



International Ombudsman Institute
Institut Internacional de l'Ombudsman
Instituto Internacional del Ombudsman

SECURING EFFECTIVE CHANGE

HOW TO MAKE RECOMMENDATIONS THAT BRING ABOUT
SUSTAINABLE IMPROVEMENT TO PUBLIC ADMINISTRATION

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Introduction

As the only global Ombudsman organisation, the IOI is uniquely placed to promote best practice by drawing on the experience of its members. This is achieved in many ways, through training, through conferences and workshops, comparative research and by putting offices in touch with others who have achieved excellence in a particular field.

One important way in which learning is shared is through the development of a series of Best Practice Papers. This paper concentrates on the issue of effectiveness. It draws on the experience of IOI members to highlight ways of working which are most likely to bring about successful outcomes.

This series of papers is published on the IOI website. This allows for them to be updated over time as new approaches and new examples come to light. Readers are encouraged to suggest improvements which will ensure that it remains useful and relevant.

Special thanks is given to Emer Doyle in the Irish Ombudsman's Office for her work in researching this paper.

Securing service improvement

Every Public Service Ombudsman Office has two core functions– resolving injustices suffered by individuals and improving public services through learning from the investigations it undertakes. In order to ensure that this happens, it is essential that each Office reassures itself that the changes it has recommended to service providers have been implemented, and once they have been implemented, that they have secured the desired outcome – that the injustice suffered by the person who brought the complaint to the Ombudsman is not being suffered by subsequent users of the service.

This paper has been informed by some initial research undertaken by the Office of the Ombudsman in Ireland. Seven Offices responded including those of the Ontario Ombudsman, the Ombudsman South Australia, The Ombudsman New South Wales, The Ombudsman of Malta, the Austrian Ombudsman, The National Ombudsman of the Netherlands and the Federal Tax Ombudsman of Pakistan. The experiences of the Irish Ombudsman’s Office were also incorporated and contributions were received from the Office of the Scottish Public Services Ombudsman and the Northern Ireland Public Services Ombudsman. Responses from these institutions give a very interesting cross-section sample of practices in Ombudsman Offices from four out of the six IOI Regions.

Several written sources were also drawn upon, including a paper published in 2015 by the Office of the Toronto Ombudsman titled “[The Impact of Ombudsman Investigations](#)”, a report from the [Ombudsman of Western Australia](#) which highlighted steps taken on the implementation and follow-up of recommendations, and extracts of a publication from 2011 by the Federal Ombudsman of Belgium on the consolidation of the Ombudsman in the 21st century.

The findings are considered under the following headings - relationship building, the investigation, framing recommendations, sharing the recommendations, launching the report and follow-up and enforcement

Relationship building

***“The process of getting recommendations accepted begins before they are even presented.”
(Ombudsman of Ontario)***

Ontario emphasised the importance of starting from a position of trust. The relationships established in the day-to-day interactions between the Ombudsman’s Office and bodies in jurisdiction will have an impact on the effectiveness of systemic investigations and making recommendations for change in policy or procedures. Many Ombudsman complaints are resolved without the need for formal investigations or recommendations. The Thai Ombudsman uses alternative dispute resolution measures such as mediation and peaceful settlement of public grievances.

This work relies on having good working relationships with the bodies in jurisdiction. These cannot be too close, as this might imply bias, but can nonetheless be very helpful in securing a constructive engagement when formal investigations are required.

Fundamentally, to ensure that the body is open to the recommendations when these are ultimately prepared, the Ombudsman must be fair in the investigative process. This should involve providing advance notice of the investigation – ideally with a meeting. The purpose of this meeting is not so much to try and mediate a settlement but instead to explain the reasons for the investigation, to commit to a fair and impartial investigative process and to invite input from the body at any time.

The scope of the investigation should be clearly set out and the methodology to be used should be available, preferably on the Ombudsman’s website. Ireland stresses the importance of setting out this information clearly in a letter which formally initiates the investigation.

The investigation

“The ability to secure results depends exclusively upon the quality of the arguments, the respect the institution enjoys and the moral authority it exercises.” (Parliamentary Ombudsman of Malta)

According to Ontario, the credibility of the investigation affects the recommendations and, in particular, the likelihood that they will be accepted. This involves compiling compelling evidence and employing a procedurally fair and thorough investigative process.

