

ADDRESS BY
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"WHY AN OMBUDSMAN -
REFLECTIONS AND THE FUTURE"

What I hope to do this evening is to share with you my firsthand practical experience of the establishment and the operation of the Insurance Ombudsman Scheme in Ireland.

MY BRIEF:

The Scheme was established in October 1992, for the purpose of providing independent settlement of disputes between personal policy holders and their insurers. It is no surprise that there was considerable interest expressed by the media at the launching of the Scheme when one considers how controversial and vexed a subject Insurance is.

Journalists enquired particularly about the independence of the rôle to which I replied then, and still firmly reply, that I have been given a job with independence guaranteed.

To those who ask: *"can you be independent when you are set up by the industry itself, as it were?"* I answer *"yes, not only because I believe that I can but also because I believe that I have a duty to ensure that I do"*.

I have felt quite "at home" in this job. Perhaps, in a way, that is because I am not in foreign territory because the relationship between a policy-holder and his Insurer is not too unlike the relationship between a lawyer and her client in that sometimes there is more loathing than loving, particularly when, perhaps, it could be argued that the clients' expectations far exceed what is practical or possible.

As regards the general public's expectations and perceptions of the Insurance Ombudsman Scheme, it has been an essential part of my job, in these early days, to explain and to convey to the general public the purpose and the limitations of the Scheme.

In my first two years in office, I have received a diverse range of claims, and complaints and communications from the general public. Some of these references have been premature in that the Complainant has not gone through "due process", that is to say:- they have not exhausted the internal complaints procedure within the Insurance Company. This is arguably, inevitable and understandable in the early days of the scheme when the public has not become familiar with the rôle and operation of the office.

At the inauguration of the Scheme, I said that I did not visualise my rôle as a "Watch Dog". I hastily added that neither would I be a "New Age Robin Hood". I fully appreciate that the saying "you cannot please all of the people all of the time" applies to this job more than to most in that a finding in favour of the Insurance Company will produce scorn and cynicism from a disgruntled complainant, yet, if my decisions were to lean heavily in favour of the complainants, this could produce the view, from the Insurers, of consumer bias. It is therefore part of my brief to safeguard the perception of the rôle by avoiding industry capture and consumerist infection.

My own personal aim has been to devise as simple and as accessible a system as possible so that disputes can be effectively and expeditiously investigated and resolved.

THE PRACTICAL EXPERIENCE:

If, as is often the case, a complainant writes to me, in the first instance, requesting that I act on his behalf, I reply enclosing a copy of the explanatory leaflet setting out the procedures in broad terms, and direct him back to his Insurance Company. I explain that he must first go through the Internal Complaints Procedure and exhaust all existing means of remedy within those procedures. In referring a complainant back to the Internal Complaints Procedure in the Company, I believe that it is crucial that he finds these procedures both accessible and functional.

Every Company participating in the Scheme has nominated a member of senior management whose responsibility it is to review and "sign off" unresolved disputes before they can be referred to me.

It is now well established that in order for an Ombudsman Scheme to work, the right to complain to the Ombudsman should be adequately publicised by those subject to complaint. I would hope, by now, that details of the Ombudsman Scheme have percolated down through the various departments of the Member Companies to the "front-of-house" personnel who should be familiar with the Scheme, the terminology, and the procedures involved. Companies should mention the Ombudsman on sales and promotional literature and advise policy holders of their right to refer disputes to me.

WHY AN OMBUDSMAN?

In a report done recently, in the U.K., in which Lord Ackner reviewed the viability of Complaints Handling Systems, with a view to arriving at a structure best to deal with consumers' Personal Investment disputes, the Law Lord concluded that an Ombudsman System is better than any arbitration arrangements for handling consumers' investment claims or disputes. Alternatives such as committees or panels with industry nominees as well as consumer representatives balanced by an independent chairman, as adopted for example, in Hong Kong and Australia (not to mention LAUTRO's own Complaints Sub-Committee) do not appear to have been serious contenders. Having investigated the Insurance Ombudsman Bureau model in the U.K., Lord Ackner referred to the Ombudsman System providing a "unified complaints procedure".

