

European Ombudsman Institute

Европейский Институт Омбудсмана

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VARIA 12 (E)

Dr Tony WRIGHT MP

CONTRIBUTION TO THE CONFERENCE
OF THE BRITISH AND IRISH OMBUDSMAN
ASSOCIATION IN NOVEMBER 1995

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Necessary annotation:

Two reasons made me ask the Secretary of the British and Irish Ombudsman Association to allow me to publish and to translate the contribution of Mr Wright at the Conference in November 1995.

Mr Wright speaks in a humoristic and satirical manner about the enormously important problem as is the access to the Ombudsman, about the necessity of a direct and easy access.

The second reason for this translation and publication is the fact, that in a country, which possesses a great tradition in matters of democracy and ombudsmanship suddenly the question arises, if the figure of the Ombudsman is necessary at all.

The extraordinary contribution of Mr Wright shows us, that during times of lower prosperity, one tends to think about the necessity of some institutions of our states, and that it might be possible, that one of the first questions could be about the necessity of the Ombudsman.

In this specific case Mr Adams, the Secretary of the mentioned Association, communicated to me, that the danger of dissolution of the "Local Government Ombudsman" was banned. But the danger of the "critical question" is not banned for all times and not for every country. This question may resurrect any time and it would be advisable to think about an adequate answer early enough.

N. Schwärzler

Address by Dr Tony Wright MP

It is intimidating talking to a group of ombudsmen. I'm sure you play games asking yourselves what the collective noun is. I've always regarded you as a "complaint". I see myself as talking to a "complaint of ombudsmen". I think it reflects the confidence that you appear to feel in yourselves and in your Association that you should have rounded up a group of troublemakers to come and say unpleasant things to you which, I take it, is our role this morning. It is a particularly nice thing to do for a Member of Parliament who has got used to having unpleasant things said about him. It's nice to come out one day and have a go at somebody else.

I think I have three partial qualifications. Yes, I am a member of the Select Committee on the Parliamentary Ombudsman. Yes, I am a constituency Member of Parliament, and therefore a heavy user of most of the services provided by most of the people here. And also, I love complaining. Always have done. In fact I've got someone at the moment trying to produce a little directory of all the ways in which people can complain, which I think would be very useful to the people that I have dealings with. It is remarkable that there isn't such a thing at the moment. I tried to get the Consumers' Association to produce it, but they won't.

You belong to a growth industry. This is the nice bit before we get to the other bit. You are a success story. Everyone wants to be one. Everybody thinks they should have one. I was struck by this clipping from the Times Higher Education Supplement in September "David Bellamy (the naturalist) is saying there should be a group of scientific ombudsmen set up to pronounce upon issues of public concern." Perhaps we'll have Bellamy's crew here next time. When there's a point of scientific dispute to be pronounced upon, they could stand up and tell us in a kind of platonic way - the "wise men" - what the answers to the great questions of our time were. This is a great tribute to the concept of the ombudsman. Looking round for someone to do these kinds of things people say "Ah, the ombudsman. He will do it." We had two ombudsman references in the Queen's speech - a sign of the times. The first was housing - the housing association person; and the second was the extension of the Health Service Commissioner's role into the clinical area in the Health Service. So ombudsmen are central to where we are at.

But I am not here to be nice. So let me, quick as I can, be unpleasant. Let me first of all be unpleasant about the bit I know best, which is the Parliamentary Ombudsman. Now the PCA is the gold standard, the gold standard of gold standards. Mr Reid is the kind of man who, if I was in a hole, I would want to dig me out of it. I yield to no-one in my admiration for the gold standard and for the person who holds the gold standard. But, but - and this is all short hand (if you want the long hand, we have produced a report a couple of years ago from the Select Committee which says a lot of this but not all of it) - it cannot

be right to take so long to investigate citizens' grievances against public departments and public bodies. It cannot be right to take a year and more to sort out a problem. That is not real world stuff. It may be excellent, the quality may be outstanding, but the time cannot be right. I know that the desire is to make it shorter.

It cannot be right either that the Ombudsman should still be so poorly known to the users of public services. I'd like it to be different. I don't want Mr Reid to become a cult figure of our time ... but, on reflection, why not? Well, yes, let's warm to the theme. Let me just revise what I have said. I do want Mr Reid to become one. I want him to become "the people's William", that they will turn to at all moments of adversity in their lives.

