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Circular 30/1983:- Ombudsman Act 1980 - Instructions to Departments/Offices

A Dhuine Uasail

I am directed by the Minister for the Public Service to state that Mr Michael Mills is to take up the position of Ombudsman on 3 January 1984. His office will be located initially at 4-5 Harcourt Road, Dublin 2 (telephones 757753, 758023, 757706, 752317, 752318).

2. Departments are requested to give the Ombudsman every assistance in carrying out his statutory duties. This circular sets out initial instructions to Departments in relation to investigations by the Ombudsman and his staff. The appendix contains a brief guide to the main provisions of the Ombudsman Act 1980 which are relevant to Government Departments. This guide is for assistance only and has no legal force.

Liaison Officers

3. Each Department/Office should nominate an officer of at least Principal level to act as Liaison Officer with the Ombudsman's Office. The name, grade, official address and telephone number of the officer nominated (and, in the future, any change in that information) should be notified to this Department, which will, in turn, forward the details to the Ombudsman's Office.

4. The Liaison Officer's main functions will be

- * to act as the first point of contact in any particular case between the Ombudsman's Office and the Department/Office
 - * to ensure that any written or oral enquiries from the Ombudsman's Office are immediately directed to the appropriate section(s) of the Department/Office
- for attention
- * to ensure that all time limits applying to requests for information, etc., from the Ombudsman's Office are met
- the
- * to ensure that all relevant files and documents are readily available for inspection when requested by the Ombudsman's Office
- inspection
- * to ensure that the Ombudsman's staff are provided with suitable facilities on their visits to the Department/Office.
- their

5. Liaison Officer will not be a full-time position and no additional posts will be created for liaison duties.

Examinations/Investigations by the Ombudsman

6. The appendix gives details of the types of cases which the Ombudsman may, and those which he may not, investigate under the Ombudsman Act. The Ombudsman is empowered to fix whatever procedures he considers appropriate for conducting an investigation. It is hoped, however, to keep formalities to a minimum and, indeed, to dispose of as many complaints as possible by telephone. To this end, if the Ombudsman's Office initiates enquiries into any complaint by means of telephone contacts with a Department, but subsequently decides to undertake a formal investigation of that complaint, that investigation will commence with a written communication to the Department (see paragraph 8) and the earlier telephone conversations will not form part of the Ombudsman's investigation. Departments are asked to co-operate fully in such investigations and to support the aim of avoiding unnecessary formalities.

7. In the case of the preliminary enquiry the first person to be contacted by the Ombudsman's Office will be the Liaison Officer. He will, in the case of an enquiry by telephone, indicate what section of the Department is involved. If possible, he will also supply the Ombudsman's Office with the name of a particular officer who should be in a position to respond to the enquiry, so that the Ombudsman's Office can then contact the officer involved and attempt to resolve the matter. He will ensure that any letter from the Ombudsman's Office is directed to the appropriate section. The Liaison Officer will have an important role to play in resolving any difficulties that may arise.

8. Where the Ombudsman decides formally to investigate a complaint under the Act, the Ombudsman's Office will write to the Secretary of the Department enclosing a written summary of the complaint and requesting written observations on it. A copy will be sent to the Liaison Officer. Such enquiries should be dealt with as a matter of priority and a reply should issue within 14 days of receipt of the enquiry. The Liaison Officer should be kept informed of developments arising from all enquiries and copies of all Departmental replies should be sent to him. If a Department does not accept that a complaint has properly been referred to it (e.g. if it is of the view that the subject matter is not one for the Ombudsman or if it feels that the complaint is not appropriate to the Department), the Secretary should convey the departmental view in writing to the Ombudsman within 7 days.

Production of Documents, Witnesses etc.