Having myself studied the model in the U.K., and also in Denmark, as part of my initial researches, my objective has been to take the best from tried and tested systems, but to do it our way. Ombudsman schemes have been working well for many years in Scandinavian countries where complaint handling systems are open, accessible, transparent and generally accepted to be fair.

We are all witness to the trend towards new methods of dispute resolution - now tagged "A.D.R." - which aims at keeping disputants outside the traditional forum of the court-room. There are several reasons for this, two suggested by consumer advocates relate to improving access to justice and having the cases decided by an adjudicator, who is perhaps both more sympathetic to the consumers' position and able to apply modern consumer inspired principles when making the decision. There is a growing recognition of the value of mediation and conciliation methods applied in both public and private disputes.

Ordinary consumers may have neither the resources nor the inclination to risk what limited funds they do have in litigating a consumer claim. An Ombudsman who is independent, free, helpful and easily accessible, but yet allows individuals the right to litigate if they are not satisfied with the decision - provides a sensible alternative to Courts or Arbitration.

The Insurance Ombudsman Scheme provides the mechanism whereby rights of the policy holder - as a consumer - are given practical effect.

CAN A PRIVATE SECTOR OMBUDSMAN INSPIRE CONFIDENCE AS TO INDEPENDENCE?

There can be no doubt that the time is right for exploring and implementing new methods of consumer redress. To those, of a cynical disposition, who, when commenting upon private sector Ombudsman, lay heavy stress upon the fact that the Ombudsman is funded by the Industry, over which he or she has jurisdiction, and imply that the independence and effectiveness of the Scheme could thereby be in doubt, I strongly contend that it is a most prudent route to get the industry in question to fund the institution of regulation or redress so long as this does not involve any loss of independence.

The Ombudsman is the keeper of the industry's conscience which it has embodied in its own Statements and Codes of Practice.

A COST EFFECTIVE MEANS OF REDRESS

Developing the Jurisprudence of consumerism through an institution such as an Ombudsman has several advantages, in contrast to the Arbitration process which can be costly and where decisions are arrived at in accordance with the rules of Law. Equitable principles are necessarily applied by an Ombudsman where the strict application of the Common Law leans against the consumer and takes no account of consumer protection ethics.

We have all heard it said that: "the Law Courts of England are as open to any man as the door of the Ritz".

By contrast, the Ombudsman service is free, open, accessible, simple and, I hope, effective.

As well as providing fast-track adjudication, an Ombudsman also offers the parties in dispute the opportunity of a private means of dispute resolution. The commercial viability and cost-effectiveness of such a scheme cannot be over-stated. An Ombudsman Scheme saves both the Industry and the consumer money.

There are further opportunities to explore the potential for mediation and conciliation. In circumstances where the parties need to or wish to have an on-going relationship, there are several advantages to having negotiated settlements which provide both parties with the potential for on-going business and commercial relationships. The business relationship is not severed by the effect of battle nor the adversarial system.

To disputants who have become grid-locked through conflict, the inquisitorial rather than the adversarial approach allows the parties to keep in focus some areas of common ground and to identify issues which are less important to them and thereby to provide a route through to a set of conditions which could accommodate both sides as reasonably as possible and at the least cost to both sides.

People are marginalised by conflict, particularly when they take on a large institution which creates a sense of imbalance in the power-process. By having an independent referee, people are empowered by the symbol of fair-play and can derive satisfaction from settlements that are proposed rather than solutions that are imposed.

There are further grounds for confidence in referring a dispute to the Ombudsman when the complainant knows that he loses no rights in so doing and can reject the Ombudsman's decision whereas, the Insurance Company has agreed - in advance - to be bound by that decision.

THE APPROACH TO CASES AND CONFLICT

Overall, the basic merits of every case are viewed throughout in the light of all the circumstances to see whether the man or woman on "the Clapham Omnibus" - not being a party to the particular complaint, and neither a consumerist nor an Insurer, would consider the outcome fair and reasonable.

