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THE OMBUDSMAN, TRIBUNALS AND ADMINISTRATIVE JUSTICE

SECTION

A 2020 Vision for the Ombudsman Sector

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This article analyses the growing role for ombudsman schemes in the UK administrative justice system following the Government reforms post-2010. It argues that the ombudsman institution is perhaps the one example of an administrative justice body that looks set to emerge stronger over the period. But the ombudsman sector needs to guard against complacency, as the demands, expectations and publicity placed upon it are all likely to increase.

Keywords: ombudsman; administrative justice; complainants; accountability; own-initiative investigation

Introduction

What will be the role of the ombudsman institution in the administrative justice system after this Government's term of office expires? After five years of a Coalition Government, and another five year period set for the current Conservative Government, it is now clear that the administrative justice system that will be in place in 2020 will look very different to that which had evolved up to 2010. Midway through this period of relative political continuity, the shifts in focus within the system are becoming more embedded and the overall impact on the ombudsman sector easier to anticipate.

This article analyses some recent developments in the ombudsman sector and their implications for the future. It concludes that the design of the ombudsman institution fits well with the needs of the revised model of administrative and civil justice that is emerging under post-2010 Government policy. But the continuing central role granted to ombudsman schemes is not an outcome that satisfies all (e.g. Reynolds, 2015) and radical alternatives to dispute resolution through an ombudsman could yet emerge. Given that there exists a background pressure against ombudsman schemes that looks unlikely to go away, the argument is made that a feature of the 2020 incarnation of the administrative justice system will be a heightened focus on the efficacy of the ombudsman model of dispute resolution.

The context in which administrative justice operates

Much has been written on the impact of austerity politics on justice, particularly adversarial justice (e.g. Justice, 2015). Other pressures too, such as information technology and enhanced consumer expectations are driving reforms in the UK's systems of justice. In terms of administrative justice, all the main branches of the system in place have been, and are still being, affected by the changes introduced by the Government since 2010. For the judiciary, amongst other measures, the replacement of the Human Rights Act is becoming ever more likely (Ministry of Justice, 2015a) even if, as of writing, disagreement remains as to the extent of the changes in practice. Meanwhile, the Ministry of Justice through a series of measures (e.g. The Criminal Justice and Courts Act 2015, Part 4; Ministry of Justice, 2015b) has sought to restrict access to judicial review (Bingham Centre et al, 2015), the legal aid budget has been slashed (Legal Aid, Sentencing and Punishment of Offenders Act 2012) and courts closed (Ministry of Justice, 2015c). In the background, there are ongoing moves to promote online dispute resolution across the courts and tribunals (Civil Justice Council, 2015).

Changes within the tribunal sector have been more subtle, but in two of the largest areas of tribunal activity, immigration and social security, the numbers of appeals heard has fallen dramatically (Thomas, 2015a and 2015b). Additionally, various measures have been considered with the aspiration to adapt the workings of the sector to integrate some of the more user-friendly features more commonly associated with alternative dispute resolution methods (Justice, 2015).

In terms of scrutiny and management of the overall system, only in Scotland¹ and Wales² does there remain an enduring Government commitment to independent holistic oversight (e.g. Committee for Administrative Justice and Tribunals Wales, 2015). In the rest of the UK, the body once in place to offer an independent oversight on developments, the Administrative Justice and Tribunals Council, has long been abolished (The Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013) and replaced by an advisory board, the Administrative Justice Forum, which meets just twice a year. Its role is proclaimed as to provide:

... a direct link between experts from across the administrative justice and tribunals system and the organisations that work with and represent its users. The forum brings an independent perspective to policy and practice in this important area of justice to inform the programme of work MOJ will take forward to improve the system for users and taxpayers (Ministry of Justice, 2015d).