9. The Ombudsman may, for the purposes of a preliminary examination or an investigation require that any information or document or any other thing relevant to his examination or investigation should be furnished to him. Where appropriate, the Ombudsman may require any person who, in his opinion, is in possession of any such information, document or other thing to attend before him for the purpose of furnishing it to him. Departments must comply with the Ombudsman's requirements in this respect. Subject to the Ombudsman's agreement and to notification of the person concerned, the Liaison Officer may attend any interview between the Ombudsman (or his staff) and the person concerned. The above provisions do not apply to information or so much of a document as relates to decisions and proceedings of the Government or any committee of the Government. Accordingly, Government memoranda, decisions and other papers and information relating to Government proceedings or other matters, e.g. security, precluded from investigation by the Ombudsman should not be sent to the Ombudsman.

10. The provisions of the Official Secrets Act will not apply to the supply by civil servants of information or documents to the Ombudsman for the purposes of his examination or investigations under the Ombudsman Act. However, once in the possession of such information or document, the Ombudsman and his staff may only use it for the purposes of their examination or investigation.

Cases involving individual Officers

11. In some cases, a complaint may be directed against the action of an individual officer, or the Ombudsman may find it necessary, in order to complete his examination or investigation, to scrutinise in detail the actions taken by an individual officer. In such cases, the officer concerned should be informed immediately that his actions are under scrutiny and he should be given an opportunity to examining, and suggesting amendments to, any draft Departmental reply to the Ombudsman in respect of this aspect of the examination/investigation. If the officer is not satisfied that his position has been adequately reflected in any reply which issues to the Ombudsman, he may submit his own comments directly to the Ombudsman. An Officer who wishes to make such a submission should be afforded all reasonable facilities to assist him in preparing the submission, including access to the relevant files, if necessary. The time limits applicable to departmental replies, indicated in paragraph 8 above, will apply also to personal submissions to the Ombudsman.

Time off, Expenses etc.

12. In the case of officers who are required to attend before the Ombudsman as described in paragraph 9 above, that attendance will be regarded as part of their official duties. The officers concerned should, accordingly, be paid their normal salary or wages for such periods of necessary absence and should be granted travelling expenses and subsistence allowance subject to the usual regulations.

Conclusion

13. These instructions will be reviewed in the light of experience obtained in their operation. Any questions of doubt or difficulty should be referred to this Department. Six copies of the Ombudsman Act 1980 are being sent to each Department at the same time as this Circular. Further copies are available from the Stationery Office.

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Appendix - Brief guide to the main provisions of the Ombudsman Act which are relevant to Government Departments

Section 1 - Definitions

This Section contains definitions of various terms used in the Act.

Section 2 - Appointment and Term of Office of the Ombudsman

This Section sets down the procedures and conditions for the appointment to/removal from office of the Ombudsman.

Section 3 - Salary and Pension

This Section sets down the conditions attaching to the Ombudsman's salary and pension.

Section 4 - Functions of the Ombudsman

1. The Ombudsman is independent in the performance of his functions.
2. The Ombudsman can investigate any action taken by or on behalf of a Department where following a preliminary examination of the matter it appears to him
 - (a) that the action has or may have adversely affected a person, and
 - (b) the action was or may have been -
 - (i) taken without proper authority,
 - (ii) taken on irrelevant grounds,
 - (iii) the result of negligence or carelessness,
 - (iv) based on erroneous or incomplete information,
 - (v) improperly discriminatory
 - (vi) based on an undesirable administrative practice, or
 - (vii) otherwise contrary to fair or sound administration.

The Ombudsman can investigate a matter either (a) following a complaint or (b) on his own initiative.

