 or more

Can you be removed from office?

Yes | No

(Only answer if yes selected in above question)

On what grounds can you be removed from office?

Office

In which year was your organisation founded?

By which of the following are your organisation's responsibilities governed? *(select all that apply)*

The Constitution | Legislation | Both the Constitution and legislation | Other

(Only answer if other selected in above question)

Please state the governing entities and responsibilities covered by these

How many staff work for your organisation?

Fewer than 10 | 10-49 | 50-149 | 150-299 | 300-499 | Over 500

Do you report to a board within your organisation?

Yes | No

Are you the Accounting Officer for your organisation?

(i.e. do you have responsibility to the national legislature for the spending of your organisation's budget)

Yes | No

Please summarise what training and/or continuing professional development, if any, is available to your staff

If training and/or continuing professional development is available, who are the main providers of this?

In-house delivery | External training organisation delivery |

A mix of in-house delivery/external training | Not applicable (*training not available*)

(Only answer if a mix of in-house delivery/external training selected in above question)

What proportion would you estimate is delivered in-house?

1-24% | 25-49% | 50-74% | 75-99%

Section 2 – Ombudsman challenges

Initial research suggests there are a range of challenges faced by Ombudsman services internationally on an ongoing basis.

Please rank these in terms of which have proved most challenging for your organisation [from 1 (most challenging) to 10 (least challenging)].

	Ranking (1-10)
Routine activity being disrupted by national/international crises (e.g. Coronavirus, European refugee crisis 2015-2018, Threats of terrorism etc)	
Human Rights abuses calling for national or international action	
Hollowing out of the State (e.g. previous responsibilities of organisations or national legislatures shifting towards privatised governance)	
Corruption and the absence of public probity	
Political interference and challenges to independence from other stakeholders (e.g. the media)	
Lack of appropriate resource (financial and non-financial) to carry out the role	
Problems created by overlapping mandates with other organisations	
Organisation's mandate not being wide enough to allow fully comprehensive investigations to be undertaken	
Meeting the expectations of complainants and service users	
Members of the public's lack of knowledge and understanding of Ombudsman's role	

If there are other challenges facing your organisation (not listed above) please note them here

Please explain more about the main challenges facing your organisation (including any strategies you have to cope more effectively with them) in the box below.

Listed below are some core organisational values.

Please select which you think are the most difficult to deliver in your organisation (select up to 3)

Independence

Impartiality

Transparency

Fairness

Accessibility

Other

Please outline why you selected each of these.

Please only complete the boxes which correspond to the answers you selected in the above question.

Independence

Impartiality

Transparency

Fairness

Accessibility

Other *(please specify)*

Listed below are a number of personal skills and attributes

Please select which you think are the most difficult to deliver in your organisation (select up to 3)

Understanding the political scene

Empathy with complainants and disadvantaged groups

A capacity to mediate

Being an effective manager of change

Being resilient

Managing stress

Other

Please outline why you selected each of these.

Please only complete the boxes which correspond to the answers you selected in the above question.

Understanding the political scene

Empathy with complainants and disadvantaged groups

A capacity to mediate

Being an effective manager of change

Being resilient

Managing stress

Other *(please specify)*

Which of the following generates your organisation's highest volume of inquiries/complaints?

Email | Postal communication | Telephone | Face-to-face contact | Webform

Section 3 – Dealing with the coronavirus crisis

With the world facing unprecedented challenges at the moment, we'd like to understand more about the impact of coronavirus on your organisation, what your organisation is doing to handle the crisis and how you're preparing for when things return to a period of greater stability.

What do you expect to happen to the volume of inquiries and complaints your organisation receives post-crisis?

Greater number of inquiries/complaints | Same number of inquiries/complaints as previously |
Fewer number of inquiries/complaints | Don't know

What do you anticipate is most likely to happen to complaint handling processes when we return to a greater period of stability?

The previous pattern of complaint handling will return to 'business as usual' soon afterwards |
We will need to prioritise and prepare for different types of complaints arising in light of the crisis |
Don't know | Other

(Only answer if other selected in question above)

Please state

What do you expect will happen to the financial resourcing your organisation receives when we return to a greater period of stability post-crisis?

Increased financial resourcing | Same level of financial resourcing |
Reduced levels of financial resourcing | Don't know

Does your organisation possess 'own-initiative' powers?

(i.e. has the power to investigate cases where no complaint has been raised)

Yes | No

(Only answer if yes selected in above question)

If your organisation has plans to use your ‘own-initiative’ powers to investigate any crisis related issues, please outline what these issues are and how your organisation intends to investigate them.

(please leave blank if not applicable)

(Only answer if your organisation has own-initiative powers)

How are the issues which you plan to investigate using ‘own-initiative’ powers being identified and prioritised?

(please leave blank if not applicable)

To what extent would you agree or disagree with the following statement?

All Ombudsman organisations should have ‘own-initiative’ powers to help prioritise areas of investigation

Strongly agree | Agree | Neither agree nor disagree | Disagree |

Strongly disagree | Don't know

Are you considering doing any of the following doing post-crisis?

Relaxing any time limits relating to the cases which you're permitted to investigate |

Prioritising investigations which relate to cases of greater severity |

De-prioritising investigations which relate to cases of lesser severity |

Using 'own-initiative' powers to investigate areas previously not looked at |

Other | None of the above

(Only answer if other selected in question above)

Please state

Post-crisis Government plans

In your organisation, do you have knowledge about any Government plans to ensure lessons are learned from the current crisis?

Yes | No

(Only answer if yes selected in above question)

Have you or anyone from your organisation been approached to be involved in a 'lessons learned' exercise?

Yes | No | Don't know

Which, if any, of the following strategies is your organisation planning to use to redeploy existing staff where their usual work responsibilities are lessened over the course of the crisis?

Increasing training/learning and development |

Allowing staff to increase their involvement in charitable activities |

Redeploying staff into other areas of the organisation |

Redeploying staff into other organisations directly assisting with the current crisis |

Other | None of the above

(Only answer if other selected in question above)

Please state

(Only answer if Redeploying staff into other organisations directly assisting with the current crisis selected in question above)

What plans, if any, does your organisation have to prevent staff redeployed into other organisations being involved with future casework with these organisations?

Once the current crisis has passed, do you think there will be any specific cultural or organisational challenges which you will need to address?

(e.g. increased homeworking for staff, different methods of communication, etc)

If so, please outline what these are and any thoughts you have to address them

Section 4 – Leadership styles

Prior to the current crisis, how would you have described your leadership style?

Have you found that you've had to adapt your leadership style in light of the current crisis?

Yes | No

(Only answer if yes selected in above question)

Please explain the ways in which you've adapted your leadership style

(Only answer if answered no to adapting leadership style in question above)

Do you think you may have to adapt your leadership style when the crisis has ended?

Yes | No

(Only answer if yes selected in above question)

Please explain the ways in which you might adapt your leadership style

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