But the Forum's true purpose or meaningful impact is unclear, as it has no standing powers to even report, let alone commission research. The Ministry of Justice itself remains but, as Thomas dryly observes, much of major Government policy is driven by 'the Treasury and the need to reduce costs' (Thomas, 2015a). As a result, the Ministry operates as a weak custodian of the administrative justice system, with the conflicting nature of the Ministry's dual role of managing the prisons system together with the justice system being badly exposed by the tenure of the previous Lord Chancellor, Chris Grayling.

But in amongst all this change, one feature of the 'pre-2010 settlement' that continues to play a prominent role in the revised administrative justice system is the complaints branch, and in particular the work of ombudsman schemes. As will be highlighted below, ombudsman schemes have not survived the period unscathed and have also been subject to significant change. Nevertheless, if anything the importance of ombudsman schemes has grown since 2010, with old schemes being reformed and/or in the process of being given new powers. Noticeably in the public sector, despite budget cuts, there is no sense at present in the policies of any of the governments operating in the UK that the remit of the ombudsman is to be scaled back in the near future. Further evidence of the extended role of the ombudsman sector can be found in the 2013 EU Directive on Consumer ADR (2013/11/EU). Albeit predominantly aimed at consumers of private services, the Directive has helped to entrench

the status of the ombudsman model of dispute resolution and encourages new schemes to be introduced.

Continued expansion in the adoption of the ombudsman model

The growth in the ombudsman model predates 2010. Around the world, the latter half of the 20th century saw a considerable pick up in the rate at which legal systems adopted various forms of alternative dispute resolution (ADR) as a solution to the challenge of delivering efficient and effective justice. For the ombudsman institution, this growth period has been dubbed ‘ombudsmania’ and in the UK led to multiple schemes being introduced (Gill et al, 2013, pp. 9-13), an outcome encouraged by the traditional British tendency towards pragmatic ad hoc reform in governance. The result is that there are now 40 UK based complaint-handling schemes signed up as members of the Ombudsman Association (a voluntary association of complaint-handling schemes), all of which can adjudicate disputes applying techniques at variance to the standard courtroom or tribunal model. In their work, these schemes offer a justice service over a wide terrain of civil and administrative justice activity.³

The terrain of justice services provided by the ombudsman sector does not provide complete coverage of public and private sector activity, but post-2010 the momentum has continued towards filling in the gaps in the justice system. This process has occurred thanks in the main to the EU Directive on Consumer ADR but additionally through Government policy continuing to look to the ombudsman solution where the demand arises.

In the UK, the ADR Directive was implemented in full on 1 October 2015 under the Alternative Dispute Resolution (ADR) for Consumer Disputes (Competent Authorities and Information) Regulations 2015.⁴ The detail on the ADR Directive can be found elsewhere (Hodges & Creutzfeldt, 2013), but in short it requires Member States to put in place arrangements for ADR schemes in all areas of consumer to trader activity covered by the Directive. Such arrangements are not required to be mandatory meaning that, outside statutory schemes, traders can choose whether or not to use an ADR service, with the trader’s only obligation being to notify customers of the ADR schemes that offer a service in their field of trade. In practice, as a result of the Directive all areas of the consumer sector are now covered by at least one ombudsman scheme (Kirkham, 2015), albeit that the policy of voluntary adoption of ADR that the Government has chosen to pursue means that the progress of the ombudsman model is uncertain. Nevertheless, it is likely that as a result of the ADR Directive there will be more ombudsman provision than previously. For instance, already there has been a significant development in the aviation sector in which the Civil Aviation Authority is actively promoting the introduction of an Aviation Ombudsman (Ombudsman Services, 2015).

In terms of its impact on administrative justice, the ADR Directive’s relevance lies in part in the uncertain overlap of the boundary lines between the public and the private sector. Thus, for instance, the ADR Directive provides further background support for existing schemes that oversee the provision of public services, such as energy and telecommunications. But additionally, the growth of consumer ombudsman schemes indirectly expands the sphere of administrative law in that the statutory schemes come under the supervision umbrella of the courts through judicial review.

