

Rob Behrens: My reflections on being an Ombudsman

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Introduction

The date of 17 January 2017 will remain etched in my memory. I was before the [Public Administration and Constitutional Affairs Committee](#) to be quizzed about my suitability to become the UK's national Ombudsman.

Faced with all the members, ably led by the highly respected Sir Bernard Jenkin, an experienced MP said to me:

“Mr Behrens, I've had a look at your career and you have a half-decent CV. Why would you spoil it by taking on this role?”.

It was an interesting comment to make in a number of ways. It shows the difficulty of being an Ombudsman and the delicate path we have to tread.

As I finish seven years of service, I have reflected on what being an Ombudsman means. It is, for me, one of the most important roles in public life. Not just for the help we provide people in uncovering the truth and seeing justice served. But also in the values that we hold close that dictate how we work. Core Ombudsman values and principles of independence, fairness and transparency. It is through these foundations that we are able to build trust with the public and speak truth to power.

Background

My Office was created in 1967 and is now the largest public service Ombudsman scheme in Europe. I am the tenth Parliamentary and Health Service Ombudsman in the UK. We now have close to 600 staff in Manchester and London, the powers of the High Court to call for papers in disputes and legal powers to require bodies in jurisdiction to cooperate with us.

We use maladministration as the test of detriment for service users, a term that includes bias, neglect, and delay, but also poor service, clinical failure, and avoidable death. A detriment can be maladministration without being illegal.

Even without non-compliance we use the prestige and focus of Parliament to raise the profile of our cases by laying reports for it to consider. Most notably, the health select committee used our report on tragic deaths resulting from service failure relating to eating disorders and anorexia to kick-start a significant five-year reform programme undertaken by what was called the 'Ombudsman Delivery Group' of the Department of Health. And our recent investigations have prompted Parliamentary debates and reports on welfare benefits for disabled people and the failure of the Foreign Office to address the torture of a British citizen in the United Arab Emirates.

I am also subject to the Judicial Review of decisions made by my office. In a landmark High Court Judicial Review Application made when I was Higher Education Ombudsman in England and Wales, the Courts [Maxell, 2011] struck

down an application by a student with narcolepsy for her Appeal against my decision to be heard in the Courts.

“The judicialisation of the [ombudsman] ... so that it has to perform the same fact-finding functions and to make the same decisions on liability as the ordinary courts and tribunals would not be in the interests of [complainants]”

But the Courts do intervene very occasionally and that is why our evidence and processes must withstand the highest level of scrutiny.

Last year we received around 130,000 inquiries including 41,000 telephone calls and 35,000 complaints. We now have a policy of seeking to resolve cases as early as possible and only investigate where absolutely necessary. Many complaints are outside our jurisdiction, some can be settled with a quick call (circa 500). And we now have a fully-trained mediation team who are offering mediation between parties rather than a long, paper-based investigation.

We end up with preliminary or in-depth investigations in around 8000 cases, and we find maladministration in around 1 in 8 cases. Each year we recommend financial compensation of around half a million pounds following about 1000 recommendations to bodies in jurisdiction.

We also have to deal with an imbalance of the types of complaints we receive. As both Health Service and Parliamentary Commissioner, health complaints considerably outweigh complaints about Government departments.

There is a simple, structural reason for this imbalance. Since 1967 complaints in cases about Government departments can't make complaints directly to my Office, but must go to their Member of Parliament first. This a hopelessly out of date and damaging rule. It is contrary to the Venice Principles endorsed by the Council of Europe and the United Nations General Assembly. It has also been consistently criticised by our Parliamentary Select Committee because it acts as a disincentive to citizens to bring their complaints forward.

The role Of Ombudsman

I have some abiding convictions about the role of Ombudsman in the face of these challenges based on my experience of Ombuds jobs in three different jurisdictions over 17 years.

First, if an Ombudsman is not independent and doesn't speak 'truth unto power' she or he is not doing justice to the job.

As Ombudsman, I have investigated complaints over a succession of avoidable deaths in the National Health Service. And I have long criticised the culture in the health service which in too many instances enables the leadership to put the reputation of institutions above serious issues of patient safety. I have found that British citizens from the West Indies were subject to human rights violations in attempts to remove them from the UK after 50 years of peaceful contribution to British life. Time and again Government departments have failed to listen to their service users, and we have tried to put matters right.