New South Wales focuses on ensuring that its draft investigative reports clearly demonstrate that there is a problem and why it needs to be addressed. Likewise the report from the Ombudsman of Toronto advised that the Ombudsman should rarely conduct an investigation if the problem was already being addressed provided that the proposed action represents an appropriate fix. Resources should not be used to address problems that the public service is already solving.

In the context of securing meaningful change, the investigation must clearly establish that the injustice arises from a systemic failure rather than a one off occurrence.¹

¹ The IOI will shortly be publishing a paper on best practice in systemic and own initiative investigations which will provide detailed guidance on the conduct of investigations.

Framing recommendations

“A critical element of the accountability and learning process inherent in recommendations implementation is the framing of clear, concise and practical recommendations arising from investigation and audit reports to agencies.” (Ombudsman for South Australia)

South Australia uses the SMART goal setting method as a well-established project management tool to identify criteria relevant to the setting of objectives. In other words the recommendations must be:

S pecific	What will the recommendation accomplish?
M easurable	How will we measure whether the recommendation has been implemented?
A chievable	Is the recommendation possible?
R esults-focused	What is the result of the recommendation?
T ime-bound	What is the completion date for the recommendation?

According to South Australia, the principal advantage of this is that recommendations are easier to understand, to implement and then be confirmed as having been implemented.

For Ontario, the recommendations must be doable, feasible and grounded in the realities of any given situation. To ensure this, it is important to listen to the views of those who will have to implement the recommendations and to make all affected parties feel part of the process.

In Scotland, the focus is on outcomes-based recommendations rather than process-based ones and linking specific findings to recommendations. Other Offices suggest that the decision as to whether to use outcome or process based recommendations will depend on the facts of the particular case. Finally, when circulating a draft report to the body concerned, New South Wales asks for its suggestions as to how the identified problems could best be addressed. If these suggestions are accepted, bodies appear to have a greater sense of ownership of the recommendations in the final report.

In some instances, it may be the case that the recommendations are not achievable because of a lack of resource availability. Ireland has stressed that where there is an entitlement to a service that has not been honoured, such recommendations may still be made to highlight the injustice.

Sharing recommendations

“By discussing the recommendations with the parties addressed, they can comment on their feasibility and how to achieve them. The result of this method is that recommendations are more realistic and at the same time a dialogue is created on the progress of implementation.”
(National Ombudsman, The Netherlands)

New South Wales has always provided draft recommendations to bodies for comment prior to finalising reports and will take any reasonable suggestions for changes into account in the final report. Ontario provides its proposed recommendations along with the preliminary draft report to the body concerned as, more recently, do Ireland, the Netherlands and Northern Ireland – Northern Ireland referred to it as “owning the learning”. Ireland asks the body to put forward alternatives to the draft recommendations if they believe that the desired outcome, or a better one, can be achieved in a different way than that proposed.

Ontario advises that explaining to the body that it will have the opportunity to review and comment on draft recommendations prior to them being finalised and made public promotes buy-in. The report from Toronto also highlights the significance of discussing the recommendations to ensure that they are achievable.

The Thai Ombudsman is obliged to consult with the body under investigation to ensure that the recommendations can be implemented efficiently and fall within the capacity of the body concerned.

Launching reports

“Including public bodies in the launch of the report will increase their commitment to implement recommendations.” (Ombudsman of Ireland)

Ireland has, on a number of occasions, invited the bodies to participate in the launch of the report and in any associated press conferences. This means that the bodies publicly accept the findings and commit to implementing the recommendations.

This can soften the criticism in the media because they are seen to be co-operative but it also means that there is public scrutiny of their implementation of the recommendations. This makes it harder for them to subsequently reduce their commitment to change.

Follow-up

“In some cases [implementation] requires liaison with agencies to encourage and support actions to address recommendations made by the Ombudsman.” (Ombudsman for South Australia)

Ontario incorporates a robust post-investigative monitoring process. Key elements of this strategy include a recommendation in every report that the body report back to the Ombudsman – in writing and at specific intervals – on its progress in implementing the recommendations, analysing these reports and reporting publicly on the body’s progress as well as monitoring relevant information from other sources, for example from other complaints. Scotland also referred to the importance of internal casework knowledge management in this regard.

