

## Transcript of Radio Ombudsman #11: Marie Anderson on the case for own-initiative powers

Rob Behrens talks to Marie Anderson, the Northern Irish Public Services Ombudsman, Northern Irish Judicial Appointments Ombudsman, and Northern Ireland Local Government Commissioner for Standards. Marie discusses why own-initiative powers are essential for ombudsman organisations and shares how her office takes a human rights-based approach to investigations.

--AUDIO BEGINS--

**Rob Behrens:** Hello, and welcome to Radio Ombudsman. This is Rob Behrens, and my guest today is Marie Anderson, the Northern Irish public service ombudsman, the Northern Irish judicial appointments ombudsman, and the Northern Ireland local government commissioner for standards, many things, and soon to leave to become the police ombudsman for Northern Ireland. Marie, you're extremely welcome. You're greatly admired and respected throughout the ombudsman world, and we're lucky to have you.

We like to start each episode of Radio Ombudsman by hearing a bit about our guests, in terms of their background. Where were you born, for example, and brought up? What kinds of values do you remember being imbibed with early on?

**Marie Anderson:** Well, thank you Rob, and thank you for the kind introduction. It's great to be on this innovative programme, Radio Ombudsman. Where was I born? I was born in Belfast in Northern Ireland. I was born into a large family, I was the youngest of a family of six. West Belfast in the 1960s, when I was born, was a place of much turmoil, and my early

childhood, adult life, and into my time at university was very much- a time of conflict in Northern Ireland.

**Marie Anderson:** I came from a very religious background, where values were very important, so there was a willingness and a desire on the part of my mum and dad to bring us up, regardless, to respect everybody, and to respect everyone's views and religion.

**Rob Behrens:** That's interesting, and that really anticipates the follow-up question, which is what do you learn and take from those awful situations?

**Marie Anderson:** The need for fairness is a very important part of communities getting on together. If one community feels they've been dealt with unfairly or, indeed, one individual, or a group of individuals, that is, you know, potentially destabilising for society and for that community. So, I realised very early on something that I think is probably part of my nature, which is this desire for fairness.

**Rob Behrens:** Does that explain why you took a law degree?

**Marie Anderson:** In part. One of the things that I've spoken about openly is the fact that I was in, you know, a convent school and, a particular day, I was called out of the assembly, I was 12/13, and I was hugely humiliated and embarrassed by the fact that I was being accused of stealing another girl's gym shoes,

when I hadn't. It was a mistake, and that mistake came out, but I remember that feeling. I think that was the more cathartic moment, if you like, the feeling of I was on my own and I was dealt with unfairly, and I wanted to be a lawyer because I was going to help people that were treated unfairly. So, that's what made me want to be a lawyer, really.

**Rob Behrens:** Yes, okay. After university, I know you became a solicitor, but was that straight away, or...?

**Marie Anderson:** Yes. I now nowadays there are gap years but, yes, I went to the Institute of Legal Studies and practiced as a solicitor in private practice, and then in the public sector. Mostly litigation, but started to focus on human rights and data protection, freedom of information, when I was in the public sector.

**Rob Behrens:** So, when did you join the Information Commissioner's Office?

**Marie Anderson:** In 2003.

**Rob Behrens:** Okay, and what did you do before then?

**Marie Anderson:** Before then, I worked for the housing authority. I worked for 17 years in the legal department of the housing authority, dealing with intractable problems such as anti-social behaviour, homelessness, fractured communities who had to be housed near to each other, so issues such as peace walls.

So, it was a good grounding, if you like, for dealing with the issues that I deal with now, but also in terms of the information. You know, I recognise the need for freedom of information and for people's information to be protected, and I really loved my time in the Information Commissioner's Office. I was there five years.

**Rob Behrens:** And you spent some of it in Manchester, which is always a treat...

**Marie Anderson:** I did indeed, yes.

**Rob Behrens:** ...and a privilege.

**Marie Anderson:** Yes, and it was a time of emerging from - you know, the office was changing from being the Data Protection Commissioner, kind of a registration function, and had taken on Freedom of Information, which was so exciting. It was about the office getting geared up for Freedom of Information and, indeed having regional offices, and the one in Northern Ireland, I actually helped establish that office.