Second, one of the biggest obstacles is wanting to be popular and to be loved by everyone. This is entirely misguided and impossible to achieve. The role of Ombudsman is not to be popular or liked, but to act independently and fairly, basing decisions on where the evidence has taken us. We must always have this in mind, so the integrity of the process is maintained and maintains the trust of both the public and the organisations under scrutiny.

Third, despite outstanding examples of heroic practice around the world - Dymtro Lubinets in Ukraine, Thuli Madonsella in South Africa and Adam Bodnar in Poland come to mind - there is no golden era of Ombudsman institution. This is, in part, because there are lots of different types of Ombudsman institutions. In much of North America, for example, Ombuds do not investigate at all - they confine themselves to support and mediation. Also, Ombudsman Institutions have had to continually reinvent themselves in the light of changing circumstances - the loss of public trust in state institutions, the decline of citizen deference to the state, the slow erosion of gender-bias in public sector hierarchies and the rise of commitment to human rights approaches in public policy.

As a result, and in my view, Ombudsman leaders and their Parliamentary oversight bodies, have to be outward-facing in their approach to big challenges. We have to learn from our experience but also learn from the experiences of our counterparts. As Benjamin Disraeli said about Robert Peel, "He was a burglar of other men's intellects". This is a good thing. In the same way, Ombudsman leaders and Parliaments have to learn, borrow and even steal ideas as they go.

Finally, being an Ombudsman is an art not a science. I made this clear in the post-COVID research I published with the International Ombudsman Institute called *The Art of the Ombudsman*. It was based on questionnaires returned from the 51 national and sub-national schemes in 38 countries. Being an Ombudsman is an art because of the significant number of ambiguities or paradoxes we have to face in the post COVID world.

Take, for example, the fact that the Ombudsman has authority but little coercive power. This means stakeholder relations, especially with Parliament and bodies in jurisdiction are vital. We have addressed this concretely with the co-production of nationwide Complaint Standards best practice guides and professional training for frontline bodies, so they have the skills to resolve complaints before they come to the Ombudsman. This has been widely welcomed across Government and in the Health Service. It constitutes a non-adversarial, non-legally binding approach to improvement.

As already mentioned, the Ombudsman must be impartial but she or he also needs to be empathetic and to recognise the huge imbalance of power between well-resourced public bodies and the individuals who complain about them.

On a regular basis, people come to my Office in a state of bereavement or trauma as a result of losing a loved one in the health service. Dealing with this requires specific skills development not only on the wide Ombudsman mandate but also on the essential skills of communicating effectively, dealing with trauma,

demonstrating empathy and learning to be even-handed between parties to a dispute.

In my period of office, we have launched a comprehensive revised programme of training and development of our staff. We have introduced an accreditation scheme for senior case-handlers. We have set up a new Ombudsman Learning Academy, where new colleagues spend 10 months learning and practising their roles. It now has more than 100 graduates and has changed the culture of our service. Last, and following this lead, we launched in Manchester in January 2024 an International Ombudsman Institute Learning Academy with a mediation skills programme for case-handlers in six counterpart countries.

The role of Ombudsman involves walking a tightrope of political process but not party politics. According to all the respondents to our international survey, it is essential for an Ombudsman to engage in the political process, but sadly the golden rule of not bowing to political masters is sometimes broken. Most recently this has been seen in the Russian Federation and in South Africa for different reasons, with seriously damaging consequences for citizens, for the reputation of our institutions, and for public trust.

One of the reasons I introduced Ombudsman peer review into the international community is so that Ombudsman colleagues can get feedback and advice on this issue and all the ambiguities and paradoxes we face in the post-COVID world. Peer Review is not a substitute for accountability to Parliament but it provides an added dimension and indeed after the first peer review of my Office in 2018, the peer reviewers were invited to give evidence before our Parliament about what they had found.

My fourth and last point is that the national Ombudsman in large countries is very often the final resort for citizens who have experienced service failure from Government departments, but also comparatively little known about. This has concerned me in my time in this role. It is a big challenge and must be faced head on through constant outreach to the public through direct engagement and explaining our value through the use of impactful media.

Conclusion

The role of Ombudsman is one that faces many challenges and pushes and pulls between serving the public, being evidence-led, and speaking to truth to power.

Independence, transparency and fairness are values that drive our work and that we should all abide by. At the heart of what we do is a belief that relationships between and the state are fundamental to our wellness as a society. Sometimes these relationships breakdown and that is where we come in. To reveal the truth and ultimately lead to better public services for our citizens.

It is a unique role in a democracy, but essential for its very existence.