

Essential Characteristics of a Classical Ombudsman

By Dean M. Gottehrer and Michael Hostina¹

A classical Ombudsman functions in government to receive and investigate complaints.² The irreducible minimum characteristics such an Ombudsman must have are:

- A. Independence
- B. Impartiality and Fairness
- C. Credibility of the Review Process
- D. Confidentiality

Each of those characteristics are effectuated by a number of essential provisions found in the laws creating such ombudsmen. This article describes the provisions, explains their effects and suggests why they are necessary for a classical Ombudsman.

EFFECTUATING PROVISIONS FOR CLASSICAL OMBUDSMEN

A. Independence

1. The Ombudsman's Office is created in the Constitution or a law of the jurisdiction to establish its permanence.

Ombudsmen established in a jurisdiction's Constitution are more likely to be permanent since the process for amending a constitution is often involved and designed to prevent frequent amendments. Some Constitutions authorize the legislative body to enact law to amplify the Ombudsman's powers and responsibilities.

An Ombudsman can also be established solely in law. Some provisions require that enactment or amendment be approved by a super majority of two-thirds or greater, either of members attending or of all members of the legislative body, to enact and amend. Other provisions simply require enactment or amendment by a majority of members in attendance.

The more difficult it is to change the legal basis for the Ombudsman's office, the more likely the office will be permanently established. Permanency creates stability for the office and credibility among the public. The Ombudsman is free to criticize without fear that the office will be abolished or unnecessarily restricted.

2. The Ombudsman acts as an officer of a legislative body or on behalf of the legislative body, and is independent of the organizations the Ombudsman reviews.

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² Some organizations and others have defined ombudsman characteristics to qualify for membership, determine what institutions can use the word "ombudsman" or for other purposes. Several of these definitions are found in Appendix I.

The Ombudsman is made a part of the legislative body to achieve functional and political independence from the organizations or agencies the Ombudsman reviews. Complaints officers who are not independent of an agency they receive complaints about may not act impartially but rather act to protect the organization.

Ombudsmen are independent so they may be impartial. Their findings and decisions are based on examination and analysis of the facts and law. They must be independent and avoid even the appearance of serving the interests of the organizations they investigate if complainants are to trust the results of their investigations.

The Ombudsman is also free of functional control by the legislative body. Legislative control is exercised instead through appointment, re-appointment and removal. Rigorous selection and other restraints imposed by law ensure that the Ombudsman requires no further control. The office must not appear to serve the agenda of legislative or government leaders. That independence creates credibility for the office among the people, particularly those who complain.

3. The Ombudsman is appointed or confirmed preferably by a super majority of a legislative body or entity other than the one the Ombudsman reviews through a process designed to prevent political appointments.

Appointment or confirmation by a super majority ensures that the candidate is one who has wide respect among different political parties and even parties that oppose one another or the government. Appointment or confirmation by a legislative body or entity other than those reviewed by the Ombudsman ensures that the Ombudsman is independent of those agencies under the office's jurisdiction. Complaints officers not independent of the agency being reviewed are subject to pressures that would reduce the credibility of an Ombudsman.

The best Ombudsman appointment processes are designed to yield one candidate, broadly approved by political parties representing a super majority of the legislative body. A number of different processes have been successful. Sometimes the process is an informal consultation among such groups; other times the process is formally structured so that a nominating committee of the legislative body presents one name to the body for appointment. The successful result is an Ombudsman appointment of a widely respected individual seen by diverse political groups as fair and impartial.

4. The Ombudsman has a fixed, long term of office and may be reappointed.

A long term of office at least a year more than the term of the legislative body members with the longer term removes the Ombudsman from political winds of the moment. The possibility of being reappointed moderates any tendency of the Ombudsman to make pronouncements that extend beyond the facts and law discovered in investigations.

5. Removal of the Ombudsman is for cause and by a super majority of the appointing entity.

The removal process is often the reverse of the appointment process. Ombudsmen are subject to removal for specified causes. This guarantees that they will not be removed for political reasons or because the results of investigations have offended those in political power in the legislative body. Requiring the same super majority to remove as appoint ensures that the reasons for removal are as widely appreciated and valid as those for appointment.