**Rob Behrens:** When did you become an ombudsman?

**Marie Anderson:** Oh, in 2009. So, after leaving the ICO, I went back to private practice. I worked in a commercial law firm, and then realised that really wasn't for me, that I was much more- my

main interest was social justice. So, I saw the role of deputy ombudsman, and I thought, “That’s interesting. I think I’ll put my hat in the ring for that,” and, yes, I was lucky, I got the job.

**Rob Behrens:** You were lucky enough to work for the legendary Tom Frawley.

**Marie Anderson:** Dr Frawley, yes. He’s been a huge support to me throughout my career, you know, and mentor. Yes, legendary. We were talking earlier today about leadership, and his famous phrase on leadership is, “I am their leader, which way did they go?” (Laughter) So, it’s, kind of, you know, to be a leader, you need to have followers.

**Rob Behrens:** Absolutely. Okay, so for our English listeners, and for those in the United States, Northern Ireland is obviously unique politically and socially, but I don’t think that many of us have a great deal of understanding of how this must have impacted on your work as an ombudsman. Could you say a little bit about that?

**Marie Anderson:** Well, I think because the first ombudsman’s office in Northern Ireland was created in 1969, so we are celebrating our 50<sup>th</sup> anniversary year this year, and it was created to deal with complaints of discrimination in housing, employment and, particularly, in local government. I think that the genesis of the idea for an ombudsman was to bring fairness to the citizen, and I think that’s really been always a key

element of the work of the office. I mean, we feel very, very strongly that we are in the justice business, that it is about, you know, being fair.

Not only being fair to complainants or people who feel the public services have failed them, but being fair to those that are wrongly criticised or wrongly blamed. Because I think the role of an ombudsman is also to provide vindication when things have gone right.

**Rob Behrens:** What about the impact of sectarianism on your work, both inside the office and externally, as ombudsman?

**Marie Anderson:** Well, you know, I have a workforce who believe totally, my staff totally believe in fairness and equality. It doesn't matter who complains to the office, it doesn't matter who complains or what the nature of the complaint is, that we're going to deal with it. But I suppose where the area which is most challenging is in my role as local government standards commissioner, where I, myself, have been accused of sectarianism. Because, you know, I was adjudicating on a particular councillor from a particular part of the Unionist community.

So, there is that added layer of not only wanting to do things right, to make the right decision, but being aware that no matter what that decision is, it might please one side or the other. So, to be accused of sectarianism was a huge hurt for me, because that's not part of my values, or my staff values.

**Rob Behrens:** I mean, that's a big issue, because it affects you personally. How do you deal with that? Because you're a very resilient, tough person, but even that must be hard to deal with.

**Marie Anderson:** Well, first of all, I've got huge support from my deputy and the senior management team, who reassured me that, "Of course this isn't true, and you know it isn't true, and we know it isn't true." But I think what was difficult was the impact on my family and how they felt. My husband was angry, and my children were unhappy about it. How did it affect me? I learnt that you can deal with this sort of criticism. I learnt that, behind it all, you've got to be sure that you're making the right decision.

**Rob Behrens:** I can remember, a few weeks ago, when I was savagely criticised on Twitter and I was thirsting to reply, and my oldest son said to me, "Leave it alone, Dad. They want you to reply," and I think that was quite wise advice. So, you do need to consult with people on personal issues, don't you?

**Marie Anderson:** I think you do need to consult. What's been helpful as been part of the ombudsman community's response to this is- and the personal support you've given me, Rob, I was able to talk to you about it. I was able to talk to others, like the current police ombudsman for Northern Ireland, who've said, "Leave it alone. Just leave it. Because if you do anything, if you take any legal action, then it's merely going to provide more oxygen."

**Rob Behrens:** Yes, okay. The-

**Marie Anderson:** It doesn't stop it being difficult, personally difficult, and that's where the resilience comes in. That's where you've got to get up the next morning, go into work, and your staff have got to see that, although it might affect you inside, you're going to continue to lead the office and do the job.

**Rob Behrens:** Thank you, that's important. Let's just move that on a little bit and talk about human rights issues in relation to the actions of public services. You launched a brilliant human rights manual, which sets out an approach that many ombudsmen in Europe take, but is not particularly prevalent in the United Kingdom, about actions that can be taken by an ombudsman. Could you tell us a bit more about how you created this?

**Marie Anderson:** Well, it was created jointly with the Northern Ireland Human Rights Commission and it started, as ever, as all good ideas, with a conversation. It was a conversation between the Human Rights Commission and our office, around the sort of case work that we were dealing with. We were dealing with issues like the Roma community feeling discriminated because they didn't have access to health services. We were dealing with issues of consent, patients not giving consent to interventions, and the family and the patient feeling excluded from the decision-making.

