

Citizens have a right to be treated properly by government. And generally they are. That's what we believe in as a society and the government machine we have created is based on that ethic. But just occasionally things go wrong. And then it's a good thing if individual citizens who feel aggrieved or unjustly treated can turn to an independent body for protection. That body is the National Ombudsman. The National Ombudsman plays an effective part in restoring confidence in government. He does so by engaging in a constant dialogue with civil society organisations and elected representatives and by acting on his own initiative to draw attention to problems. And, perhaps even more importantly, by taking effective action to solve them. He does so by sharing his expertise with government bodies, instituting investigations, raising instances of unfairness or cutting through red tape.



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Capitalising on Citizenship



2007 Annual Report
of the National Ombudsman of the Netherlands

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Summary

2007 Annual Report of the National Ombudsman
of the Netherlands

Contents

Preface	3
Capitalising on citizenship	4
Strategic trends	9
Statistical overview of the work of the National Ombudsman	11

Preface

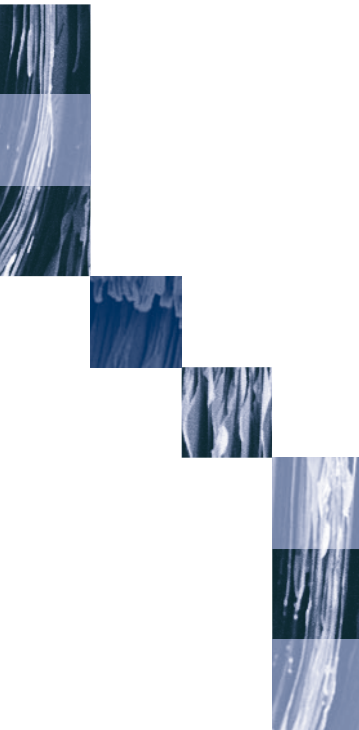
Capitalising on citizenship was the chosen theme for a year which marked the 25th anniversary of the institution of National Ombudsman in the Netherlands. It was intended as a wake-up call to politicians and public administrators to do more to develop citizenship. After all, the individual citizen is the basic currency of good and efficient government.

The year was dominated by the anniversary celebrations. These included the first ever Dutch Citizen’s Day in March and the publication of a book entitled *Werken aan behoorlijkheid* (‘Working to achieve proper conduct’). The latter contains interesting essays on the work of the National Ombudsman and will be a rich source of inspiration for the further development of his activities. The year was also memorable for the announcement by the House of Representatives that the National Ombudsman should henceforth present his annual report to parliament in person. Another welcome development was the slight down-turn in the number of complaints received by the National Ombudsman in 2007, following the rocketing figures in 2006. The Immigration and Naturalisation Service (IND) and the Employee Insurance Schemes Implementing Body (UWV) are clearly on the right track. They are making demonstrable efforts to improve communication with individual members of the public and these seem to be paying off. On the other hand, complaints about the Tax Department and the Information Management Group (IBG) have increased. The overall reduction in the volume of complaints seems to be accompanied by an increase in their complexity. Ever more complaints are being generated by the fragmentation of government tasks and their distribution among different agencies.

To get the clearest possible picture of citizens’ problems, complainants are increasingly being invited to discuss them on the phone or face-to-face. This approach is part of a general update in the way the National Ombudsman operates that is aimed at setting administrative authorities a good example of how to deal with complaints from the public.

Over the last 25 years, the National Ombudsman has done more than just handle tens of thousands of individual complaints. By instituting investigations on their own initiative, successive ombudsmen have also addressed structural problems, while reports on individual cases have provided a basis for an ongoing effort to develop standards of proper conduct. These activities are all part of a constant search for ways to strengthen the relationship between citizen and government. And there are more changes in prospect. For some considerable time the government has been pondering the possibility of an external complaints procedure in relation to the courts. The Netherlands also has an international obligation to establish a National Human Rights Institution. And UNICEF Nederland and Defence for Children are calling for the appointment of a children’s ombudsman under the United Nations’ International Convention on the Rights of the Child. The National Ombudsman sees all three developments as appropriate extensions of his existing duties.