6. The Ombudsman has a high, fixed salary.

Ombudsmen investigate and make recommendations to the highest officials of the government. They are paid at a level commensurate with that responsibility. Pay is often equated with judges, justices of supreme courts, or heads of ministries or government agencies. The salary is fixed so that the pay for an Ombudsman may not be reduced while the person is in office, preventing punishment of an Ombudsman whose reports may have been politically difficult or unpopular. The salary of an Ombudsman may only be reduced if all government officials' salaries are being reduced.

7. The office has a budget funded at a level sufficient to carry out the purposes established in law and spends and accounts for its funds directly to the legislative body.

An inadequately funded office will not be able to perform the functions required by law, and thus will lack true independence. The Ombudsman spends budgeted funds independent of any approving authority and accounts for its expenses directly to the legislative body.

8. The Ombudsman has the sole power to appoint and remove staff.

The Ombudsman is an institution most often headed by one person or occasionally a board appointed or confirmed by the legislative body. The Ombudsman has the power to delegate responsibilities to staff. Staff often perform work that is sensitive, delicate or confidential. The Ombudsman must have confidence in them. The Ombudsman has the sole power to appoint and remove staff to ensure that staff will have the Ombudsman's full confidence and to ensure that the Ombudsman has sole responsibility for administering the office. Legislative bodies do not appoint or confirm staff because that would politicize the office.

In some countries where government employees are appointed by a public service commission, the Ombudsman is directly involved in the commission's selection process. In countries where staff are seconded from other agencies, the choice of whom to accept or to return to service in the original agency is the Ombudsman's alone.

9. Someone is always capable of exercising all the Ombudsman's powers.

An office without someone to exercise the Ombudsman's powers is paralyzed. Ombudsmen have the authority to and name deputies or acting ombudsmen who can always exercise the powers of the office while the Ombudsman is out of the country, ill or unable to serve or when the office is vacant. Maintaining office function when the office is vacant encourages legislative bodies to speedily appoint a fully confirmed successor.

10. The Ombudsman is provided immunity from liability and criminal prosecution for acts performed under the law.

The Ombudsman is an attractive target for the people criticized or served. The Ombudsman is immune from liability for acts performed under the law. Those dissatisfied with the Ombudsman may follow other official procedures to make government accountable. Immunity also allows the Ombudsman to focus resources on receiving and investigating complaints rather than defending suits. The Ombudsman may not be prosecuted criminally for acts performed under the law. This protects the office from another possible form of political control.

11. Ombudsman actions may not be reviewed in court except to determine the Ombudsman's jurisdiction.

Since no one receives anything by right from the Ombudsman and since the Ombudsman cannot issue a binding order to an agency, judicial review would serve mainly to harass and delay the Ombudsman. One goal in instituting such an office is to offer an alternative to litigation although complainants may choose later to go to court. However, when jurisdiction is in question, judicial review is appropriate if no other resolution can be found.

12. The Ombudsman may appeal to courts to enforce the powers granted by the act.

Ombudsman acts give the Ombudsman certain powers, such as the right to summon or subpoena testimony or documents, that on occasion may not be honored by agencies under the Ombudsman's jurisdiction. Litigation is a necessary option for the Ombudsman to enforce those powers. Ombudsmen have the authority to hire independent legal counsel to enforce their powers under the law so they do not have to use counsel to other agencies who may have a conflict of interest.

B. Impartiality and Fairness

1. Qualifications to serve are imposed and are designed to select an Ombudsman widely respected among different political groups as impartial and fair.

Qualifications enumerated in an act are normally the minimum needed to serve as Ombudsman. Other qualifications are also included and designed to select someone who is viewed among many different political and interest groups as impartial and fair.

2. A super majority is required for the Ombudsman's appointment.

Appointment of the Ombudsman by a super majority helps ensure that the person selected is widely viewed as fair and impartial.

3. The Ombudsman's political and other activities are restricted to remove the office from the political arena and make the ombudsman accessible to complainants from any political group.