The jurisdiction clearly needs to be fundamentally revised. Lord Nolan tried to say this. In fact he got it wrong. The actual paragraph in Nolan about this gets it round the wrong way. I think that everything should be in jurisdiction except anything which is specifically excluded, as opposed to the position at the moment where you simply put in all the things where the writ runs. This is completely the wrong way round. The principle should be: where public money goes, where public administration goes, there accountability should follow, accountability in the form of the PCA, and also in the form of the National Audit Office. That should be the fundamental principle. So there is a major jurisdictional issue. Training and Enterprise Councils are a clear example; but there are many other examples of areas which should not be outside the remit and which we need to put inside. I was involved in a report not long ago looking at the whole world of quangos and the vast number of quangos. They are not subject to the basic principles of public accountability such as scrutiny by ombudsmen. You would have to change the jurisdictional basis to do that.

I think the Parliamentary Ombudsman should also be able to initiate investigations in certain circumstances. He shouldn't have to rely on what comes in to be able to do things. He should be able to investigate things that seem to be matters of public concern.

May I refer to usage. It is a splendid, wonderful, extraordinary system, but the usage is extraordinarily low. That must tell us a lot about the potential that is not being tapped here. Yes, there has been a huge increase in the last several years, and enormous increase in usage from 1989 to 1993, but it cannot be right that only 1,000 or so cases a year can get referred to this system, or that only 200 might get taken up. Those figures simply do not correspond to the level of plausible demand, that there would be expected when ombudsmen investigate the whole range of public services.

This brings us (and I mention it because it would be wrong to leave it) on to the whole question of direct access. You will recognise here arguments which I was involved in and lost at

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various points. It cannot be justified that we have to insist that citizens go through Members of Parliament (of all people) to access the Parliamentary Ombudsman. This makes no kind of sense whatsoever. We did a survey in the Select Committee, looking at MPs' views on all this, and when we look at the figures they are striking. Forty-five per cent of MPs said they seldom or never referred cases. Ninety-three per cent said they never referred someone who was not a constituent, in spite of the fact that you are supposed to be able to go to any Member of Parliament to take up a case. Fifty-eight per cent said they never would refer anybody who was not a constituent. So that bit of the justification for the system falls away. Fifty-three per cent said they always referred if they were asked to, which makes a nonsense of the filtering role which is supposed to be operating. So whichever way you play the figures, I don't think that it stands up, and I am delighted that one of the chief advocates of getting rid of that indirect access system is the Parliamentary Commissioner himself. My worry is that Members of Parliament still think that this is a system somehow designed for them, and not a system designed for citizens. And that is exactly what it is, because that is how it was set up. It was the price that had to be paid to get the House of Commons to set it up in the first place, when they had tremendous inhibitions about doing it. Somehow they had to keep control of the system. But, given the Citizen's Charter, and given everything that has happened since those early days, is it possible to defend the idea that citizens can only make complaints about public services if that is somehow tied in to the role of MPs as being the only agencies for taking up citizens' grievances? That doesn't stand up any more, and yet we are left with indirect access which I think suppresses demand. That has to change.

Let me now go beyond the Parliamentary Ombudsman and say a few things more generally. How would someone make sense of the bewildering variety of ombudsmen? How would people like my constituents make sense of it? The answer is that they wouldn't. They have no idea. They vaguely have a notion that there is someone called an ombudsman, but they have no idea what this ombudsman person is. They are not at all aware of the distinction between the Parliamentary Ombudsman and the Local Government Ombudsman, let alone the bewildering variety of ombudsmen that we have got here in your Association. How do we make sense of that bewildering variety so that it becomes usable by citizens? Who would know whether a particular ombudsman he deals with is bogus or not? What is the mechanism for a citizen knowing whether an ombudsman is the real article or whether it is somebody who had borrowed the name; and was using the aura of the name for a scheme that was basically flawed? How is it possible to guarantee this independence which, you rightly say, is central to a proper ombudsman scheme? And if it's not guaranteed, what can be done when the aspiration to independence is infringed? I read in the newspaper the other day about the Prisons Ombudsman. I know about the elaborate steps that the Home Secretary took to ensure that he got someone of his choice, indeed aborting the process, throwing out an initial shortlist because the person of his choice was not there, and finally

