

# **BRITISH AND IRISH OMBUDSMAN ASSOCIATION**

## **SCHEDULE 1 TO THE RULES**

### **CRITERIA FOR THE RECOGNITION OF OMBUDSMAN OFFICES**

#### **A. GUIDING PRINCIPLES**

The Association will afford recognition as Ombudsman Offices to those bodies whose core role is to investigate and resolve, determine or make recommendations with regard to complaints against those whom the Ombudsman is empowered to investigate; and which meet the detailed Criteria set out below.

The Association will only give recognition to Ombudsman's Offices whose primary role is to handle complaints by individuals about maladministration, unfair treatment, poor service or other inequitable conduct by those subject to investigation.

The Association recognises and values the wide range of Ombudsmen schemes in the public and private sectors and the variations in their constitution, jurisdiction, powers and accountability. The Criteria for Recognition of Ombudsman's Offices have been drawn up with that in mind and the Association will apply the Criteria with sufficient flexibility to encompass those variations.

The Association expects users of Ombudsman schemes in the public and private sectors to have comprehensive and coherent coverage and clear and simple access to Ombudsmen and will take account of this when considering applications for membership of the Association.

In the case of private sector schemes, the Association is opposed to the fragmentation of redress schemes within a single industry. The Association prefers there to be a single Ombudsman within an industry. Where more than one scheme is established within an industry, the Association will normally only afford recognition to the scheme or schemes to which a substantial number of firms in the industry belong.

#### **Criteria**

The Association's Criteria for the Recognition of Ombudsman Offices are set out in detail in Part B below. The five key Criteria are:

- Independence
- Fairness
- Effectiveness
- Openness and transparency
- Accountability

#### **Governance**

The Association expects Ombudsman Members to comply with its Principles of Good Governance (and any amendments thereto).

#### **Principles of Good Complaint Handling**

The Association expects Ombudsman Members to operate in accordance with its Principles of Good Complaint Handling (and any amendments thereto).

### **Use of the title of 'Ombudsman'**

The title of 'Ombudsman' should not be used unless the Association's Criteria for Recognition of Ombudsman's Offices are met. The Association will not admit to Membership in any category organisations or individuals which use the title of 'Ombudsman' but do not meet the Association's Criteria.

The Association also hopes that, in the interests of users, organisations which meet the Criteria for Recognition of Ombudsman's Offices will use the title of 'Ombudsman' unless there is a good reason not to do so.

### **Recognition**

The decision on whether a scheme is recognised as meeting the Criteria will be made at the discretion of the Executive Committee or by a General Meeting of the Association on the recommendation of the Validation Committee.

### **Review**

The Validation Committee will also, when requested to do so by the Executive Committee or a General Meeting of the Association, review whether existing Ombudsman Members continue to meet the Criteria for Recognition and advise the Executive Committee accordingly.

## **B. CRITERIA**

### **1. Independence**

- (a) The Ombudsman must be visibly and demonstrably independent from those whom the Ombudsman has the power to investigate.
- (b) The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint by majority decision.
- (c) The term of office should be of sufficient duration not to undermine independence. The appointment should be for a minimum of five years. It may be subject to renewal but the renewal process should not undermine or compromise the office holder's independence.
- (d) The remuneration of the Ombudsman should not be subject to suspension or reduction by those subject to investigation, but this does not exclude their minority representation on the body authorised to determine it.

- (e) The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated, although the nature of the grounds may vary from scheme to scheme. Those subject to investigation by the Ombudsman should not be entitled to exercise the power to terminate the Ombudsman's appointment, but this does not exclude their minority representation on the body which is authorised to terminate.
- (f) The Ombudsman alone (or someone acting on his or her authority) must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction. If it is, the Ombudsman (or someone acting on his or her authority) must have the power to determine it. The Ombudsman's determination should be final and should not be able to be overturned other than by the courts or an appeal route provided for by law.
- (g) Unless otherwise determined by statute the Ombudsman should be accountable to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. That body should also be responsible for safeguarding the independence of the Ombudsman.

## **2. Fairness**

- (a) The Ombudsman should be impartial, proceed fairly and act in accordance with the principles of natural justice.
- (b) The Ombudsman should make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law, to good practice and to any inequitable conduct or maladministration.
- (c) In all cases where it is decided not to accept the complaint for investigation, the Ombudsman should notify the complainant of that decision and the reasons for it.
- (d) In all cases investigated, the Ombudsman should notify the parties concerned of the decision and the reasons for it.

## **3. Effectiveness**

- (a) The office of the Ombudsman must be adequately staffed and funded, either by those subject to investigation or from public funds, so that complaints can be effectively and expeditiously investigated and resolved.
- (b) The Ombudsman should expect those subject to investigation to have accessible and fair internal complaints procedures.
- (c) Accessibility
  - (i) The right to complain to the Ombudsman should be adequately publicised by those subject to investigation.

- (ii) Complainants should normally have direct access to the Ombudsman scheme. If, exceptionally, this is prevented by law, the Ombudsman should seek to minimise the adverse impact on complainants.
  - (iii) The Ombudsman's procedures should be straightforward for complainants to understand and use.
  - (iv) Those complaining to the Ombudsman should be entitled to do so free of charge.
- (d) Powers and procedures

The Ombudsman should:

- (i) Be entitled to investigate any complaint made to the Ombudsman which is within the Ombudsman's jurisdiction without the need for any prior consent of the person or body against whom the complaint is made. This does not preclude a requirement that before the Ombudsman commences an investigation, the complainant should first have exhausted the internal complaints procedures of the person or body being investigated.
- (ii) Save as otherwise provided by law, have the right to require all relevant information, documents and other materials from those subject to investigation.
- (iii) Be entitled but not obliged, to disclose to the complainant or to the person being investigated such information, documents and other materials as shall have been obtained by the Ombudsman from the other of them unless there shall be some special reason for not making such disclosure, for example, where sensitive information is involved or disclosure would be a breach of the law.

(e) Implementation of Decisions

Either

- (i) Those investigated should be bound by the decisions or recommendations of the Ombudsman; or
- (ii) There should be a reasonable expectation that the Ombudsman's decisions or recommendations will be complied with. In all those cases where they are not complied with, the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.

#### **4. Openness and transparency**

- (a) The Ombudsman's Office should ensure openness and transparency so that members of the public and other stakeholders know why the scheme exists, what it does and what to expect from it; and can have confidence in the decision making and management processes of the scheme.

- (b) Information in the public domain should include a clear explanation of an Ombudsman scheme's legal constitution, governance and funding arrangements.
- (c) The jurisdiction, the powers and the method of appointment of the Ombudsman should be matters of public knowledge.
- (d) The Ombudsman should be entitled in the Annual Report, or elsewhere, to publish anonymised reports of investigations.

## **5. Accountability**

- (a) The Ombudsman, staff members and members of any governing body should be seen to be responsible and accountable for their decisions and actions, including the stewardship of funds.
- (b) The Ombudsman should publish an Annual Report and Annual Accounts.