The Ombudsman is normally restricted from any sort of party political activity. Any person from any political group is thus made to feel comfortable coming to the Ombudsman's office. Ombudsmen are also restricted from earning other income. Outside income could be used to influence an Ombudsman and is prohibited. Ombudsmen often extend these restrictions to their staff.

4. Legislation creating the Ombudsman's Office or internal written policy states how conflicts of interest will be handled.

Complaints occasionally will be filed by an individual who has had some prior relationship outside the office with an investigator or with the Ombudsman. Legislation requires these conflicts to be declared and the complaint and investigation to be handled by someone who does not have a prior relationship. When the Ombudsman declares such a conflict, the Deputy Ombudsman usually supervises and signs the report of such an investigation. Complainants and agency personnel are entitled to have complaints handled or investigated by an impartial individual with no prior relationship to any party to the complaint.

5. Anyone may bring a complaint, preferably directly to the Ombudsman, without paying a fee or passing through an intermediary official.

No limitations are placed on the individuals or groups who may complain to the Ombudsman. While some Ombudsmen will accept complaints when the complainant has no personal interest, others will not. No fee is charged for complaints. The Ombudsman decides which complaints may be heard. The Ombudsman's decisions are not reviewable by courts except on whether the Ombudsman has jurisdiction over an agency.

In England and France, complaints are first made to any member of Parliament, who then decides which complaints are sent to the Ombudsman. A number of efforts have been made to change this system in England, so far without success. While some observers conclude that it is not an impediment to getting a complaint to the Ombudsman, direct access to the office is preferable.

6. The Ombudsman may criticize any agency or person under the office's jurisdiction and may make recommendations to resolve specific situations or prevent their reoccurrence.

Complaint investigations may result in a determination that the complainant was justified in bringing the complaint and that agencies or persons under the office's jurisdiction need to be criticized for their acts. The Ombudsman may criticize any agency or person under the office's jurisdiction so the public will know where the responsibility for the act complained about rests. The Ombudsman makes recommendations to solve problems or prevent them from reoccurring. Ombudsmen may not make binding orders. They use persuasion, the wisdom of their recommendations and views, and the stature and credibility of their office to have their recommendations accepted and implemented.

7. The Ombudsman is required to consult before criticizing an agency or person and allow the agency or person criticized to reply.

As a result of an investigation, the Ombudsman may criticize an agency or person. Reports are more accurate and criticism more easily accepted if the agency or people being criticized have an opportunity to know what the criticism will be before it is made public. Preliminary confidential reports to the agency are one way to consult. Occasionally reports are changed when new information is communicated to the Ombudsman.

Fairness, due process, natural justice and other characteristics Ombudsmen seek in agencies under their jurisdiction are followed by Ombudsmen in their operations. Any agency or person criticized is allowed to write a response published in whole or in summary in the report with the original criticism to ensure that all sides are told.

8. The Ombudsman is not an advocate for any individual or group although the Ombudsman may, after an investigation has been conducted, advocate for recommendations that would benefit a complainant.

Ombudsmen are impartial. They examine the facts and law of a complaint without having prejudged who is right and without taking one side or another. During an investigation, the Ombudsman makes findings about the complaint based on the facts and law and conclusions drawn on an analysis of them.

Where the Ombudsman determines a complaint is justified, the Ombudsman makes recommendations to an agency to remedy the situation. These recommendations are normally followed by the agency. On those occasions when they are not followed, the Ombudsman may advocate for the recommendations, which in turn may benefit a complainant or improve the administration of government. The Ombudsman, however, is not a paid or unpaid advocate for the complainant.

Ombudsmen are not advocates on behalf of complainants or agencies but rather for good administrative process and good government.

C. Credible Review Process

1. The Ombudsman has general jurisdiction in the government that is broadly defined and not restricted to one agency or one particular type of grievance.

Ombudsmen with a broadly defined, general jurisdiction are not as subject to pressure or influence as those with jurisdiction over only one agency or one type of complaint. Their review process is made more credible by the breadth of their jurisdiction because they can follow the investigation where the evidence leads. Limitations on Ombudsman jurisdiction should be well-thought out and generally exist only when a person with a complaint has other equally or more effective remedies.

