

## IPA/Ombudsman 2014 conference highlights



### **Opening address: Minister Brendan Howlin, TD, Minister for Public Expenditure and Reform**

The minister opened the conference by congratulating the IPA and the Office of the Ombudsman on sponsoring this conference and presenting the fundamental and intertwined issues of accountability and responsibility in the public service. He noted that the Government's objective is to ensure that the systems of accountability/responsibility are effective, robust, clear, and identifiable. Accountability is not a shackle that limits and confines and should never be a pathway to the 'gotcha' culture which focuses solely on mistakes and pays little attention to the learning available when things go wrong. Accountability supports and reinforces the already deep-rooted public service ethos of independence, integrity, impartiality, equality, fairness and respect.

The minister noted that these were some of the reasons why back in January he established an Independent Panel on Strengthening Civil Service Accountability. The Independent Panel's report was crucial in the development of the new Civil Service Renewal Plan which he and the Taoiseach launched last week.

Trust and confidence in our public administration is not something we can take for granted. The minister commented that as highlighted by the IPA's paper on Public Sector Trends earlier this year, while citizens' level of satisfaction with public services varies significantly by sector, trust and confidence in public services remains low overall. More encouragingly the IPA paper also highlights that the quality of Ireland's public administration is slightly above average for the European Union.

The Renewal Plan is part of the Government's commitment to restoring that trust. It focuses on the issues set out in the Independent Panel's recommendations, in particular to ensure that the public know 'who does what and to whom are they accountable'. This renewal strategy will be implemented over the next 3 years.

Its key themes are taking action to improve the level of professionalism in how the Civil Service operates; to improve how the Civil Service is geared up to respond to ever increasing demands; to ensure the Civil Service openly engages and accounts for what it does; and to ensure that the Civil Service works in a better collective way.

Under the Plan, the minister noted that the government will establish new structures to ensure greater focus on performance and accountability at the highest levels, through the new Civil Service Accountability Board, the Civil Service Management Board and the first performance review process for Secretaries General. The Accountability Board, chaired by the Taoiseach, will strengthen accountability and performance across the Civil Service by introducing greater oversight and delivery. It will focus on and provide oversight of the implementation of key cross-cutting priorities, and the capacity and capability of the Civil Service to deliver including performance management of Secretaries General.

Implementation of the Renewal Plan will be managed by the new Civil Service Management Board of Secretaries General, chaired by the Secretary General to the Government. These are important new structures which will give assurance to the public and the Government and civil servants themselves that things are being done in the right way and objectives are being met.

The minister stressed that Civil Service Renewal is a core strand of the Government's wider Public Service Reform Programme, which itself has been, and will continue to be, an important part of the government's strategy for recovery. As the first phase of the Public Service reform programme was devised against the backdrop of the fiscal crisis, it was necessarily focused on ways to consolidate and reduce costs, take out duplication and waste, and improve expenditure controls. The minister stated that as we reach a more sustainable fiscal position, this next phase of reform has the ambitious goal of a Public Service that will have positive outcomes for all stakeholders, including citizens, businesses and public servants themselves.

In the minister's view, this broad suite of political and legislative reforms are not initiatives which easily grab the public imagination but they lay the foundations for delivering open, accountable and ethical public governance arrangements in Ireland for both Government, the wider political system, and the public service. The minister stressed that as we approach the suite of centenary celebrations he wants to strengthen citizens' trust in Government and in the institutions of the State and to encourage more citizen participation in decision making.

The minister concluded by noting that our responsibility for the future as public servants is to restore the trust and confidence of citizens in the Public Service, ensure faster and more responsive policy delivery, and in doing so strengthen our accountability.

### **30 years of the Ombudsman in Ireland - Impact and the Future: Peter Tyndall, Ombudsman and Information Commissioner**



Peter noted that the first modern ombudsman institution was created in Sweden more than 200 years ago. It offered an independent safeguard for citizens to ensure that a return to autocratic monarchy would not happen. The concept of the Ombudsman was further developed in Scandinavia and the creation of the Danish Parliamentary Ombudsman's Office in 1955 created the model which has since spread around the world.