Dr Alex F.M. Brenninkmeijer
National Ombudsman of the Netherlands



Capitalising on citizenship

In the current political culture of the Netherlands, the citizen is not seen as the source of state authority.

As a result, members of the public have little sense of personal involvement in public affairs and citizenship is slow to develop. The citizen is passive rather than active and authorities are apt to take decisions over citizen's heads without adequately involving them in the process. At the same time, the government machine has no incentive to be service-minded in its relations with individual citizens.

In recent years, there has been a policy of making government more businesslike and introducing market forces. This is not working and is leading to an undesirable hardening of attitudes within society.

Things could be different if authorities paid serious attention to three interfaces that the ombudsman sees as essential to the relationship between individual citizens and government: personal attention, proper conduct and participation. A greater investment needs to be made in strengthening citizenship and thereby creating a more meaningful relationship between individual citizens and government. We need to capitalise on citizenship.

Interface 1: personal attention

Personal attention is an 'interface' between the citizen and government in the most literal sense of the word. A beat policeman who behaves in a firm but polite and professional way can generally count on the cooperation of the public. The vast majority of people will respond positively to him. This is the kind of personal attention that citizens hope to receive when they phone large bureaucratic organisations like the Tax Department or the Employee Insurance Schemes Implementing Body. They do not appreciate being fobbed off with a telephone menu and the anonymous voice of some call centre worker. What they want is to talk to an official willing to listen to their problem and help them with it. Such personal attention turns the citizen from a mere pawn into an active player engaged in a meaningful relationship with government. It also allows government officials to act as true professionals.

From the point of view of the government machine, such personal attention cannot always be provided. Many processes are fully automated and government works on a tight budget. Indeed, personal contact is not always necessary. It is time-consuming and anyway, given that the main aim of government is to achieve the correct implementation of statutory provisions, there may be little if any point in 'discussing' things with individuals. There are many reasons for giving a low priority to personal attention. On the other hand, paying personal attention to individuals is a powerful means of strengthening the relationship between citizen and government.

Interface 2: proper conduct

To show respect for the citizen as a human being, government needs to behave properly in its contacts with individuals. Citizens want to be taken seriously; they want to be properly informed;

they want to understand government decisions. Simply referring them to the relevant statutory provision is often not enough: it evokes unnecessary resistance, which in turn produces complaints and objections. Over the last 25 years, the National Ombudsman has developed standards of proper conduct based on actual cases and expressed in thousands of reports. In deciding what constitutes proper conduct, he considers not only what the law says but also what people instinctively feel is proper. To comply with the letter of the law is not enough. Whether conduct is proper also depends on what people think about it and whether they feel it is just and fair. If a citizen feels unfairly treated (because an authority has not acted properly) or aggrieved (for example, because of a perceived lack of respect), he may well dig in his heels. The body concerned will often be quite unaware of having given any offence.

Equality of treatment is an essential criterion of proper conduct: does every citizen receive 'his due'? But the way in which individuals are treated is equally crucial. The difference between distributive and procedural justice is important to the work of the National Ombudsman for two reasons. Firstly, citizens can usually check whether they are getting 'their due' by lodging an objection with the authority concerned and eventually applying for judicial review. Secondly, citizens are often unable to find out what 'their due' actually is and are therefore forced to focus more on the fairness of the procedure. Many cases brought to the National Ombudsman show that citizens can accept decisions that go against them, provided they feel they have received proper (i.e. fair) treatment. Such treatment is therefore indispensable to the public acceptability (i.e. the legitimacy) of government action.

Interface 3: participation

The third interface between the citizen and government is participation. Citizens' perception of procedural injustice is fuelled in part by the frustration they feel when decisions affecting them are made over their heads without giving them any say. Many forms of participation are possible. Sometimes the authority simply needs to be careful to ascertain the relevant information from the citizen and to deal carefully with it. In other cases, it needs somehow to involve citizens in the actual decision-making process.

Many good methods of organising public participation now exist. Many government bodies use mechanisms like people's panels and client councils. One of the most important ways in which authorities can strengthen participation is to strive to organise face-to-face discussion between all the relevant parties at appropriate moments. Another is to use mediation methods and have discussions chaired by neutral figures with appropriate expertise in the field of interactive decision-making processes.