The Ombudsman may:

- (a) having carried out a preliminary examination, decide not to carry out an investigation or
 - (b) discontinue an investigation,
- if he becomes of opinion that
- (i) the complaint is trivial or vexatious or
 - (ii) the person making the complaint has an insufficient interest in the matter or
 - (iii) the person making the complaint has not taken reasonable steps to seek redress in respect of the matter or, if he has, has not been refused redress.
3. The Ombudsman does not have to investigate any action if he is of the opinion that the subject matter has been, is being or will be sufficiently investigated by him in another investigation under the Act.
4. An examination or investigation by the Ombudsman will not affect the validity of the action in question or the power or duty of the person who took that action to take further action with respect to the matter.
5. In deciding whether to proceed with or discontinue an investigation the Ombudsman can, subject to the provisions of the Act, act in accordance with his own discretion.
6. A civil servant can, acting as a private individual, bring complaints to the Ombudsman provided of course that the subject matter of the complaint is not otherwise excluded under the Act. The Ombudsman can also on his own initiative investigate an action affecting a civil servant provided it affects the civil servant other than in his official capacity.
7. This subsection makes provision for the amendment of the Schedules to the Act by Order.

Section 5 - Exclusions

1. The Ombudsman cannot investigate an action in the following circumstances:
- (a) (i) If the person affected by the action has commenced civil legal proceedings and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by the Court or
 - (ii) if the person affected has a right of appeal, reference or review to or before a court, conferred by or under statute or
 - (iii) if the person affected has the right of appeal, reference or review to or before any person or body other than a Department of State.
 - (b) If the action relates to or affects national security or military activity or arrangements regarding participation by the state in international organisations. As regards the participation by the State in international organisations the effect of this section is to exclude Ministerial discussions on policy matters relating to, for example, the EEC but to include the execution by Departments of directives etc. resulting from policy agreements.
 - (c) If the action relates to recruitment or appointment to any office or employment in a Department of State.
 - (d) If the action relates to the terms or conditions under which a person holds an office or is employed in a Department of State. This exclusion also applies to the terms or conditions of a contract for services (including the superannuation provisions of such a contract).

(e) If the action is one taken in the administration of the law relating to aliens or naturalisation.

(f) If the action relates to the right of pardon or the right of commutation or remission of punishment under the Constitution (Article 13.6) or the remission of any penalty imposed by a Court.

(g) If the action was one taken in the administration of prisons or other places of custody.

(h) In cases where a complaint is lodged, if the complaint is not made within either 12 months of the action taking place or the complainant becoming aware of the action, whichever is the later.

(i) Where no complaint is made, if the Ombudsman does not initiate an investigation within 12 months of the action taking place.

(j) If the action was taken before the commencement of the Act (i.e. 7 July 1983).

In cases falling under paragraphs (a), (h) and (i) above the Ombudsman may conduct an investigation if it appears to him that the special circumstances appear to warrant it:

2. The Ombudsman may investigate actions relating to insurability and entitlement to benefit under the Social Welfare Acts.

3. The Ombudsman may not investigate any action if the relevant Minister of the Government so requests. The request must be in writing and be accompanied by a written statement of the reasons for making the request.

Section 6 - Reports etc. by the Ombudsman

1. Where the Ombudsman decides not to conduct, or to discontinue, an investigation, he must send to the complainant and any other person he considers appropriate, a statement in writing of his reasons for so doing. If the investigation ceased because of a Ministerial request, he must furnish to the complainant and any other person he considers appropriate, a copy of the request and the statement setting out the reasons for the request.

2. When the Ombudsman conducts an investigation he must send a statement in writing of the results of the investigation to the following persons:

(a) the Department of State or other person against whom the complaint was made;

(b) where the body complained of is not a Department of State, to the Department of State which has functions in relation to that body;

(c) any other person alleged to have taken or authorised the action complained of; and

(d) any other person to whom the Ombudsman considers it appropriate to send the statement.

3. Where the Ombudsman finds that a complaint was justified he may recommend the following courses of action to the Department or body which took the action complained of:

(a) that the matter be given further consideration;

- (b) that specific measures be taken to remedy the adverse effect of the action; or
- (c) that he be furnished with the reasons for taking the action.

The Ombudsman may also request that the Department or organisation should notify him of their response to his recommendations within a specified time limit.