I have made it quite clear, from the outset, that I intend to fully explore all means and methods of fulfilling the objectives as set out in my Terms of Reference:-

“The Ombudsman shall facilitate the satisfaction, settlement or withdrawal of the complaints, disputes or claims comprised in such references by the making of awards and/or by other means herein provided.”

The Terms of Reference also say that in:- “Reaching a decision on the merits of the subject matter of every reference the Ombudsman shall:

- (1) Exercise her discretion in a fair and reasonable manner.
- (2) Have regard to the Terms of the Insurance Contract, these Terms of Reference, all applicable rules of Law and relevant Judicial authority and general principles of good insurance practice.

My Terms of Reference also provide that:

“The Ombudsman may act as counsellor, conciliator or adjudicator in relation to any such reference.”

I am fully convinced of the merits of conflict management and of the need, in the first instance, to apply the mutual gains approach by providing the parties in dispute with an opportunity of assisted negotiation towards a settlement and a realistic means of breaking the impasse.

I aim - also - to try to create an environment which negates the commonly held view, in business, that to indicate a willingness to settle will be interpreted as weakness. We need to recognise now that consumers do not just need new procedures but also new (or at least adapted) laws, inspired by the ethic of consumer protection.

A further advantage of an Ombudsman Scheme is that decisions can be related to the specifics of the industry sector, governed by the Ombudsman, and may be more easily accepted by the Industry than if they were externally imposed. In this way, industry standards can be promoted. Although, under my Terms of Reference, I am not bound by a previous decision, consistency is both desirable and a main aim and it is envisaged that decisions will be made public, in an anonymised form, in the first instance, through the publication of the Ombudsman’s Annual Report.

One of my difficulties, over the past two years has been, in censoring my own enthusiasm and taking account of the fact that not everybody knows about or feels as enthusiastic about the rôle of the Ombudsman as I do. We have, as you know, just two privately established Ombudsman Schemes here in Ireland, one being my own, the other being the Ombudsman for the Credit Institutions - that is Gerard Murphy, who deals with disputes in relation to Banks and Buildings Societies.

By contrast - over the last few decades, there has been a proliferation of Ombudsman Schemes in the United Kingdom and I am glad to say that four years ago the Association of U.K. Ombudsmen, (now the British and Irish Ombudsman Association - B.I.O.A.) comprising both public and private sector Ombudsman, was established in order to provide regulation, if you like, of the Ombudsmen themselves.

Recently, in anticipation of the possible denigration of the term "Ombudsman", by the establishment of bogus or sham Ombudsman Schemes, the B.I.O.A. has set down four fundamental criteria which should be in place before the term "Ombudsman" can realistically be applied. They are:

- (1) Independence from those whom the Ombudsman has the power to investigate;
- (2) Effectiveness;
- (3) Fairness;
- (4) Public Accountability.

I strongly welcome and endorse these objectives and I accepted an invitation to become an associate member and attended the 2nd Annual Conference of the Association at Warwick University in November 1993.

At the Association's A.G.M. in May of this year, a motion was proposed and the members voted unanimously to admit Irish Ombudsmen as full voting members of the Association and agreed to change the name of the Association to reflect this change. It is a source of some pride that such a gesture of goodwill and harmony was demonstrated in May of this particular year and that the three Irish Ombudsman have been accorded a means of contributing to a body representing over fifty U.K. public and private Ombudsmen and benefiting from such a valuable network.

Delegates at the Conference in Warwick University addressed a number of issues. In addition to concerns about the possibility of an abuse of the term "Ombudsman", the practical and theoretical issues and problems facing Ombudsmen - in the light of increasing workloads - and the dilemmas as to how to maintain quality standards - in the face of that increasing workload - were discussed.

This debate revealed a division of opinion as to how to cope with this challenge of maintaining standards of speed and efficiency. Some Ombudsmen were in favour of more delegation, others, of which I was one, feel very strongly that the Ombudsman, in order to satisfy the expectations of the general public, must maintain a personal link with the complainant, and the investigation and the settlement or adjudication of a dispute.