Participation helps to produce two important results. Firstly, it can enhance the quality of government decisions and the effectiveness of government policies. Secondly, by helping to bring about consensus, it increases public acceptance of government policies. By reducing individuals' desire to object or apply for judicial review, effective forms of participation can also counter the juridification of relations between government and citizen.

Impact

What impact can be expected if authorities pay people more personal attention, take care to behave properly towards individual citizens and strive to create scope for public participation? Citizens approached in this way are likely to feel greater satisfaction with the authority concerned and public confidence will be greater. However, citizens need not always get their own way. Authorities are entitled to make political choices with which individual citizens may disagree. Provided they communicate with citizens about such choices in a reasonable way, the public will usually respect their decision. Citizens tend to be far more reasonable than is generally assumed in the public discourse. Moreover, this way of approaching people will encourage the growth of citizenship in Dutch society. A company's customers can 'vote with their feet' and television viewers can zap to another channel. But there is little – short of emigration – that a country's citizens can do to escape the clutches of government bodies with which they are at loggerheads.

Role of the National Ombudsman in setting an example

The three interfaces that can be used to strengthen the relationship between the individual citizen and the system of government – personal attention, proper conduct and participation – are also applicable in the work of the National Ombudsman. In that sense, his work can set an example for government. In 2008, therefore, direct personal contact with complainants will become the rule. As regards proper conduct, citizens have always felt properly treated by the Ombudsman. Where participation is concerned, the practice will be to phone complainants at an early stage to discuss how their complaints should be handled and to report regularly to them on progress. In more complex or distressing cases, the initial discussion may take the form of a face-to-face meeting to explore what the complainant hopes to achieve and what the Ombudsman can offer.

Over the years, the Ombudsman has developed a method of tailored intervention whereby he seeks in consultation with the relevant authority (or its spokesman) to find the quickest possible solution to the alleged problem. This can range from a rapid response to a question to the payment of a long overdue benefit or allowance. A total of 2,899 interventions were made in 2007.

Downside of political principles

The coalition agreement signed by the current government gives pride of place to an alliance between government and the community: government should be dependable and solve problems by working hand in hand with the public. The policy document on central government reform contains the first details of concrete plans in this respect. Unfortunately, the main emphasis is on civil service cuts and improving the relationship between government and citizen appears to be of only peripheral concern. The main idea seems to be that improved government efficiency will produce greater public satisfaction. But if public satisfaction is the goal, it would seem advisable to take the aforementioned three principles of good public service provision (personal attention, proper conduct and participation) as the starting point for reform.

There is a strong temptation for government to introduce market forces into its operations by way of privatisation, the 'liberalisation' of government tasks and internal competition. Many areas of government activity seem to lend themselves to this and the Netherlands has experimented with this

approach in recent years. Performance-based contracts can also be used by government to provide incentives. From the point of view of the individual citizen, the question is how far the introduction of market forces and efficiency incentives actually produce greater satisfaction. Moreover, it is questionable whether 'client satisfaction' can remain a long-term measure of government success.

Increasing confrontation between citizens and government

Attitudes within society are becoming increasingly confrontational. The National Ombudsman takes the trend in relations between the public and the police as an indicator in this respect.

The relationship is particularly sensitive because of the unilateral powers of the police to use appropriate force. Research reveals a growing confrontation between the police and the public over the last 25 years. In today's more individualised society, a more vocal public is readier to stand up to police authority and may be short-tempered in doing so. At the same time, research by the Ombudsman reveals that the police are exhibiting less patience. Where officers used to allow citizens to have their say, they are now more likely to turn a deaf ear. There is greater emphasis on enforcement. This hardening of attitudes is all the more unfortunate because research shows that the vast majority of people never do anything wrong: less than 2% engage in criminal behaviour.

The past year produced more examples of hardening attitudes. The Municipality of Amersfoort and more recently Vlaardingen decided to crack down on nightlife violence at weekends. The ironically named 'weekend arrangement' widely publicised in the media is intended to make it as inconvenient as possible to be detained by the police. The possibilities presented by the criminal law are fully exploited with the aim of extending detention right through to Monday lunchtime, so that detainees are unable to turn up for work on time.