Perhaps of more importance though is what the ADR Directive implicitly tells us about how justice should be approached from the Government’s perspective. Whereas ombudsman schemes were originally introduced in the quiet hinterland of justice, they are now seen as a key part of the solution. According to the promoters of the ADR Directive, it will increase the consumer’s access to justice (DG SANCO, 2011, p. 3; European Commission, 2011, p. 2), an

aspiration echoed by the UK Government (Department for Business, Innovation and Skills, 2014). Such promotion of ADR provides further official recognition of the ombudsman model, as a legitimate and important form of dispute resolution. Indeed, in some schemes this process has become so powerful that the role of the courts in the development of the law has been pushed to the margins. The Financial Ombudsman Service, with its annual intake of up to half a million complaints, is the best example of this trend (Financial Ombudsman Service, 2014, p. 2).

This implicit acceptance of the ombudsman model continues also to be evident when new problems arise for which the Government seeks an answer. Again in the private sector, the Government is exploring the possibility of introducing a Small Business Commissioner to offer an alternative means with which to deal with trader to trader disputes (Department for Business, Innovation and Skills, 2015). Albeit that the primary *modus operandi* of the new body will probably be mediation not adjudication, once more the underpinning rationale of the new proposal is that the existing courtroom based mode of dispute resolution involves practical and procedural barriers to entry that undermine its potential as a dispute resolution process. Meanwhile in one of the areas of Government activity traditionally least exposed to independent oversight, the military, years of concern in the ability of the armed forces to deal with individual grievances has led to the introduction of a new statutory ombudsman scheme, the Service Complaints Ombudsman for the Armed Forces (Armed Forces (Service Complaints and Financial Assistance) Act 2015). The Service Complaints Ombudsman replaces a former non-statutory scheme and provides another telling example of the Government preference for promoting complaint-handling mechanisms in response to external demands for justice.

Reform and new roles

The sense of reliance placed upon ombudsman schemes within the modern justice system is heightened by the output of current debates around the reform and adaptation of the ombudsman model in those institutions already in operation. In this respect, the ombudsman sector provides an interesting lesson in the benefits of diversity and devolution. Whilst the UK civil and administrative justice system has often been criticised for its complexity and the difficulties for complainants navigating their way towards justice, an off-setting benefit is that experimentation and innovation are encouraged by the diversity of schemes in operation. A feature of this arrangement is the tendency for individual schemes to look around for ideas and models of good practice, an adaptive process that has been facilitated in recent years by the steady trickle of opportunities for legislative reform in the sector.

It is not just the schemes themselves that have learnt new ideas, governments and legislatures are also capable of persuasion provided the circumstances are right. In this respect, austerity has made it easier to consider various long-standing proposals for amendment to the powers and remit of ombudsman schemes (Kirkham & Martin, 2014). Under pressure to find new ways to improve public service without the potential for increasing budgets, governments and legislatures have been persuaded to update the powers of ombudsman schemes to make it easier for them to influence the way that public services are delivered.

The ombudsman as an authority on good complaints handling practice

An example of the tendency for ombudsman schemes to influence each other under the UK's diverse ombudsman system is the frequency with which the Scottish Public Services Ombudsman's statutory role as a complaints standards authority has been cited as a model to

follow. This power was introduced under the Public Services Reform (Scotland) Act 2010, Section 16, and makes it the duty of the Ombudsman to promote and offer guidance on the operation of complaint-handling schemes within public bodies. Some aspects of this form of work has been undertaken by ombudsman schemes previously, but the Scottish arrangement takes the role much further (Gill, 2014). Thus amongst other duties, the Scottish Public Services Ombudsman is empowered (i) to specify the form of complaints handling procedure that should be operated by a body within its remit and (ii) to issue a declaration of non-compliance should a body fail to comply. One practical result of this novel legislative power is that the Ombudsman has established a dedicated unit within the office to work permanently on promoting good complaint-handling.