The Office of the Ombudsman in Ireland is a relative newcomer at a mere 30 years old, but has made a very substantial contribution to securing justice for users of public services and driving improvements through using the learning from complaints. Peter stated that he wanted to briefly reflect on the contribution the Office has made to society in Ireland over the last 30 years before going on to look to how the role of the office can be developed to support an open, accountable public service.

He paid tribute to his three predecessors as Ombudsman, Michael Mills, Kevin Murphy, and Emily O'Reilly.

Peter noted that the Ombudsman Amendment Act 2012 marked a major step forward in the development of the office. In 1984 the Ombudsman's remit was confined to civil service bodies only. Later the health boards and local authorities were added, and later again public hospitals. The 2012 Act saw an extension of remit to cover the administrative actions of around 200 additional 'reviewable agencies' which are now subject to examination by the Ombudsman, including all publicly funded third-level education institutions.

To give a flavour of the work of the Office of the Ombudsman, Peter gave some examples of some of the significant issues dealt with over the years, including lost pension arrears, subventions for nursing home care, and redress for taxpayers.

Peter reflected on his first year in office. He stressed that he strongly believes that complaints should not be regarded negatively but should be used to highlight areas where improvement is necessary and desirable. As part of his objective to 'share the learning' from complaints he issued his first Ombudsman's Casebook last month. The Casebook contains summaries of cases dealt with and is aimed at public bodies to learn, both from the good practice and the mistakes of others. The Casebook will be issued quarterly.

Shortly after he took Office Peter noticed that compared with other jurisdictions, complaints about the health service and to his Office are very low in Ireland. He wanted to find out why this is. He has therefore launched an own initiative investigation into how complaints are handled by public hospitals in Ireland, the results of which will be published early next year. It is the role of an Ombudsman to help identify areas for improvement and best practice in delivering public services. These and other initiatives Peter noted will help him do that. However, he stated that it is up to Government and its agencies to carry them through.

In looking to the future Peter identified a number of areas where he believes there is potential for improvement. These include the extension the Ombudsman's jurisdiction to include more public services provided by private bodies and in particular, the opportunities offered by the European Directive on Alternative Dispute Resolution; the benefits of adopting a standardised approach to complaint handling across the public sector and the development of a single portal for complaints.

Peter noted that recent events, such as the controversy involving the Garda Síochána Ombudsman Commission, have highlighted the importance of Ombudsman institutions being accountable to the Oireachtas, and not to the administration. One way to guarantee this relationship would be for the Ombudsman to become a constitutional office, in the same way as the Comptroller and Auditor General. At the moment, the Ombudsman is appointed by the President on the recommendation of the Oireachtas and has access to the Public Service Oversight and Petitions Committee.

Peter stated that public confidence in oversight institutions is enhanced when they are clearly independent of the bodies in their jurisdiction. Constitutional status would serve to reinforce the independence and offer a further reassurance to members of the public that their complaint will be dealt with properly on its merits, and that the people making disputed decisions will not themselves be able to dictate or influence the outcome.

Peter concluded by noting that in its thirty years the office has developed an enviable reputation for doing what Ombudsmen the world over do – speaking truth to power, and during his term of office he plans to build on its successful track record by working with people in public sector organisations to continue to put things right for individuals while driving improvement in our public services.

### **The Changing Role of the Ombudsman: Dame Beverley Wakem, Chief Ombudsman, New Zealand**



Beverley opened her remarks by noting that whenever she thinks of the role of the Ombudsman and how they fit into the administrative justice landscape and the increasingly crowded dispute resolution business, she has a recurring image of a cartoon which seems somewhat apposite – large reptiles thrashing about in a pool with a lone figure confronting them in the middle. The caption – “When you’re up to your rear in alligators it’s hard to remember that your mission was to drain the swamp.”