4. Where the Ombudsman conducts an investigation, the person who made the complaint must be notified of the results of the investigation, any recommendations made to the Department of State or other bodies involved, and the response, if any, to those recommendations.
5. If the Ombudsman is not satisfied with the reaction to his recommendations, he may include a reference to the case in his annual report to the Houses of the Oireachtas or make a special report on the matter.
6. No adverse finding or criticism may be made in a statement, recommendation or report unless the person involved has had an opportunity to consider such finding or criticism and to make representations to the Ombudsman about the matter.
7. The Ombudsman must make an annual report on the performance of his functions and may make such other reports as he sees fit from time to time. These reports will be laid before the Houses of the Oireachtas. The terms of a request made under Section 5(3), together with the reasons for the request, must be included in a report.
8. For the purposes of the law of defamation, any report, publication, notification, statement or recommendation made by the Ombudsman is privileged.

Section 7 - Powers of the Ombudsman in respect of examinations and investigations

1. For the purposes of a preliminary examination or investigation the Ombudsman has the power to summon witnesses and to request the production of documents or other evidence. Where a document or other information requested by the Ombudsman relates to decisions or proceedings of the Government or a committee of the Government the information need not be supplied. In the case of doubt as to whether any information or document falls into this category a certificate signed by the Secretary to the Government certifying that the information or document belongs to this category will be regarded as conclusive evidence.
2. Any individual or organisation summoned before the Ombudsman, or required to supply information to him, has the same protection and rights as a witness in the High Court.
3. A person may not, by any act or omission, hinder the Ombudsman in the discharge of his duties.
4. The obligations of the Official Secrets Act, in relation to the secrecy of official information, will not apply to civil servants or Departments when furnishing information to the Ombudsman for the purposes of an examination or investigation.
5. Travelling and subsistence allowances, and compensation for loss of time, may be paid to complainants and witnesses at an investigation if the Ombudsman thinks fit.
6. Statements or admissions made to the Ombudsman in the course of an investigation are not admissible as evidence in criminal proceedings.
7. The continued performance of an action under investigation cannot be construed as obstruction of the Ombudsman.

Section 8 - Conduct of investigations

1. The Ombudsman may not conduct investigations in public.
2. A Department, other body or individual whose actions are under investigation must be afforded an opportunity to comment on the actions or any allegations contained in a complaint in relation to those actions.
3. Subject to the provisions of the Act, the Ombudsman may establish his own procedures for conducting investigations.
4. The Ombudsman may decide whether any person may be represented by counsel, solicitor or otherwise, during an investigation.

Section 9 - Secrecy of Information

1. Information obtained by the Ombudsman during an investigation may be used only for
 - (a) that investigation and any related statements or reports
 - (b) proceedings against the Ombudsman or his staff under the Official Secrets Act.

The Ombudsman and his staff cannot be called upon to disclose such information in any other proceedings.

2. A Minister of the Government or the Revenue Commissioners may request the Ombudsman not to disclose information obtained by him by giving notice in writing that such disclosure would, for stated reasons, be prejudicial to the public interest. The Ombudsman must comply with such a request.

Section 10 - Staff of the Ombudsman

This section relates to the staffing of the Ombudsman's office.

Section 11 - Expenses

This section deals with the expenses arising from the administration of the Act.

Section 12 - Short title and commencement

Deals with the title and coming into operation of the Act.

Schedules

First Schedule - Part I

This lists all the bodies which will be subject to investigation by the Ombudsman, and includes all Government Departments, together with offices either comprised in or associated with them in which civil servants are employed.

First Schedule - Part II

The bodies listed in Part II are excluded from investigation by the Ombudsman. They include certain bodies which might otherwise be considered to form part of the Departments of State

listed in Part I and bodies which while often associated with Departments and having civil service staff, do not form part of the Civil Service proper.

Second Schedule

The bodies listed in the Second Schedule are not subject to investigation by the Ombudsman and may not complain to the Ombudsman about any action of an organisation listed in Part 1 of the First Schedule.

This guide does not purport to be an interpretation of the Ombudsman Act, 1980.