

HOW PRIVATISATION AFFECTS OMBUDSMEN

Introduction

The IOI has currently 177 members in more than 100 countries worldwide (as at December 2014). Most of the members are Parliamentary Ombudsmen and almost all deal with complaints about public services. They aim to resolve complaints where individuals have suffered an injustice as a result of a failure in a service or a failure to provide a service. They are free to use, independent and objective. They are also independent of services providers.

The range of public services is wide and can include health, education, social care, benefits, taxation, public housing, prisons and utilities. These services are provided differently in different countries. In some countries, many or all services are provided by the state or by local or regional government. In others, the private and independent sectors play a major role.

Problem

In recent years, there has been a tendency for more and more services to be outsourced, sometimes to state owned companies, and sometimes to private companies or NGOs. Often, the transfer has removed the service from the jurisdiction of the national or regional ombudsman. Sometimes, a new independent redress mechanism is created; sometimes access to independent redress is lost entirely.

The IOI believes that there should be access to independent redress for all public services, regardless of who provides them. It has agreed on a policy setting out its views on how this should be achieved.

Cases and recommendations

Many public services ombudsmen have retained jurisdiction over services when the transfer has been managed by a contract. For example, where a local authority lets a contract for refuse collection to a private company, the service usually remains in the Ombudsman's jurisdiction because it is being provided on behalf of the local authority. These arrangements pose few problems because access for the service user to independent redress is not lost. The only issue to be considered is that the arrangements for handling complaints and for notifying service users of their right to come to the Ombudsman should be written into the contract.

If a service is to be outsourced to an independent entity, as has often been the case with public utilities such as water, electricity or gas, the IOI believes that there is no reason to transfer the requirement to provide redress. This should be retained by the existing national or regional Ombudsman. There is excellent evidence of this arrangement being adopted and working effectively in Spain or in Australia for example.

In some instances, states have established separate independent ombudsman schemes, which have a proper statutory basis to cover particular industry sectors such as energy. Where such schemes already exist, the IOI supports their continuation, but does not wish to see further extension where services are already within the jurisdiction of a public services ombudsman.

In other cases, complaints are dealt with in the first instance by a body which is independent of service providers and is itself in the jurisdiction of an Ombudsman, as is the case in Sweden, for example. This arrangement works effectively and the IOI does not wish to see it changed.

However, in many instances, services have been outsourced and there has been a complete loss of access to independent redress. Sometimes, there is a company “ombudsman” but these are not independent and the IOI does not support the use of the name ombudsman in such cases. The IOI believes that in all instances where public services have been removed from an Ombudsman’s jurisdiction and no fully independent alternative is provided, that the public services ombudsman’s jurisdiction should be reinstated.

Public services ombudsmen are usually funded by their parliamentary body to make them independent of government and often make recommendations rather than binding decisions. Where wholly private companies are within jurisdiction the IOI believes that the cost of the Ombudsman’s work should usually be funded by a charge on the companies, either by a levy, or a charge per case, or a combination of both. The Ombudsman’s decisions should usually also be binding, and only be capable of being set aside by the courts. This is because private companies are not susceptible to scrutiny by elected bodies in the same way as public services providers and thus recommendations may not be implemented.

Conclusion

The IOI believes that people should be able to complain about any public service through their national, regional or local ombudsman. In the ever more complex world of public service delivery, we should be aiming for simplicity in helping people to access redress when things go wrong. A “one stop shop” for all public service complaints is the way to do this. A proliferation of ombudsmen and redress mechanisms only serves to confuse service users. The IOI will work to avoid this outcome.