Ombudsman offices everywhere are assessing their mission and responses as Ombudsmen to the challenge of change. Beverley noted that more of the same won’t do. We need to be ahead of the wave, agile, proactive, focussed, open to using new technologies and techniques to achieve our purpose and prepared to adapt our organisations and our investigative, oversight and monitoring roles accordingly.

She noted that it is clear that the international ombudsman community is at something of a cross road. A higher level of community engagement is seen as critical to remaining relevant. Even in countries where the regime is conservative, or even authoritarian, expectations are high amongst people as to what amounts to fair treatment and a good decision by an agency, and what is considered to be the reasonable delivery of public services. In an excellent report by Chris Gill et al for Queen Margaret University in Edinburgh last year, the authors noted that: “changes in ombudsman schemes are being driven by developments in consumer behaviour, service provision and the policy environment and that these drivers demand a response from individual ombudsman schemes and the ombudsman community”.

Beverley noted that increasingly, the value of the stronger links with the various associations of Ombudsmen that exist is being recognised. Sharing experiences of best practice and how to navigate our way through the challenges inherent in the role and to our jurisdiction and powers, and strengthening training and development are two examples of the benefits to be obtained from a closer association. She noted that there will be issues around independence of action and so on but these can be worked through. She also stressed that it is important that the Ombudsman “brand” is not diluted.

Increasingly, also, there is interest on the international front in exploring how alliances between integrity agencies on a particular issue might give greater strength and breadth to major investigations. In New Zealand Beverley cited the example that they have collaborated with the office of the Auditor General on a major issue involving the issuance of visas. And that she is currently involved with the Auditor General, the Human Rights Commissioner and the State Services Commission on matters to do with the Christchurch Earthquakes, with joint and several activities informing the whole of government analysis of those events and their implications for community services – identifying some critical gaps in the recovery processes and picking up the pieces.

Alternative dispute resolution pathways and mediation are increasingly seen as important tools to meet consumer needs as opposed to the more traditional, formal approach which has characterised Ombudsman schemes in the past.

A current development, which is gaining strength, and one which will have a significant impact on the Ombudsman's role, is the Open Government Partnership. Beverley noted that there is clearly an impetus for an Ombudsman to play an active role in shaping policy around this, and another opportunity for all of us to collaborate to promote the centrality of an Ombudsman in achieving the goals of the OGP.

Beverley indicated that she is currently chairing a Committee composed of academics, agency representatives, and NGO's which is advising the State Services Commission in its work of strengthening integrity within the public service. An Integrity Strategy is being produced and a roadmap for implementation. This work is going hand in hand with an analysis of the OGP and how the New Zealand Government will articulate that in practice.

Looking further ahead, the UN Secretary General's recent report on "Intergenerational solidarity and the needs of future generations" explicitly referred to those national bodies and institutions, like Ombudsman's, as the drivers of the changes that will be needed.

In commenting on accountability Beverley stated that when we speak of accountability in the public service, we must also reflect on the accountability of the Ombudsman and demonstrating that effectively. This is critical to remaining relevant and being open and transparent. Along with stakeholder research, it is instructive to have a regular independent "health check" of our own performance.

In conclusion, Beverley stated that continued confidence in the Ombudsman's office rests on their having clearly articulated outcomes, supported by a "fit for purpose" structure; a demonstrably high level of trust and integrity between the office and those it deals with; capable and competent staff, transparent and robust processes; impartiality and fairness; confidentiality; and a credible review process. It also rests on their ability to adapt and change to meet the challenges in the environment within which they work – economic, political, social and legal.

The role of the Ombudsman in both the private and public sector is vital to a well-functioning democracy, and to the maintenance of high standards of conduct in government and business. The economic and social health of our countries depend on all our institutions functioning as well as they can and dealing in a principled way with their consumers. The Ombudsman's role is to ensure that they do, and Beverley finished by noting that role is more important in this changing climate than ever before.