Ombudsmen generally do not have jurisdiction over those who appoint them, elected officials or judges. Ombudsmen in a number of countries where the institution has been created in recent years do have some jurisdiction over the court system, especially when it has not had a history of being an independent branch of government equal with the legislative and executive branches.

2. The Ombudsman may investigate grievances of anyone concerning any decision, recommendation, or any act done or omitted relating to a matter of administration, by any organization or person over whom jurisdiction exists.

Ombudsman legislation often indicates the types of acts that can be the subject of complaint to the office. In practice, as long as the agency or person who is the subject of the complaint is under the Ombudsman's jurisdiction, few limits are placed on the kinds of acts that may be the subject of an investigation. However, almost all Ombudsmen are precluded from reviewing judicial decisions. Accessibility and latitude allow the Ombudsman discretion to focus resources effectively the ability to respond to valid complaints.

3. The Ombudsman may investigate complaints against government or semi-government departments and agencies.

Ombudsmen have jurisdiction over government agencies or those that are completely or partially financed by public funds. Increasingly, Ombudsmen have jurisdiction over privatized government functions to provide independent review of a service or function that was previously public. The ability to review privatized services and functions is most often created by contract between the agency that funds the function and the private contractor.

4. The Ombudsman may initiate an investigation without a complaint.

While most investigations will arise from a complaint to the Ombudsman, some matters will only be considered if the Ombudsman initiates an investigation. The authority to self-initiate an investigation allows the Ombudsman to act when

information warranting an investigation comes to his or her attention in the absence of a willing complainant

5. Agency staff are required to cooperate with the Ombudsman and the Ombudsman is given access to records and agency premises; the Ombudsman has subpoena power or the ability to compel individuals to testify or produce evidence in countries where subpoena power does not exist.

The cooperation of agency staff and access to records and premises are critical to effective and credible review of agency actions. Thorough investigations require this kind of access. The Ombudsman also has the power to compel testimony and evidence through subpoena in countries where that power exists and through a summons in other countries.

6. The grounds for Ombudsman review are stated broadly and include "fairness."

Ombudsman legislation states grounds or standards under which complaints are investigated. These standards provide a test against which the acts complained about can be judged once the facts and law are determined. Fairness is one of the standards and Ombudsmen are often the only place in government where the fairness of an act can be assessed and recommendations made to remedy decisions or actions that, while strictly legal, may simply not comport with broader standards of justice.

7. After investigation, the Ombudsman has the responsibility to make findings and recommendations to organizations under the office's jurisdiction and has the ability to publish and publicize them.

The Ombudsman makes a report containing findings on the complaint, together with any recommendations to solve problems or prevent them from happening again, to the agency or organization that is the subject of the complaint. The Ombudsman may publish and publicize these findings, recommendations and reports so the office will be accountable to the people and so the results of investigations may be widely known.

8. The Ombudsman's findings are not reviewable.

The Ombudsman's findings and reports are final. Because the Ombudsman may not issue a binding order, no one may take the Ombudsman to court to appeal the findings or seek a review or modification of the findings and reports. This ensures that office resources are not diverted to litigation. Courts may only review whether the Ombudsman has jurisdiction over an agency.

9. The Ombudsman may not make binding orders.

Ombudsmen have extensive powers to inquire and investigate agency acts. To give them the power to issue binding orders would be to create a "super" agency. This limitation on Ombudsman powers, seen by some as a weakness, is seen by most Ombudsmen as a strength for two reasons. First, government agencies persuaded to act are more likely to act effectively and efficiently and do a better job than those forced to act. Second, binding orders would establish appeal rights. That would subject the office to litigation and the need to spend financial resources on defending against actions in court.

D. Confidentiality

1. The ombudsman may maintain confidentiality.

Complainants may bring matters to the Ombudsman that are confidential by law, delicate or about which they wish the Ombudsman to do nothing. Ombudsmen have the power to maintain the confidentiality of complainants where that is needed. When an investigation would require or inevitably result in disclosure, Ombudsmen may determine not to investigate when the complainant will not release the office from the requirement.