Launching another investigation is considered to be a last resort to be used only when key problems identified in the initial investigation have been ignored or not dealt with effectively. However, the Netherlands has completed a number of retrospective studies which can make visible the practical problems of implementing recommendations. New South Wales always includes a requirement in its final reports that the body provide detailed advice as to the actions taken on recommendations.

Likewise, in Austria, bodies are obliged (under the Austrian Ombudsman Act) to comply with recommendations within a period of eight weeks and to give reasons in writing why the recommendation has not been complied with within that timeframe.

In Northern Ireland, compliance is time-bound and actions plans are developed. It is the responsibility of the investigator who conducted the investigation to follow up on compliance in the first instance with possible escalation to the Director and then the Deputy Ombudsman / Ombudsman.

In South Australia, a small Recommendations Implementation Team is responsible for documenting progress and implementation of recommendations. Similarly, in Scotland, a Learning and Implementation Unit monitors the implementation of any recommendations made. In Pakistan, independent advisors are assigned the task of following-up on the implementation of recommendations. Both Scotland and Pakistan also referred to the use of their IT systems as an effective way of classifying and tracking recommendations.

Where necessary, Ireland undertakes follow up investigations to ensure that promised change has been delivered. These include consideration of written submissions on the outcome of action plans, site visits, random file inspections and interviews with staff including frontline staff, complaint handlers and senior managers.

Enforcement

“While we do not have the power to compel acceptance and implementation of our recommendations, we do have an important and effective tool in the power to publish. Ultimately, our power is in our voice.” (Ombudsman of Ontario)

A large proportion of Ombudsman Offices make recommendations and do not have powers of enforcement. There are some exceptions to this rule, as in the case of Pakistan, where in instances of non-implementation, notice of defiance proceedings (and, in some cases, contempt proceedings), can issue. There is a provision for the Northern Ireland Ombudsman to ask the Attorney General to apply to the High Court for relief but this provision has never been used. New South Wales can make a default report to Parliament although this mechanism has not been used for at least the past two decades.

Malta can also report on non-implementation by sending a copy of the report to the Prime Minister and thereafter report to Parliament. However, this procedure has had very limited success and does not attract a high level of publicity.

In Ireland, reports on any rejection of recommendations are made to a Parliamentary Committee, and Ministers and senior officials can be called to give evidence. This has proved effective in the very small number of cases in which recommendations were not accepted with only one remaining un-resolved in more than 30 years of the Office.

In Thailand, where disputes about recommendations cannot be resolved, the Office will refer the matter to the Cabinet for consideration and action.

Ontario uses media engagement and the power to publish in an effort to secure implementation of recommendations. The use of the media can be critical in highlighting failures to accept and implement recommendations, especially where links with the Parliamentary body do not prove successful. Likewise, in Austria, the television programme *BürgerAnwalt* (Advocate for the People) and the media exposure involved creates incentives for the authorities to find solutions.

In addition to its general preventive effect, the Austrian TV show also includes regular follow-up reports on previously shown cases. In addition to this, collaboration with NGOs can have a positive effect on enforcement: if civil society backs the Ombudsman's recommendations, more weight and pressure is put on the government to implement them.

Conclusions

Securing effective change can best be achieved with a number of key considerations:

- Maintaining good working relationships with bodies in jurisdiction
- A clear focus for all investigations
- Thorough and objective consideration of the issues
- Only making systemic recommendations where the investigation has confirmed the existence of a systemic cause
- Recommendations which are specific, clear and time-bound, and which relate explicitly to the findings
- Recommendations which are agreed with the body in jurisdiction, where possible
- An action plan setting out the steps to be taken
- An agreed reporting timetable to confirm that the actions have been taken **and** that the desired outcomes have been achieved
- Follow-up if necessary

In some complaints, the failure is a consequence of problems with organisational culture and not simply procedural issues. In such cases, reassurance that procedural steps have been taken is not sufficient. Evidence that Leaders and Senior Managers are satisfying themselves on the ground that the steps have been taken **and** that they are securing the designed outcome is essential. Quality control mechanisms which do not rely on the people who caused the problem need to be in place to confirm its solution. Written assurances may not be sufficient and you may need to check on the ground that the change has happened.