### **The citizen redress maze in England: Jane Tinkler, Research Fellow, London School of Economics Public Policy Group**



Jane opened her remarks by stating that citizen redress is important. Redress bodies have a number of roles: citizen champions, market checkers, change evaluators, and future proofers. But she noted we are also in a period of extended austerity with financial squeeze on budgets while preserving front line services. Complaints are an excellent source of information on where the needs of citizens lie and where problems are in delivery chains leading to more effective services.

Over time through three waves of public administration reorganisation, Jane showed that what they have been left with in England is a complex maze of redress systems and processes.

Why does the redress maze matter? Jane suggested that first of all it matters for citizens. Research shows that one of the key problems for citizens is knowing how and where to kick off a complaint. Therefore citizens use many different channels, often at the same time, to try and get something put right. This means that it is costly, both in terms of time and resources, for citizens to complain.

More service providers means that citizens must now make a choice between complaining to the government body who commissioned and paid for their service, and has responsibility for it. The problem here though is they may not know which government body this is or how to contact them. Or complain to the service provider that is actually providing their service. So they will probably have contact details but they may fear that complaining directly to the provider of their service will affect their relationship with that provider and therefore the quality of their care.

And then there is the growth in the number of regulators and mediators that citizens can use to address their complaints. Regulators are an increasingly attractive choice as they have a higher public profile than ombudsman offices. In the UK this is something that the new Parliamentary and Health Service

Ombudsman Dame Julie Mellor is keen to change and it was also something that the Public Administration Select Committee's report on ombudsman focused on.

Jane indicated that there has been a rise in the number of online feedback sites that are relevant for public sector services. Often referred to as 'Trip Advisors' of public services, Patient Opinion is one that was set up by a Sheffield GP and now has a sister site seeking users stories about social care services. They do not collect only complaints though and are also keen to hear good stories about the care that people have received. Various hospital organisations get alerts from Patient Opinion when a story is received about their organisation. However there are no requirements on organisations to do this. There are no procedures in place to track response times or what happened as a result of complaints made in this way as there is in most formal complaints processes.

Jane noted that complaining is becoming more public thanks to the rise of social media. Private sector services use social media to respond immediately with an apology. Train companies are especially good on the use of Twitter to head off complaints before they get going. Some companies will even open a complaint for you if you are not satisfied with their initial response. This is not the case for government bodies some of whom are still banning staff from using social media professionally. Citizens are still using this technology to complain to government, in public. And their experience with the private sector means that they expect government organisations to be using these tools too. But there is no equally public response from government. And again the citizen is left feeling unheard.

Jane then moved on to address the issue of why the redress maze matters for government. Research and practice findings show that redress information is incredibly useful for service quality. But government has a problem with collecting complaints data. The fragmenting of this information across complaints silos compounds this problem. Spending on running complaints processes is replicated as well as the costs of not seeing potential 'service delivery disasters'. Government is also missing out on new sources of data.

When she and colleagues at the LSE asked government departments and local authorities to provide redress data, Jane found that there was a mixed response. Some had good data. But overall there is very little data on costs. Most government bodies did not record information on complaints if they were solved with one phone call or interaction. Clearly having a problem sorted in one interaction is best for the citizen, but the government may lose valuable information on pinch points in services that would be valuable to know. Often there is no record of complaints where the service has been contracted out. It's important to have data because it shows the redress sector is sizeable and its scale can be hidden by lack of consistent oversight.

Jane suggested that digital tools could be providing Government with new sources of data. Everyone with a smart phone now has a public voice and public camera.

In bringing her presentation to a conclusion, Jane noted that change may come from the grass roots as more savvy citizens and more digitally enabled government bodies make more use of the information they actually hold and the new information they can collect. But she suggested that research she and colleagues at LSE had undertaken suggests that there is also scope for joined up oversight of the redress sector to bring far reaching changes to public services. They argue strongly that England needs a single public sector ombudsman: an idea whose time has come. She suggested there are a number of reasons for this: it would make it easier for citizens to know who to complain to; would provide a focal point for citizen redress in England; would provide an oversight to all public services in England; and save money. For such a service to be effective Jane indicated that there would need to be both citizen-centred and process changes to the way things currently operate.