But, also, we realised that ombudsmen and human rights commissions, and/or equality bodies, are actually doing the same job. So, I mean, my style is to move on from the



conversation and actually have a product, and the product was a 'how to do this' manual for ombudsman staff. How to introduce human rights principles into ombudsman investigations. It's quite simple, and it's not about Strasbourg jurisprudence, that's the beauty of it, I think, for non-lawyers, you know, for non-legal staff, that they're very simple principles.

Participation, a person affected by a decision by whatever public service provider, be it health, be it housing, be it, you know, local government, that they have to be able to participate. They have to be given enough information to participate effectively in the decision-making. So, there's the principle of empowerment, of giving information. There's the principle of non-discrimination and being treated equally and fairly and having equal access. Ultimately, the fourth principle of the human rights-based approach is accountability, and that's what we ombudsmen do.

**Rob Behrens:** Would you-

**Marie Anderson:** We hold public services to account.

**Rob Behrens:** Would you say that you've been able to hold public services more to account as a result of having that human rights-based approach?

**Marie Anderson:** Yes. I think maladministration is a tool, but I think that having a human rights lens allows you to look more closely, away so much from the process, as to how the process

actually affects the individuals and affects the individuals' rights. So, if I give you an example, we had a case where a young man died as a result of a routine ear operation, and it was a one-in-a-million reaction to a titanium implant, to the packing around a titanium implant. The point being, his mum and dad believed that he wasn't consented for that intervention, and that was unfair and affected his human rights.

The coroner had refused to undertake an inquest, saying it didn't affect his human rights. When it came to my office, we identified the human rights principle of participation. If I know what is going to happen to me, if I'm told of the risks, instead of someone else making the decision for me, then my human rights have been respected. When I drew that out in the investigation report, I was able to come to a conclusion where there was a conflict between the experts. Some said, "Well, another consultant might not have done the implant," another said they would have gone ahead with the implant.

But, actually, the human rights-based approach meant that I thought about the individual, and that they hadn't been properly consented. The result? Not only did the family get an investigation report identifying this issue, but they were able to go to the coroner, he's commenced an inquest.

**Rob Behrens:** Now, you have two things in Northern Ireland that we don't have. Partly because of your own excellence in bringing it about, you have an integrated Public Service Ombudsman scheme, and you have the power of own initiative. Are these valuable additions to the way ombudsmen should be working?

**Marie Anderson:** I do believe in the one-stop-shop model. The Public Services Ombudsman in Northern Ireland looks at complaints about government departments, statutory agencies, local government, health and social care, education, schools, universities, colleges. I think that can be challenging for staff, but I believe that they enjoy the variety. But I also believe that ombudsman principles of good administration apply across sectors. So, yes, I think it is of value. I think having one place to go to, to seek redress for injustice, is important. If people don't want to go to court, there's an ombudsman there that can look at the full range.

Own initiative is, for me, an essential tool of every ombudsman's toolkit, it should be there.

**Marie Anderson:** When you look internationally, you look at ombudsmen in Australia, you look at ombudsmen in Europe, you look at ombudsmen in North America, the Ontario ombudsmen, the Western Australian ombudsmen, they all have own initiative. They've all had own initiative from the start. The Irish Ombudsmen Act that was created in 1980 had own initiative there, as well as dealing with individual complaints. For me, an ombudsman without own initiative can't fulfil the mandate of improving public services for many, not just for the individual.

**Rob Behrens:** Hmm. So, you'd have no hesitation about introducing own initiative? It's essential?

**Marie Anderson:** Not at all. I was lucky to be part of the development of the Public Services Ombudsman Act, and had an opportunity to

persuade officials who were perhaps nervous about an ombudsman having own initiative powers that, really, this was something that actually could benefit public services in the end. See, it is about prevention. You can deal with numerous complaints but never get to the core issue, whereas own initiative allows you to tackle the core issue of systemic failing.

**Rob Behrens:** Well, I agree with that and that's why I think it's necessary for us to have the reform that you've already been operating for nearly three years now, so...