Grappling as the delegate-Ombudsmen did, on the more practical difficulties of maintaining quality standards in the face of increasing case loads, and the possibility of a log-jam being created in the system if the Ombudsman had to personally review every case, I was relieved that, for the moment, numbers being as they are in this country, I can manage to maintain a "hands-on" personal approach for the handling of the disputes referred to me.

In Ireland, there is discernible relief expressed, on the part of complainants, when they are assured that the Ombudsman personally reads their correspondence and reviews the claim. Being primarily concerned to have all communications with my office as simple, accessible, and as user-friendly as possible, it has been my experience, so far, that people have responded positively in a manner which demonstrates confidence and comfort with the system.

It goes without saying that a decision reached - after considering all reasoned arguments - must not be influenced by objections however forthright and and/or threatening from the complainants or Insurers. In the U.K., the Insurance Ombudsman perseveres, in spite of threats to withdraw from the Scheme - from Companies disgruntled by his stance. On the 29th of November 1993, there was an application brought to Judicially review one of his decisions. The High Court declined to accept the application.

There is no doubt that the job calls for a person strong of temper - not battle-shy, nor faint-hearted. To maintain such necessary resolve, so far, I have had undinting support and co-operation from the Industry. This may just be the "honey-moon period" as many are prone to warn me.

What I can say, with certainty, is that the Insurance Ombudsman Scheme is up and running; that it works; and that it is here to stay.

When I was appointed one of the first things I did was to contact our Parliamentary Ombudsman, Michael Mills, who saw me, over a pot of tea, and listened to my hopes and fears. He helped me by sharing some of his early experiences and mistakes and ended by saying that the qualities needed in an Ombudsman are many but that common-sense would be high on his list of priorities. He added that he had been advised by another Ombudsman that the first thing he did every morning was to say "Oh God, please make me humble today!!"

There is no doubt that one would require a substantial degree of humility in the face of a challenge to be fair, efficient, stable and wise on a consistent basis! Sometimes when I consider the prospect of achieving these objectives, I am reminded of the Japanese proverb that warns: "A man who betrays his wife must forever sleep with his eyes open!". I think that I must also sleep with my eyes open, but for different reasons!

Shortly after my appointment as the first Insurance Ombudsman, I had one of those uniquely Irish experiences when I was stopped in the street by a total stranger who wished to congratulate me on my appointment and further to impress upon me his confidence in my being able to carry out my new rôle. He explained, that this confidence was endorsed after his close scrutiny of the titles of the books in *my* bookcase which he had somehow managed to glean from a rather small head and shoulders photo that had appeared in the press - in recalling the titles which he had spied, he singled out, with delight and praise, "Law Liberty and Morality" - by Professor Hart and the "Enforcement of Morals" by Patrick Devlin.

When Declan Dunne invited me to contribute to your meeting this evening, I recalled the incident with the man in the street and I took down the two books from the bookshelf that had impressed him so much. Scanning the chapter headings of: "Enforcement of Morals", I read - "Morals and the Criminal Law"; "Morals and the Quasi-Criminal Law and the Law of Tort"; "Morals and the Law of Contract"; "Morals and the Law of Marriage"; "Democracy and Morality"; "Mill on Liberty in Morals"; "Morals and Contemporary Social Reality".

I can appreciate how, to not just *my* man in the street, but to any man or woman in the street - the principles and issues focused then in these 1960's publications are still central to regulating and maintaining standards and ethics across a wide range of business and professional life, which has a bearing on our every day experience both as the providers and the recipients of services.

I thought long and hard as to how best to present my paper to you, how I could add to your knowledge, insight and understanding of these issues. I opted to share my "early days" experience of being an Ombudsman with you and I do hope that this has added to your understanding of how the rôle works in practice.

It was both an honour and a daunting prospect to be invited to address you, this evening, and it has been my pleasure to share my thoughts with you, which I *hope* have been of interest and of relevance to you.

Thank you very much.

A handwritten signature in cursive script that reads "Paulyn Marrinan Quinn". The signature is written in black ink and is positioned above a long, horizontal, slightly wavy line that spans across the width of the signature.