#### **Independence and accountability – lessons learned: Baroness Nuala O'Loan**

Nuala opened her remarks by indicating that her brief was to explore accountability in the context of policing, drawing on her experience as Police Ombudsman for Northern Ireland. Policing is critical to a stable economy. If policing is corrupt, those who are policed become alienated and a vicious spiral develops. Trust is the key to the delivery of public services. Police need the people as much as people need the police.

The Patton Inquiry identified principles which should apply to the police service. Nuala believes that these principles apply to every public service in every country.

They are:

- The service has to be professional, effective and efficient
- That it is fair and impartial
- That it be free from partisan political control
- To be accountable under the law for its actions, and to the community it serves
- To be representative of the people
- That it operates within a coherent and cohesive criminal justice system

One of the critical things for policy is clarity of roles: who does what, and who has oversight of what. There must be appropriate separation and clear understandings between agencies about who does what, when, why, and in what manner. Nuala stressed that it is at the level of the individual interaction that accountability is crucially important. It is the rude doctor, or the teacher that doesn't care, that causes the problem.

One of the things Nuala learned very early on, and repeated throughout her career, is to look at why things go wrong. One of the big issues is political interference. The strength of leadership and police culture are also important factors. She noted she has seen so many examples where senior officers occupying influential positions contributed very little to normal policing processes, and this creates a management and leadership lacuna. Into this lacuna those with malevolent intent will move. And those who don't care or will not bother to do things they should do.

Nuala stressed that if people know that failures of duty won't be picked up, and if whistleblowers won't be listened to, then you will not have the level of service delivery you want to achieve. She noted she had heard something that astonished her the other day. A senior person giving evidence who said there is no such thing as an altruistic whistleblower. She indicated that if you were in a senior management position and you thought that, you should think very seriously if you were meant for that position. There are altruistic whistleblowers. There are people who will sacrifice their life and careers to try to make things right. Whistleblowing is important. Often it is seen as almost a pejorative term, and that is something we need to think about, as it is service improvement they are after.

Ethical leadership is important. Zero tolerance of abuse, whether in care homes for the elderly, a school, or a police station. There is a need to make apologies when things go wrong, both public and private. Apologies still aren't popular or fashionable enough.

Nuala also stressed that if we don't provide training and equipment to staff, we can't expect them to maintain professional standards.

With regard to complaints systems, Nuala noted the need for direct interaction with the complainant, remembering that many complainants cannot use the internet, or perhaps even read or write. She also emphasised that it is important that the complaints system can examine systemic failures. This provides good management information for staff of the service. It is also important that organisations dealing with complaints have the capacity to make recommendations. She gave the example of if you reduce the number of assaults and associated complaints, the number of people who suffer injury by taser, cs spray, batons etc. also reduces, the amount of compensation the police have to pay out reduces, and the number of officer days lost due to injury reduces (and the compensation paid to them). There are real benefits to be gained from maintaining good management information systems of complaints and mining it in a proper way.

Independent verification of police and the justice system is one tool. If used in conjunction with proper leadership, management training, equipment and resourcing, good policy and practices, you get better policing. Nuala emphasised that positive leadership, not just warm words, is necessary on the part of all leaders of all the institutions throughout the criminal justice system.

Nuala closed by stating that independent investigation can identify wrong-doing and present a case for prosecution and discipline. It can identify cases where the evidence doesn't support the allegations and make this quite clear. It can grow confidence that there is a purpose to making a complaint, because people often feel that there is no point to complaining. And it can give confidence to the community.



## **Accountability and performance – reflections on the report of the Independent Panel on Accountability and Performance: Kevin Rafter, Professor of Political Communication**



Kevin opened his remarks by saying he would focus on the independent panel on accountability and performance set up in January that he chaired, and whose recommendations have been incorporated into the Government's civil service renewal plan launched last week.