A zero tolerance policy does not justify unnecessarily tough police action or behaviour that amounts to the imposition of sanctions without the intervention of the courts.

"Exceptions to the rule"

Government bodies are too inclined to brush off criticism by saying that the cases concerned are 'exceptions'. Fobbing people off like this reveals the indifference that gives government a bad name. It also shows a defensive attitude that makes it difficult for authorities to learn from their mistakes. It is true that parliament frequently makes much of incidents, creating political pressure for new legislation or policy in response to each passing issue. And, of course, the media often hypes individual cases, creating the impression that the exception is the rule. But this is no excuse for refusing to look for the lessons that can be learned when things go wrong. The Ombudsman sees it as his duty to help government increase its capacity to learn such lessons wherever possible. To achieve this, it is not sufficient for the Ombudsman to investigate individual complaints. Experience shows that an individual complaint may just be the tip of the iceberg.

Individual complaints are not the only indication of shortcomings within government. Faults in the system can cause problems without prompting a stream of complaints, or the complaints they produce may not be directed towards a particular government body. Two investigations undertaken on the Ombudsman's own initiative in 2007 showed that the relevant authorities' defence that the

cases were ‘exceptions’ was entirely wrong. The investigations related to the dismissal procedure at the Central Organization for Work and Income and the preparation and use of individual reports in asylum procedures.

Conclusion

People do not expect government to achieve miracles. Citizens generally accept the outcome of political and administrative decision-making procedures, even if they have to swallow hard first. The important thing is the public’s confidence in government. Experience shows that this can easily be shaken and that lack of public confidence is a risk to the political system. Such risks can be reduced by treating citizens in the right way. Not as clients and not by government bodies that have market discipline as their watchword. In fact, a one-sided emphasis on market forces and over-businesslike government make the public apprehensive. After all, the power of government is an important counterweight to that of the private sector.

The government system can capitalise on citizenship by adopting a personal approach, ensuring proper conduct and using participation to encourage an active sense of involvement in the minds of citizens. This will increase not only public satisfaction, but also public confidence in the authorities. In any country, committed citizens are its government’s greatest asset. Authorities should turn that asset to account in their day-to-day work. If they do so, they will find the National Ombudsman a dependable partner for themselves as well as for the public.

Strategic trends

The Dutch Constitution provides for a National Ombudsman, the General Administrative Law Act (Algemene wet bestuursrecht) establishes the procedural framework for his actions and the National Ombudsman Act (Wet Nationale ombudsman) spells out the institutional arrangements. However, this clear legislative framework does nothing to prevent recurrent debate about the position of the National Ombudsman and the scope of his powers.

Scope of powers

The National Ombudsman’s remit is to investigate actions by government bodies, or what the law calls ‘administrative authorities’. But how exactly should the term government be delimited at a time when it is increasingly hiving off its activities to private-law constructions such as not-for-profit organisations and engaging in sometimes complex forms of public-private partnership?

The law excludes so-called ‘b-authorities’ (non-governmental bodies invested with public authority) from the National Ombudsman’s jurisdiction, but members of the public find it incomprehensible that he lacks the power to deal with complaints about institutions which ordinary citizens perceive as part of ‘government’ (such as bodies responsible for probation work and the care and resettlement of offenders, victim support organisations, the Advice and Reporting Centres for Child Abuse and Neglect and the youth crisis intervention teams).

In 2007 the National Ombudsman devoted special consideration to the limitations on his powers. This was one of the subjects discussed with leading experts at his 25th anniversary symposium, held on 1 November 2007. There proved to be strong support for the idea that the National Ombudsman should adopt his own interpretation of the term ‘administrative authority’, tailored to his remit. A possible criterion for determining whether an activity can be regarded as an action of government is whether it is ‘funded, decided or organised by government’. The National Ombudsman feels that a suitable opportunity should be taken to amend the General Administrative Law Act to replace the present definition of ‘administrative authority’ by one that takes better account of his remit.

Netherlands Antilles

The changes currently envisaged in the constitutional status of the Netherlands Antilles are expected to result in the islands of Bonaire, St Eustatius and Sabah being given a status comparable to that of Dutch municipalities. From the end of 2008, these islands may well fall within the jurisdiction of the National Ombudsman.