Officials who are the subject of a complaint may also warrant protection during the investigatory process. Confidentiality of the investigation process allows it to proceed without publicity and speculation.

Ombudsmen have the discretion to make investigations public along with other information that does not violate confidentiality requirements in law or disclose the complainant's identity without authorization. Complainants could be subjected to persecution, intimidation, retribution, withholding of benefits, etc. by a department or government agency. Confidentiality protects a complainant from such abuse.

2. The Ombudsman may not be forced to testify or produce records.

The integrity of the Ombudsman's confidentiality depends on this provision. By ensuring that the privilege belongs to the Ombudsman, the provision can also prevent complainants from using the office for discovery in a court case, which should actually be done under court rules governing discovery. It also prevents spending office resources defending against subpoenas or spending time in court testifying.

Appendix I: Other Definitions of Ombudsman

International Ombudsman Institute Definition of Voting Member:

(b) A Voting Member shall be the office of a person whether titled Ombudsman, Parliamentary Commissioner or like designation who has been appointed or elected pursuant to an Act of a legislature and whose role includes the following characteristics:

(i) to investigate grievances of any person or body of persons concerning any decision or recommendation made, or any act done or omitted relating to a matter of administration, by any officer, employee or member or committee of members of any organization over which jurisdiction exists;

(ii) to investigate complaints against government or semi government departments and agencies;

(iii) a responsibility to make recommendations resulting from investigations to organizations under jurisdiction;

(iv) to discharge the role and functions as an officer of the legislature or on behalf of the legislature in a role which is independent of the organizations over which jurisdiction is held;

(v) to report to the legislature either direct or through a Minister on the results of its operations or on any specific matter resulting from an investigation and

but does not include a person or office who or which

(vi) has jurisdiction over only one agency or one particular type of grievance.

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Appendix A
American Bar Association
Administrative Law Section
Ombudsman Committee

The Ombudsman

1. Definition

The Ombudsman is an independent governmental official who receives complaints against government agencies and officials from aggrieved persons, who investigates, and who, if the complaints are justified, makes recommendations to remedy the complaints.

2. Basic Concept

The Ombudsman system is one of the institutions essential to a society under the Rule of Law, a society in which fundamental rights and human dignities are respected. Human rights are not protected simply by constitutions or legislation, by guarantees or speeches, by proclamations or declarations, but primarily by the availability of remedies. The Ombudsman system is one of the remedies which seeks to preserve human rights.

3. Reasons for Ombudsman

a). The post-World War II growth of the welfare state. Government grew in size and extensive powers were given to agencies. Protection is needed against executive and administrative mistake and abuse of power.

b). The activities of public administration have become so comprehensive and the power of the bureaucracy so great that the legal status of the individual needs additional protection.

c). Existing mechanism - courts, legislatures, the executive, administrative courts, and administrative agencies - are not sufficient to cope with the grievances of the aggrieved and there is a need for a supplementary institution.

d). The presence of the Ombudsman has psychological value. His office gives the citizen confidence that there exists a watchdog for the people who will hold government accountable.

e). The legislature traditionally concerned with the observance of laws and rulings by public officials has at the same time extensively delegated powers to the administrative authorities. The Ombudsman can serve to aid the legislature in its function of supervising the executive and administrator.

f). The Ombudsman gives the citizen an expert and impartial agent without personal cost to the complainant, without time delay, without the tension of adversary litigation, and without requirement of counsel or the intervention of those highly placed.

4. Types of Action or inaction which Gives Rise to Complaints

1. Injustice
2. Failure to carry out legislative intent
3. Unreasonable delay
4. Administrative error
5. Abuse of discretion
6. Lack of courtesy
7. Simple clerical error
8. Oppression
9. Oversight
10. Negligence
11. Inadequate investigation
12. Unfair policy
13. Partiality
14. Failure to communicate
15. rudeness
16. Maladministration
17. Unfairness
18. Unreasonableness
19. Arbitrariness
20. Arrogance
21. Inefficiency
22. Violation of law or regulations
23. Abuse of authority
24. Discrimination
25. Disability to act
26. Errors, mistakes, carelessness
27. Disagreement with discretionary decisions
28. Inconsistent with general course of an agency's function

29. Mistakes in law or arbitrary in ascertainties of facts
30. Based on irrelevant consideration
31. Unclear or inadequately explained when reason should have been revealed
32. Inefficiently performed
33. All other acts of injustice that frequently the governors inflict upon the governed, intentionally or unintentionally

b). The Ombudsman may also recommend clarification, amendment, or initiation of legislation and administrative rules and regulations.