With regard to the background to the establishment of the independent panel (which apart from Kevin included Dorothea Dowling and Michael Howard), it arose in the context of a perceived need to enhance and clarify public accountability for the civil service. The panel's work was informed by issues raised in a consultation paper issued by the Department of Public Expenditure and Reform; they received submissions from institutions and individuals; and they held about 60 meetings with current and past ministers and secretaries general, special advisers, representative groups and other individuals. He took notes of meetings as chair but there was no formal record, and he believes this meant that people felt they could speak openly and freely. Also, none of the panel had 'skin in the game'; career paths likely to be affected by any recommendations they might make.

Kevin addressed the questions as to what guided their recommendations. They saw a need for a clear and unambiguous report, with recommendations that if accepted could be implemented quickly. They didn't want to require legislative change, recognising that there is existing legislation that maybe hasn't been exploited enough. Recommendations should address the problems and challenges raised in their consultation process. It was also important to ensure there is greater oversight of how the civil service does its business, and ownership of the recommendations.

In arriving at recommendations, they considered lessons from previous reform experience, and three in particular: changes must be integrated and joined-up; reform must be properly resourced; and there must be clear ownership at political and administrative level with leadership in both systems.

Kevin noted that while he would focus in his presentation on two recommendations in particular (the establishment of an accountability board and creation of a head of civil service post) the report contains other important recommendations, such as renewed strategy statements, more focused engagement with Oireachtas committees, and a programme of organisational capability reviews. He also mentioned that the performance management recommendations have the potential to be a game changer.

The panel's top line recommendation was the creation of an accountability board, with external representation, to hold the civil service to account for its actions. It means the civil service will have at its peak a board of directors. Bringing in external membership will bring different professional experience from diverse backgrounds. The panel recommended appointing people with exceptional experience and significant career records – not just the 'usual suspects'. The board has a specific defined remit with regard to the implementation of cross-cutting issues, dealing with capacity and capability in the civil service, and performance management of senior staff. Kevin expressed a hope that the board will be a place where issues are reviewed and challenged, where people are asking questions about accountability and performance.

The panel also recommended continuing permanency of civil service employment, alongside flexibility in defined circumstances. The panel believed that having a permanent civil service supports an independent civil service, where taking the long view on policy design is possible. But this means the civil service must use their employment status to challenge and review: this is one of the lessons from the crisis and the crash.

The panel looked at the experience of departmental boards in the UK, Canada and Australia and thought them a good thing. Kevin would hope that once the accountability board has proved its worth, all civil service departments should have a management board including external members.

With regard to the panel recommendation for a head of civil service appointment, Kevin noted that the panel, on the basis of analysis of experience elsewhere, were convinced of the merit of having a dedicated, formal permanent head of civil service position, with a remit with regard to performance management, cross-cutting issues and capability reviews, and reporting to the accountability board. The government accepted the argument for a more cohesive corporate centre, but rather than take the bold step of appointing a head of civil service opted to go for a civil service management board. In Kevin's view this was a pity and he sees the management board (composed of all departmental secretaries general) as a compromise measure. All the members of the management board have exceptionally busy

day jobs and he has concerns about the size of the board, and that the board will not have the singular focus the panel envisaged. Also, it is unclear how the management board will relate to the accountability board so that its own work is reviewed and challenged. Kevin's view is that there may be a period of transition and that the political and administrative system will re-visit this issue relatively soon. He was heartened to hear Minister Howlin, at the launch of the civil service renewal plan, say that he was open to re-visiting the issue. The positive to be taken is that the issue of greater unity and cohesion across organisations has now been taken on board, and he sees that as a significant step.

Kevin summed up by noting that the panel was a fascinating project to be involved with. Their work has already had substantial impact. But no single proposal can transform accountability and performance. With civil service buy-in and political support, it is possible to deliver a radical shake up to the civil service and show that the lessons of the crisis have been learned.

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