getting his retired admiral, who it seems is doing a sturdily independent job. The newspaper last week now tells me that because he is sturdily independent he has got to submit his annual reports to the Home Secretary for vetting each year before they are published. I don't know if that's true, but that's what it says. What does someone with aspirations to independence do if wanting to protect the independence of an ombudsman scheme in those circumstances? Who do you appeal to? Who protects you? Whose job is it to identify the holes and plug the gaps in the coverage of ombudsman schemes? Well, informally it is your Association, but then that is not the answer. That is not the public answer to the question. It is the informal answer to the question. It is the best answer we can currently get. If we find, for example, that what goes on inside schools - which is a profoundly important issue for most people in this country - is not subject to a complaints system of an ombudsman kind, whose job is it to say that there is a huge gap there and something should be done about it? There isn't anybody, which is why the gap stays. And why only a scheme for corporate estate agents? Why not a scheme for individual estate agents? The public interest says there should be. Why do schemes operate on a different basis from each other? Why is the Building Societies Ombudsman a statutory private scheme but the Banking Ombudsman a non-statutory private scheme? What is the logic of having that kind of distinction? It doesn't seem to be a logic that has any grounding in public interest, or where citizens are coming from. It may have a grounding in the different nature of these organisations and their different strengths, but it doesn't have a public interest grounding.

So, just to pull these things together in a positive way. The question is: do we simply celebrate the diversity of the ombudsman world - different organisations, therefore different schemes all working differently? Do we try to tidy up the edges through your Association, or do we try to sort out this Topsy in some kind of systematic way? My approach would be to go for the latter course. We might think about how we could have unified access points into the world of ombudsmen; how we could think about doing real publicity that would seek to get citizens into this world in a direct, easy and comprehensive way. Perhaps we should have regional offices where people can approach this world and find their way in. Perhaps we should have drop-ins and telephone contacts. But if my constituents had to do the kind of formal letter writing things that Sheila was talking about to have me take up their cases, most of them would be disenfranchised. If they could not come and sit down with me and talk through the problems that they have got, so that I could make notes from that conversation and take it further, most of my constituents would be disenfranchised. If we are not content just to run ombudsman schemes for the articulate middle classes, we have to be able to run them in a way that makes them accessible to everybody. Otherwise, I think it undercuts the promise and the potential of the scheme.

There must, I think, be common rules, common procedures. Redress that is obtained in individual cases should be applied to all

similar cases. There should also be the power to do that. There should be the power to probe the systemic failures in all systems and not simply to deal with individual grievances. And there must be mechanisms to ensure comprehensive coverage. Both in the public and private sector, nobody should have schemes if they don't cover the whole field, because then citizens or consumers would be misled and they would be let down.

Can we patent the term "Ombudsman"? - no we can't. In the immortal words of the people's William "the horse has bolted". In New Zealand they do, but nowhere else. But why should we? Having got a term that works, and that people have begun to understand, surely the approach should be to make schemes have the integrity that deserves the name. This is better than trying to take the term away because schemes can't live up to it. My approach is "How do we universalise gold standards, if that is not an impossible thing to do?" We could do it through having kite marks. We could have the Ombudsman Association give a kite mark to schemes. But that doesn't ensure comprehensive coverage. I think we want every organisation, public and private, in line with the spirit of the Citizen's Charter, to have a good, internal complaints system, and then a good, external ombudsman. The public interest is about ensuring that both are in place, and that both are as good as they ought to be. It is time to take hold of all this.

There are alarming reports about discussions going on about the future of the Local Government Ombudsman at the moment. I took advice last night on the stage which this was at, and it was more alarming than I thought. I am told that suggestions are afoot that the Local Government Ombudsman should be swept away, and that instead there should be a statutory obligation on local authorities to have proper complaints systems, and that it should be underpinned by a system of tribunals that people should be able to go to, if they feel that their complaints have not been properly dealt with. That's an extraordinary proposal. I'm not saying that it is extraordinary because we should not go down that path. What is extraordinary is what it reveals about the casual way in which we might do things here. If it were to be the case that we might casually, through reviewing the Local Government Ombudsman, invent administrative tribunals, it would be a bizarre development. It would be bizarre to do it without thought about what this would do to the whole system of public administration and public law in this country. And it would also ignore the fact that those countries which have developed systems of administrative tribunals - I think of France or Australia - have also gone on to develop ombudsman systems because of the delay and remoteness of those systems. What I am saying is that it is just not possible to proceed in this kind of way any more. The time has come, I think, to get a new body, whether we call it an administrative commission or whatever, to take hold of this whole area. We are on the eve now of a profound period of change in the British constitution and administrative arrangements. We have to devise the machinery to do it properly. We should not simply make it up as we go along so that we extend the mess and increase the mish mash. I think putting the whole ombudsman world on to a more systematic basis is part of that same story.