Ombudsman for children

The Netherlands has no umbrella organisation to which children can take their questions, complaints or comments concerning the protection of their rights. A study by UNICEF Nederland and Defence for Children International Nederland reveals that the Netherlands is failing properly to observe the rights of the child, especially in the fields of immigration policy, health care and youth welfare.

There is widespread debate on whether the United Nations’ International Convention on the Rights of the Child makes it necessary to establish a children’s ombudsman. The National Ombudsman feels it is crucial that the interests of the child should come first and has offered to take on the tasks that flow from the Convention. Some of these are already part of his remit, such as processing and resolving complaints, conducting investigations on his own initiative, advising on legislation and policy, and – not only as part of actual complaints procedures – identifying problem areas in the work of government bodies and helping them to devise possible solutions and improvements. A limitation in this respect is the fact that the private sector falls outside his jurisdiction. With this possibility in mind, a special investigation team was set up in 2007 within the Office of the National Ombudsman to deal with cases involving children.

National Human Rights Institution

As a state governed by the rule of law, the Netherlands attaches great importance to human rights. The coalition agreement signed by the current government says that human rights can contribute to social integration and cohesion. For the National Ombudsman, human rights are also important benchmarks for the propriety of government conduct. The members of the United Nations have agreed that each country should have an independent national human rights institution meeting specific criteria. Such institutions are to be tasked with promoting human rights, for example by issuing advisory reports, conducting research, providing training, cooperating with government authorities and non-government organisations (NGOs) in the human rights field.

Preparations for the establishment of such an institution in the Netherlands are now in full swing. The National Ombudsman, the Data Protection Authority, the Dutch Equal Treatment Commission and the self-styled Netherlands Institute of Human Rights (SIM) have set up a consortium to work on the creation of a National Human Rights Institution (NHRI) meeting the criteria laid down by the UN. The government will decide what it wants to do in 2008. If it decides not to establish a separate NHRI, an obvious alternative would be to include the role of the NHRI in the remit of the National Ombudsman. In that case, however, it would be important for the NHRI to have a distinct identity in the eyes of the public.

Statistical overview of the work of the National Ombudsman

Complaints to the National Ombudsman

This year, for the first time ever, there was a downturn in the number of complaints made in writing to the National Ombudsman. In contrast to the sharp increase in 2006 of 23% on the previous year, the number of written complaints fell in 2007 by 9.3%. The number of cases completed and closed in 2007 was 13,096.

Tabel I Volume of written complaints

Complaints	2004	2005	2006	2007
Total received	11,156	11,852	14,607	13,242
Closed	11,347	11,451	14,910	13,096
Pending at 31/12	1,602	2,006	1,704	1,850

Figure I Volume of written complaints

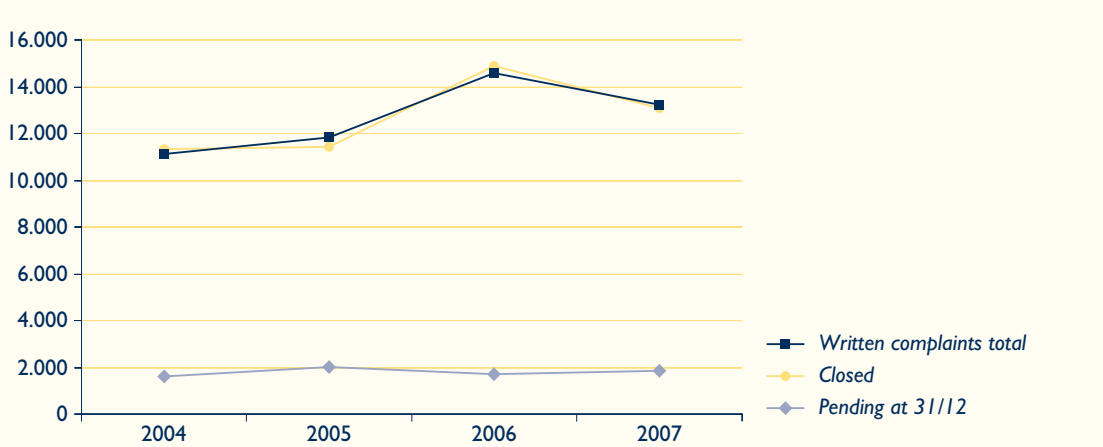


Table 2 Complaints received in different areas of the National Ombudsman's jurisdiction