Acting as a form of regulator of complaint-handling was once seen as inconsistent with the ombudsman's role as a complaint-handler. There was a fear that such a regulatory role might be thought to compromise the ombudsman's neutrality when it later came to consider complaints that had been heard in the first instance by a complaint-handling scheme at some point reviewed by the ombudsman. But the current cohort of ombudsman schemes and legislative scrutineers appear to be more willing to dovetail the complaints standards role onto the existing mandate of ombudsman schemes. Thus in Wales, the proposed new Public Services Ombudsman (Wales) Bill (cl.33-39) includes provision for a complaints standards authority along virtually identical lines to Scotland, likewise in Northern Ireland (Public Services Ombudsman Bill, Part 3). In England, the Bill for a new integrated ombudsman scheme is still being drafted, but noticeably the preceding consultation document includes reference to the idea of providing for an equivalent power.

The Public Service Ombudsman, with its greater reach and greater clarity of identity, will also have an opportunity to provide a centre of excellence and expertise in complaints handling, setting standards of best practise, and providing challenge to Departments and others where those standards are not being met. This would encompass both helping organisations to drive up the quality of their complaints handling and in turn supporting those organisations through better understanding of data to improve public service provision and standards (Cabinet Office, 2015, p.15).

The ombudsman institution, therefore, is being widely seen as a tool with which not just to resolve complaints, but to cajole service providers into taking customer service ever more seriously.

The Ombudsman as a fire prevention officer

There has long been a debate in ombudsman circles as to the best role, or balance of roles, for an ombudsman (Harlow, 1978; Gill, 2014). The core debate revolves around whether an ombudsman should concentrate its resources on complaint-handling (fire-fighting); investigating in more depth the causes of systemic complaints and thereafter using that knowledge to focus efforts on rectifying repetitive maladministration (fire-watching); or being pro-active and intervening even before complaints are received in order to prevent them occurring in the first place (fire-prevention) (Snell, 2007). In practice, the three roles overlap and are not necessarily mutually exclusive, but some have argued that the most exciting potential in the ombudsman model lies in its potential to identify systemic maladministration early before it becomes entrenched practice (e.g. Buck et al, 2011). Operationally, this fluid balance of roles is the norm for most ombudsman schemes around the world, but in the UK the capacity for an ombudsman to interrogate systemic maladministration is hampered by statutory restrictions that mean that investigations have to be connected to individual complaints. As a result, more expansive investigations that might occur as a result of whistle-blowing or other tip-offs of administrative maladministration are potentially delayed or discouraged, sometimes indefinitely, by the need to await a complaint

and focus only on that complaint. Ombudsman schemes in other countries have been able to get around such restrictions by being granted the power to start an investigation of their own-initiative, thereby enabling them to be more proactive.

Such arguments have now found favour in UK legislatures. In Northern Ireland, legislation is currently before the Assembly which will grant the Northern Ireland Ombudsman the power to initiate an investigation even without a complaint where there is ‘a reasonable suspicion ... that there is systemic maladministration, or ... that systemic injustice has been sustained as a result of the exercise of clinical or professional judgement’ (Public Services Ombudsman Bill, cl.8).

In Wales, a Bill has been consulted on which also includes a power to initiate investigations (Public Services Ombudsman (Wales) Bill (cl.4-5)). Whether this Bill is passed will depend in part on the outcome of the next election to the Assembly for Wales. In the UK, the Cabinet Office is set to publish in the Spring/Summer 2016 its proposals for a new integrated ombudsman scheme in England.⁵ In the documents and debates that have preceded the Cabinet Office’s work, the own-initiative power has been recommended (Public Administration Select Committee 2014, pp. 27-29; Gordon, 2014, pp.50-51), but it is noticeable that in the Cabinet Office’s rather brief consultation paper on the design of the new scheme the option of including such a power was not included (Cabinet Office, 2015). It remains to be seen whether this watering down of the proposals turns out to be a renewal of traditional civil service resistance to too much oversight.