**Marie Anderson:** Yes. And now, the Welsh Ombudsman is about to get that also. I believe the Scottish Ombudsman would like own initiative. So, if that happens, it means that the devolved administrations have it, and the first ever ombudsman in these islands, the Parliamentary Ombudsman, has not. I think that's missing an opportunity to improve public services for the citizen.

**Rob Behrens:** As you move on from the Public Service Ombudsman, what are you most proud of? Is it bringing the whole thing together, the integration of the various systems?

**Marie Anderson:** Well, I think the legislation that allowed the Public Services Ombudsman as a one-stop-shop for complaints about public services. But also, being able to bring in local government standards. Because Northern Ireland was one of the- well, it was the only part in Europe that didn't have a mandatory

code of conduct for local representatives. That was introduced in 2014. My office, and I, as deputy ombudsman, now ombudsman, have been key to establishing an investigative and judicative function in Northern Ireland, that is a unique model but, I believe, operates very well.

But that is not work that is out with ombudsmanary because, for me, ethical standards, values, fairness, they're all part of good governance and that's where we ombudsmen are. I mean we're not a court, we don't declare, we don't make binding decisions. But, nevertheless, we can influence with the recommendations that we make, and with setting standards.

**Rob Behrens:** Now, we asked colleagues on Twitter to send in questions to you, and we had a set of questions from one dissatisfied user of the service under your predecessor, who felt that she hadn't been treated fairly by the system. What can you say to people in that position?

**Marie Anderson:** I think that many people misunderstand the role of the ombudsman. They believe that the ombudsman is there particularly to advocate for them and their particular issue. Ombudsmen are impartial, so a finding of no failure can be disappointing to the complainant, and I believe that was the case in relation to the particular individual that you're referring to. So, the previous ombudsman did not find in her favour, and that can be disappointing. But then, you've got to understand that the other side of that is that perhaps a clinician or a member of health staff who has been criticised, receives, you know, a message that, actually, they did it right.

But there are many occasions in which complainants don't agree with my decisions, but I still have to decide fairly, ensure there's a fair process, ensure everyone gets an opportunity to comment and report on the matter. That's what an ombudsman does.

**Rob Behrens:** Yes. It's difficult sometimes to explain that, while the complaint belongs to the complainant, the decision belongs to the ombudsman, providing it's evidence-based and rigorous.

**Marie Anderson:** Provided it's evidence-based and rigorous but, also, I believe, fair. I think you have to give everyone and opportunity, including those who are criticised. But this issue about it's an ombudsman decision, while you bring your complaint, it is the ombudsman's decision, has actually been written into the legislation that I referred to. Which is that, under the Northern Irish Ombudsman legislation, the 2016 act that I mentioned, that even if a complainant withdrew their complaint, I can still investigate.

**Marie Anderson:** So, it is the ombudsman's investigation.

**Rob Behrens:** Now, you've been with the office in Northern Ireland for ten years, that's a long time. Will you have any regrets about moving on, even though it's to an even more difficult and challenging role?

**Marie Anderson:** I have huge regrets about leaving my staff, because they are wonderful to work with, hugely supportive, and on days when I don't have my usual level of energy, they give me the energy back to keep going. So, I have regrets about leaving my staff. But, I mean, I was asked this question about, "Why do you want to undertake the roll of police ombudsman?" I do believe that it's about public service, and it's about bringing my experience.

You said ten years' experience in the Ombudsman's office, five years' experience in the Information Commissioner's office, it's bringing that to bear in what is, you know, a very challenging area, dealing with police complaints in Northern Ireland.

**Rob Behrens:** Now, you've spent the day with us, speaking to my colleagues at our all-staff away day. What advice would you give to our younger colleagues, many of whom have only recently joined the ombuds profession?

**Marie Anderson:** The advice I would give is, first of all, it is a profession. As you know, Rob, from your discussions with me, I believe very much that it has to be recognised as a profession. I'm amazed at your accreditation project, at getting that off the ground, that I would advise the young people in this office to take advantage of that. That is a wonderful opportunity, and I realise the rigour and the commitment to achieving that accreditation, but I would say go for it. I mean, in this, you are leading the way in the ombudsman world.

It is something that many have talked about. I've talked about it myself. I've tried to do it, but you and Amanda have

actually done it, and I think that is amazing. So, my advice is take the opportunity.

**Rob Behrens:** Marie Anderson, thank you very much indeed. It's been an absolute privilege and a pleasure talking you.

**Marie Anderson:** Okay. Thank you, Rob. Thank you.

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