	2005		2006		2007	
	Number	%	Number	%	Number	%
Ministries¹⁾						
General Affairs	23	0.2	9	0.1	10	0.1
Foreign Affairs	380	3.7	355	2.7	219	2.0
Justice	875	8.6	819	6.3	978	8.8
Immigration and Integration ²⁾	1,149	13.9	987	7.6	439	4.0
Interior and Kingdom Relations	49	0.5	65	0.5	70	0.6
Education, Culture and Science	317	3.1	270	2.1	364	3.3
Finance	1,332	13.0	3,331	25.6	3,439	31.0
Defence	55	0.5	74	0.6	71	0.6
Housing, Spatial Planning and the Environment	717	7.0	572	4.4	229	2.0
Housing, Communities and Integration	-	-	-	-	-	-
Transport, Public Works and Water Management	185	1.8	325	2.5	324	2.9
Economic Affairs	32	0.3	39	0.3	35	0.3
Agriculture, Nature and Food Quality	46	0.5	45	0.3	43	0.4
Social Affairs and Employment	2,129	20.8	2,717	20.9	1,728	15.6
Health, Welfare and Sport	410	4.0	773	6.0	472	4.3
Youth and Families	-	-	-	-	1	0.1
Government Reform and Kingdom Relations	-	-	8	0.1	13	0.1
Development Cooperation	2	0.1	1	0.1	-	-
Police	930	9.1	974	7.5	918	8.3
Regulatory industrial organisations	6	0.1	5	0.1	9	0.1
Subnational government						
Mayors	7	0.1	6	0.1	3	0.1
Water boards	141	1.4	162	1.2	140	1.3
Municipalities	1,093	10.7	1,324	10.2	1,431	12.9
Provinces	49	0.5	43	0.3	59	0.5
Joint bodies	9	0.1	64	0.5	76	0.7
Total	10,206	100	12,968	100	11,071	100

¹⁾ Including autonomous administrative authorities.

²⁾ Since 22 February 2007 there has been no separate minister with this portfolio.

In general, there was a slight downward trend in the number of complaints. The major exception was the Tax Department, where the bulk of the extra complaints related to the administration of rent, health care and child care allowances. Another exception was the Information Management Group.

The overall downturn seems not to have been a lucky accident, but can be attributed to deliberate policy changes on the part of bodies like the Employee Insurance Schemes Implementing Body (UWV) and the Immigration and Naturalisation Service (IND). It appears, however, to have been accompanied by an increase in the complexity of complaints. Ever more of them are being generated by the fragmentation of government tasks and their distribution among different agencies.

Oral complaints

People who phone the National Ombudsman or walk in off the street are served by front office staff. The front office has a free telephone number. People who adopt this approach often do so because they are unable to find their way around the government machine or because they have consumer issues. The main function of the front office is to provide information and use its expertise to refer people to the right body. However, contact with the front office may also lead on to the submission of a written complaint. The front office acts as a kind of filter, letting through only those complaints that lie within the National Ombudsman's jurisdiction. The number of such contacts in 2007 (24,354) was down 8% on the 2006 figure (26,862).

Over the years there has been a striking increase in the proportion of matters brought to the front office that actually lie within the jurisdiction of the National Ombudsman. The publicity campaign run between 1 October and 11 November 2007 supported this trend. In the course of the campaign, there was a slight increase in the number of complaints about the police. The front office also records complaints by people who say they are unable to draft a written complaint themselves because of problems like functional illiteracy and dyslexia.

Website

There was an increase in the number of people visiting the website in 2007 compared with the previous year: 385,306 compared with 270,000 in 2006 and 194,000 in 2005. Peak months in 2007 were March (coinciding with the presentation of the 2006 Annual Report and Citizen's Day) and November (during the publicity campaign). Visitor numbers in these peak months were around 40,000: comparable to peak months in 2006.