Direct access

The two oldest ombudsman schemes in the UK, the Parliamentary Ombudsman and the Assembly Ombudsman for Northern Ireland, have long been slightly hampered by the need for complainants to submit their grievances via their democratic representative. This provision was originally a necessary compromise made in order to gain the approval of Parliamentarians to the new oversight body, fearing that it would infringe on their constituency role. Yet the need for an MP to possess the discretion as to whether or not to refer a complaint onwards to an ombudsman has long looked an unnecessary delay in accessing justice. Finally, it looks like both these restrictions are set soon to disappear in reforming legislation in 2016. These reforms will operate not so much as a new power, but as the removal of an existing block on the ability of an ombudsman to administer justice.

Critics of the ombudsman sector

British Governments have not been renowned for their ability to develop coherent policy on administrative justice, with reform tending to happen at various levels and for reasons isolated to specific aspects of the system (Bondy & Le Sueur 2012). But insofar as such a policy can be pieced together through its various engagements with ombudsman schemes, the current Government’s policy towards the institution is one that pragmatically views it as a useful tool through which to secure its goals. In other words, the 2020 vision of the administrative justice system is being built around the need (i) to offer the potential for enhanced access to administrative justice; (ii) for the lessons of systemic and serious administrative malpractice to be learned; and (iii) for the culture of local service providers to be shifted more forcefully in the direction of taking complainants and their complaints seriously. This policy can perhaps be best seen in the evidence to the Public Administration Committee of the Minister who has taken responsibility for the complaints branch within Government, the Minister for Government Policy, Oliver Letwin (Public Administration Select Committee 2014b). However, overriding all of these aspirations is (iv) the need for

administrative justice to be delivered efficiently and promptly, and without the injection of more funding. On paper at least, the ombudsman institution, in partnership with local complaint processes, offers a model through which all of these demands can be furthered.

While much critical academic and political attention has been directed at most other aspects of the Government's administrative justice policy, there is little disagreement with the Government's approach to the ombudsman sector. Nevertheless, there are voices that express strong scepticism, and in some instances dismay, as to the ombudsman model's ability to deliver on these promises. For a sustained critique of the sector one has to turn to ex-users of one or more of the ombudsman schemes available. This voice finds its greatest expression through internet-based campaign groups, with several ombudsman schemes possessing at one time or another an unwanted sister campaign group. One of the most active such groups through 2015 was the *PHSO Pressure Group*, whose founder has regularly blogged, lobbied and appeared in the media, campaigning amongst other things for a much revised system of complaint-handling to be put in place in the NHS. Equivalent groups, such as *Local Government Ombudsman Watch* and *Scottish Ombudsman Watch*, have in the past also achieved sufficient traction to lobby for questions to be raised in parliamentary hearings. Nor is this phenomenon isolated to public services, with for instance both the Financial Services Ombudsman and the Legal Ombudsman being the target of *Ombudsman Problems*.

There is little evidence at present that this collection of dissatisfied ex-users of the ombudsman have succeeded in winning over key policy-makers, but they have gained increasing profile and could potentially be influencing other users or potential users of the ombudsman sector. Moreover, whilst it is tempting to dismiss some of the hostility towards ombudsman schemes by users as being primarily motivated by a reluctance to accept the determinations of an ombudsman, these various anti-ombudsman groups offer a rich store of information and deserve proper consideration.⁶

The arguments against the ombudsman model put forward by groups sites are in part based upon familiar critiques, as rehearsed many times over the years. For instance, the ombudsman process does not generally allow for complainants to cross-examine the evidence provided by the investigated body; much of the decision-making process is conducted out of view of the complainant; and an ombudsman has significant limitations to its powers (Kirkham, 2005). Such arguments have gained little traction in established administrative justice circles, and have been dismissed repeatedly by the courts alongside more shot-in-the-dark allegations that ombudsman schemes are biased. But where the critique of ex-users of the ombudsman gets powerful, and potentially very important, is in its empirically-based observations of the effectiveness of justice as delivered through the ombudsman model. Where such evidence can be compiled effectively and connected to wider debates about public service and administrative justice, it might offer strong clues as to how the operation of ombudsman schemes can be improved.