5. American Bar Association Resolution

The following Resolution dealing with the establishment of an Ombudsman was adopted by the American Bar Association at the Midyear Meeting of the House of Delegates in 1969.

BE IT RESOLVED, That the American Bar Association recommends:

1. That state and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.
2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials:
 - (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff;
 - (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body;
 - (3) appointment by the legislative body or appointment by the executive with confirmation by the designated proportion of the legislative body, preferably more than a majority, such as two-thirds;
 - (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds;
 - (5) a high salary equivalent to that of a designated top officer;
 - (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restrictions of civil service and classification acts;
 - (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee;
 - (8) access of the ombudsman to all public records he finds relevant to an investigation;
 - (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee;
 - (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize;

- (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism and answering statement;
- (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the Federal government, the Federal government should experiment with the establishment of an ombudsman or ombudsmen for a limited geographical area or areas for a specific agency or agencies or for a limited phase or limited phases of Federal activity.

4. That establishment of a Federal government-wide ombudsman program should await findings based upon the experimentation recommended.

BE IT FURTHER RESOLVED, That the Section Administrative Law is authorized to present the views of the Association and to encourage the establishment of ombudsmen in accordance with the provisions of this Resolution, by all necessary and appropriate means.

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British and Irish Ombudsman Association

Criteria for the use of the term "Ombudsman"

A. Introduction

The term "Ombudsman" should only be used if four key criteria are met. Those criteria are independence of the Ombudsman from those whom the Ombudsman has the power to investigate; effectiveness; fairness and public accountability.

Detailed criteria which should in the longer term be achieved by all recognized ombudsman schemes are set out in part B.

Given the considerable range of ombudsman schemes in the public and private sectors and the variations in their constitution, jurisdiction, powers and accountability, the detailed criteria need to be sufficiently flexible to encompass those variations.

Independence, for example, may be achieved in several ways. Hence, in the private sector the body which appoints the Ombudsman and to whom the Ombudsman reports, can be regarded as independent, provided that those of its members who are representatives of organizations subject to the Ombudsman's jurisdiction, constitute a minority of the membership.

Initially, recognition of existing schemes will be dependent on whether, broadly speaking, they meet the key criteria; it will not be withheld if, in some respects, the detailed criteria are not met. However, over time it is expected that the constitution of all schemes would be developed to the extent necessary to meet the detailed criteria in full. For example, in the longer term the power by those subject to investigation to veto the proposed appointment or reappointment of an Ombudsman should, where it exists, be removed.

In due course, it is expected that in the private sector all, or virtually all, firms in an industry with an ombudsman scheme or schemes should participate in the scheme

or schemes, even though in the short term, especially when a scheme is first established, a lesser number of firms may participate.

The decision on which schemes are recognized as meeting the key criteria will be made by a validating body. The validating body will also decide which schemes meet the detailed criteria in full and which do not. In respect of the latter, the validating body will in due course review its initial recognition, having regard to the extent to which progress has been achieved towards meeting the detailed criteria in full.

B. Detailed Criteria

1. Independence

(a) The jurisdiction, the powers and the method of appointment of the Ombudsman should be matters of public knowledge.

(b) The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint by majority decision.

(c) The appointment should be either for a specified number of years or until a specified retirement age. If the former, it may be renewable. The initial term of office and any renewal should normally commence before the age of 65 years and be of sufficient duration not to undermine independence.

(d) The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. Those subject to investigation by the Ombudsman should not be entitled to exercise the power to terminate the Ombudsman's appointment, but this does not exclude minority representation on the body which is authorized to terminate.

(e) The remuneration of the Ombudsman should not be subject to suspension or reduction by those subject to investigation, but this does not exclude their minority representation on the body authorized to determine it.