Method of resolving complaints

Table 3 shows the heavy use made of the intervention method (in almost three-quarters of cases). Intervention by the National Ombudsman or his staff often produces an immediate concrete solution to the complainant's long-running problem. Cases which lend themselves to this approach range from those where a quick answer to a question is required through to ones concerning delays in the payment of benefits or allowances.

Table 3 also shows a decline in cases where authorities have failed to recognise or deal with a complaint and the National Ombudsman has to call on them to do so without further delay: down from 27.5% in 2005 to 13.3% in 2006 and 10.3% in 2007. The proportion of cases leading to reports has increased slightly (8.7% in 2007 compared with 7.4% in 2006) but absolute numbers have declined (from 421 in 2005 to 401 in 2006 and 339 in 2007).

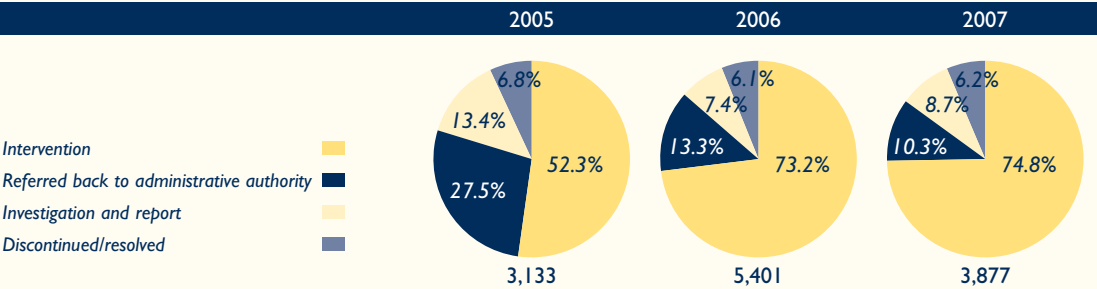
In 2007, the number of case reports issued was 334 (compared with 400 in 2006). Finally, the year also saw the publication of nine reports based on investigations undertaken on the ombudsman’s own initiative, compared with seven in 2006.

Table 3 Method of resolving complaints accepted for investigation

	2005		2006		2007	
	Number	%	Number	%	Number	%
Intervention	1,638	52.3	3,952	73.2	2,899	74.8
Referred back to administrative authority	861	27.5	719	13.3	399	10.3
Investigation and report	421	13.4	401	7.4	339	8.7
Discontinued/resolved	213	6.8	329	6.1	240	6.2
Total	3,133	100	5,401	100	3,877	100

N.B. In 2005 417 reports were issued related to 421 complaints.
In 2006 400 reports were issued related to 401 complaints.
in 2007 334 reports were issued related to 339 complaints.

Figure 2 Method of resolving complaints accepted for investigation



Duration of complaints procedure

In the course of the year, systematic efforts were made to speed up the processing of complaints. The result was a considerable reduction in the number of investigations taking over forty weeks: from 523 in 2006 to 363 in 2007.

It also proved possible to provide an adequate response to people whose complaints fell outside the jurisdiction of the National Ombudsman well within the established standard period of five calendar days. Of the 9,219 complaints not accepted for investigation, 6,641 (= 72%) were the subject of an appropriate referral or advice within four weeks. This compared with 6,048 out of 9,509 (= 63.6%) in 2006.

Complaints about the National Ombudsman

In 2007 the National Ombudsman received 42 complaints about himself and his staff, compared with 28 in 2006. They were dealt with in accordance with the Office’s own internal complaints procedures.

Half of them could be dealt with quickly and informally to the satisfaction of the complainant. A telephone call was frequently sufficient. In 65% of cases, the allegation was found to be justified. The complaints related to delays, discourtesy, failures in active and adequate information provision, and administrative errors.

Production credits

Cover photo shows Alex Brenninkmeijer, National Ombudsman of the Netherlands.

Publication: National Ombudsman's Office, The Hague

Cover photo: Eric de Vries, The Hague

Editing: Sandra van Noord, Bureau voor Tekst en Redactie, Delft

Translation: Janey Tucker, Diesse (CH)

Design: Zwart op Wit, Delft

Printing: Van Tilburg, Waddinxveen

March 2008