The recent critique of the office of the Parliamentary and Health Service Ombudsman (PHSO) by users provides a good example as to the importance of user input. As well as being exposed to attack by ex-users, the PHSO has been subject to a series of critical comments in official reports as it has become embroiled in some high profile failings in the NHS (Clwyd, 2013; Francis, 2013; Kirkup, 2015). These events have thrown into negative light the ability of the PHSO to handle the scale of its brief, and in particular its capacity to act as an effective 'fire-watcher', let alone as a 'fire-prevention' mechanism. The nadir for the office came with the high profile deconstruction of the complaint-handling system in the NHS by Parliament (Public Administration Select Committee, 2013/14b; Health Committee, 2014/15). Additionally, a pointed letter by the Patients Association to the Secretary of State for Health was published in which it described the PHSO as a failing institution (Patients Association, 2014). This letter was backed up by a report compiled by the Patients

Association into user's experiences of complaining to the PHSO. Subsequently, the PHSO has responded by stating that it has changed its policy towards health service complaints, in order to increase the numbers of investigations it takes on.⁷

The perennial challenge for the sector is to make best use of user critique. But in the PHSO example, there is a body of evidence that implies that some of the negative feedback it was receiving from its own users, if better managed and listened to, could have provided powerful evidence at a much earlier stage that the office was missing systemic failings. But in looking for ways forward to prevent such a reoccurrence, the difficulty is that in dealing with negative feedback from complainants an ombudsman is required to perform a twin role: to identify the potential organisational alarm bells and to find ways to bring closure to an individual complaint.

This latter role of bringing closure to a complaint is a little spoken aspect of the ombudsman's work, but it is a necessary and deliberate design feature of any administrative justice system. There have to be ways to (a) offer users the chance to dispute decisions involving them, but (b) once those processes have been exhausted, public authorities, and the general public, need to be able to know that disputes have been determined definitively so that everyone can concentrate their energies and resources on present and future service provision. In the complaints branch, this 'closure' role falls on an ombudsman with, thereafter, there being only a low percentage likelihood of complaints being pursued further through the courts and judicial review. However, it is also a role that the ombudsman model struggles to perform well, as evidenced by the extensive range of customer satisfaction surveys that have been commissioned by ombudsman schemes over the years. These surveys regularly highlight a marked correlation between the level of satisfaction registered by a complainant with the service provided by an ombudsman, and the decision they receive. In other words, when a complainant gains the redress they expect, satisfaction can be remarkably high. By contrast, when a complainant does not gain the redress they expect, satisfaction ratings often bomb (Buck et al 2011, ch.4). In a recent piece of research, Creutzfeldt (2015) has found that this phenomenon is one that especially applies to ombudsman schemes in the public sector. If this overall analysis is correct, then ombudsman schemes are struggling to fulfil the closure role from the administrative justice system as a whole. Further, it also entails that the process of sifting out genuine points of concern from user criticisms, as distinct from arguments that are more to do with a general reluctance to accept a different point of view, becomes an extremely challenging one to perform well.

Questions of scrutiny

The response of the ombudsman community to anti-ombudsman groups looks likely to become one of increasing engagement with a variety of users of its services. At the same time, however, it is probably inevitable that the institution will remain for ever exposed to such criticism, as befits its role as a remedial process at the end of the administrative justice line. The danger is that this situation becomes a debilitating scar on the public's perception of the ombudsman institution and undermines efforts to retain trust in its operation. How might this situation be addressed?