(f) The Ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction. If it is, the Ombudsman (or an appointed deputy) must have the power to determine it.

(g) Unless otherwise determined by statute the Ombudsman should be required to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. That body should also be responsible for safeguarding the independence of the Ombudsman.

(h) The office of the Ombudsman must be adequately staffed and funded, either by those subject to investigation or from public funds, so that complaints can be effectively and expeditiously investigated and resolved.

2. Accessibility

(a) The right to complain to the Ombudsman should be adequately publicized by those subject to complaint.

(b) Those subject to complaint should be required to have proper internal complaints procedures.

(c) The office of the Ombudsman should be directly accessible to complainants unless otherwise specified by or under statute.

(d) The Ombudsman's procedures should be straightforward for complainants to understand and use.

(e) Those complaining to the Ombudsman should be entitled to do so free of charge.

3. Powers and Procedures

The Ombudsman should:

(a) Be entitled to investigate any complaint made to the Ombudsman which is within the Ombudsman's jurisdiction without the need for any prior consent of the person or body against whom the complaint is made. This does not preclude a requirement that before the Ombudsman commences an investigation, the complainant should first have exhausted the internal complaints procedures of the person or body being investigated.

(b) Save as otherwise provided by statute, have the right to require all relevant information, documents and other materials from those subject to investigation.

(c) Be entitled but not obliged, to disclose to the complainant or to the person being investigated such information, documents and other materials as shall have been obtained by the Ombudsman from the other of them unless there shall be some special reason for not making such disclosure, for example, where sensitive information is involved or disclosure would be a breach of the law.

(d) Proceed fairly and in accordance with the principles of natural justice.

(e) Be required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law, to good practice and to any inequitable conduct or maladministration.

(f) In all cases which it is decided not to accept for investigation, notify that decision to the complainant and the reasons for it.

(g) In all cases investigated, notify in writing the decision and the reasons for it to the parties concerned.

4. Implementation of Decisions

Either

(a) Those investigated should be legally bound by the decisions or recommendations of the Ombudsman; or

(b) There should be a reasonable expectation that the Ombudsman's decision or recommendations will be complied with. In all those cases where they are not complied with, the Ombudsman should have the power to publicize, or require the publication of such non-compliance at the expense of those investigated.

5. Annual report

The ombudsman should publish an annual report. The Ombudsman should be entitled in that report, or elsewhere, to publish anonymised reports of investigations.

10 May 1994

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Criteria to Use the Name Ombudsman in New Zealand

The following criteria were stated by Sir Brian Elwood, Chief Ombudsman for New Zealand, for those seeking to use the name “ombudsman” in New Zealand, where the Chief Ombudsman must give prior written consent for that to be done:

1. Unless specifically authorized by statute, no position entitled “ombudsman” should be established in any area where an existing parliamentary ombudsman has or may be given jurisdiction.
2. The holder of the name “ombudsman” must be appointed and funded in a manner which enables him/her to operate effectively and independently of the organization which will be subject to the ombudsman’s jurisdiction. The ombudsman should have a publicly notified charter in plain language which is available and accessible to the public.
3. The “ombudsman” is to receive complaints directly from a complainant free of charge, and impartially investigate the facts and conclude with a decision to not sustain or sustain and, if appropriate, achieve a remedy. The “ombudsman” should not be seen to be a counsel or advocate for special interest groups and must be publicly seen to be independent and impartial.
4. The name “ombudsman” should primarily be associated with a function which is national in character and application.
5. Where the criteria for use of the name have been met, the term “ombudsman” should not be used alone, but only in conjunction which makes the role clear. The extended name is to be used in the public charter, in correspondence and in all publicity.
6. The approved “ombudsman” will be required to produce an annual report and make it publicly available.
7. The charter establishing the particular ombudsman scheme should be subject to periodic public review to assess its effectiveness and credibility.
8. There must be an assurance of continuing and future resources to guarantee tenure to the ombudsman and his/her staff and to ensure the effective and efficient administration of complaint handling.
9. The system and procedures used by the approved ombudsman must ensure fair and impartial decision making.