

# Public Body Complaints and the Ombudsman



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Niall O'Brien of Beauchamps Solicitors outlines the role of the Ombudsman.

The Ombudsman Act 1980 (the 1980 Act) established the Office of the Ombudsman and gave the Ombudsman the power to investigate complaints about administrative actions of many public bodies which adversely affect individuals or companies. The current Ombudsman is Emily O'Reilly. She examines complaints about the administrative actions of Government departments, the Health Service Executive (HSE), local authorities and An Post. The Ombudsman also has power to investigate complaints about compliance by public bodies with Part 3 of the Disability Act 2005. The Ombudsman cannot investigate matters that relate to actions affecting children.

A typical example of what people may complain about is a dispute about the medical card scheme administered by the HSE. Pharmacy contractors could also complain about any problems they have in the dealing with the HSE, such as obtaining payments under the HSE Primary Care Reimbursement Service (PCRS).

Before complaining to the Ombudsman, however, you must first try to solve your problem with the public body concerned. Therefore, in the example above relating to delays in payments under the PCRS, the PCRS's Complaints Tribunal that investigates complaints by the HSE against individual doctors, pharmacists or dentists and complaints and appeals by the health professionals against HSE decisions affecting them would have to be contacted first and the relevant procedure followed. If you cannot resolve your complaint in this way, you can ask the Ombudsman to investigate the matter.

## Ombudsman investigations

Complaints to the Ombudsman may be made in writing, by telephone, by calling to the Ombudsman's Office, by email or

by using the online complaint form on the Ombudsman's website. The majority of complaints are resolved informally; for example, by discussing the problem with the public body.

The Ombudsman can investigate a complaint after carrying out a preliminary examination if the action has adversely affected the complainant and the action was:

- taken without proper authority;
- taken on irrelevant grounds;
- the result of negligence or carelessness;
- based on incorrect or incomplete information;
- improperly discriminatory;
- based on an undesirable administrative practice; or
- otherwise contrary to fair or sound administration.

Investigations are always in private although the investigation procedure is a matter for the Ombudsman to decide. The Ombudsman may require any person with relevant information to furnish that information or meet with them.

The Ombudsman cannot investigate certain cases. For example, where the matter is before the courts; where the complainant has a right of appeal to the courts or an independent appeal body; or where the matter relates to recruitment or terms of employment. The Ombudsman may, after having carried out a preliminary examination, decide not to carry out an investigation or discontinue an investigation if:

1. the complaint is trivial or vexatious;
2. the person making the complaint has an insufficient interest in the matter; or

3. the person making the complaint has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if he has, has not been refused redress.

The Ombudsman can make recommendations that the actions be further considered; that measures are taken to mitigate or alter their effects; or that reasons for taking them are furnished. For example, the Ombudsman can ask a public body to offer an appropriate remedy, including an explanation, an apology and/or financial compensation. Before the Ombudsman makes an adverse finding against a person or body she must allow that person or body time to consider the issue and make representations. The Ombudsman's findings are not binding and the complainant must be informed of the result of the investigation and how the relevant public body has responded to any recommendations made.

## Proposed Reforms

In 2001 a Bill was introduced into the Dáil to provide for the appointment of a dedicated Health Ombudsman but this Bill subsequently lapsed. The current Ombudsman (Amendment) Bill 2008, which aims to extend the powers of the Ombudsman to cover a number of new bodies and update certain provisions of the 1980 Act, sets out further criteria and procedures which are to apply to bodies covered by the legislation and increases the powers of the Ombudsman in respect of access to information. However, it has not made any progress through the Dáil since March 2009.

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