The solution offered by the critics is stark and involves replacing the ombudsman model with a new form of dispute resolution altogether. Often advocated is some form of localised tribunal which allows for the reconsideration of administrative decisions in a forum which also enables enhanced participation of all sides. Appeal processes are also commonly touted as a solution. Imagination is required in times of change and there may be merit in thinking again as to the potential for viable alternatives to our standard administrative justice models. But it should be recalled that the history of the growth of the complaints branch is based in

part upon the negative side-effects of adversarial dispute resolution (including costs) and a marked reluctance of public administration to concede to anything that looks like invasive judicial scrutiny of its discretionary powers and responsibilities. As was noted above, current Government policy is entirely in line with this general development of the administrative justice system and its resultant dependence on complaint-handling bodies.

Long-established administrative justice policy both here and elsewhere in the world suggests that the anti-ombudsman community will be frustrated in some of their goals, but it is important that their energy is harnessed. Alongside longer-standing consumer groups such as *Which?*, where user-critics of ombudsman schemes retain power is in maintaining and increasing the pressure on ombudsman schemes to perform to a high standard and to find new ways to evidence that performance. By way of example, would the recent Parliamentary reviews of the PHSO and, before that, the Local Government Ombudsman (Communities and Local Government Committee, 2012–13) have been so effective without the pressure placed on Parliamentarians by dissatisfied users?

Constitutionally, therefore, the momentum exists for existing accountability and governance arrangements surrounding ombudsman schemes to be placed under continuing pressure to ensure that the model is achieving as much as it should. As the role of the ombudsman sector incrementally increases, it follows that if anything that pressure will increase, particularly if the efforts of key players in the ombudsman's scrutiny network remain hit and miss.

It is also worth noting that current Government policy is not geared towards stronger external scrutiny. Here the ADR Directive again provides an indication of the possibilities but also the barriers to reform. The ADR Directive requires competent authorities to be put in place to regulate the provision of ADR. Potentially, this creates a framework through which an external body is made permanently responsible for scrutinising in a methodical fashion the standards and performance applied by ADR schemes, including ombudsman schemes. This requirement has now been implemented by the UK Government, but unsurprisingly it has done so in what it perceives as the most cost effective and least intrusive fashion possible. Eight separate competent authorities (plus the Secretary of State for Work and Pensions who is the competent authority for the Pensions Ombudsman) have been established, almost all under the umbrella of existing sector-specific regulators. As a consequence, the responsibility for raising standards in the sector has been split and existing relationships between regulators and complaint-handling schemes retained. One should probably not prejudge the output of these new competent authorities, but there is currently little to suggest that they will be the answer to demands for heightened accountability of ombudsman schemes (Kirkham, 2016).

Conclusion

The 2020 vision for the ombudsman sector is one in which it plays an even more prominent role in the administrative justice system than it does now. This role is implicitly supported by various loose strands of Government policy. But with added responsibility will come enhanced expectations and challenging scrutiny, particularly when retrospectively it is established that the claims made in favour of the ombudsman model have not been matched in their delivery. Further, because the impact of the complaints branch is now as powerful in the civil justice system as it is for public services, the integrity of the ombudsman model will likely become a more regular topic of public debate. Accountability processes are already in place to scrutinise the work of the ombudsman, but it can be anticipated that the effectiveness of these processes will also be subject to more interrogation in the future. A 2020 vision for the ombudsman, therefore, will need to include a renewal and more systematic application of those processes in order to maintain the strength and legitimacy of the ombudsman brand.

Notes

1. The Scottish Tribunals and Administrative Justice Advisory Committee.
2. The Committee for Administrative Justice and Tribunals Wales.
3. See the website of the Ombudsman Association for a full list of members.
4. As amended by the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015.
5. One of the major challenges in designing this new ombudsman scheme is how to deal with the existing residuary UK-wide role performed by the Parliamentary Ombudsman.
6. In an interesting piece of current ESRC funded research, Chris Gill and Naomi Creutzfeld are responding to this challenge.
7. In its most recent Annual Report it is claimed that the office now conducts ‘ten times more investigations into unresolved complaints compared to two years ago’ (PHSO 2015/16).

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