

Institution: University of Sheffield
Unit of Assessment: 20 - Law
Title of case study: Influencing Governments' Policy and Strategy on Ombudsman Reform
<p>1. Summary of the impact</p> <p>Sheffield research on the role of Ombudsmen within the Administrative Justice (AJ) system has: (1) changed the approaches of Parliamentary and Local Government Ombudsmen in the UK with a view to improving their performance; (2) influenced government decision making on the reform of Ombudsman schemes in the UK and in Gibraltar; (3) contributed to forming opinions among parliamentary decision makers, via the Parliamentary Select Committee system; and (4) shaped debate and policy recommendations on administrative justice remedies within the Law Commission. The research has thereby addressed the challenges to the AJ system posed by the economic downturn and government austerity measures which carry the risk of deterioration in the quality of services available to citizens for the redress of grievances.</p>
<p>2. Underpinning research</p> <p>Since 2003, Dr Richard Kirkham in Sheffield's School of Law has engaged in theoretical, empirical and comparative research which analyses the role of Ombudsmen as part of the AJ system. The focus of the research is on understanding and enhancing the capacity of the office of the Ombudsman to promote good administrative practice and deliver justice to individuals for the redress of grievances. The research builds upon a tradition of socio-legal research on public law and AJ undertaken in the School of Law since the 1980s led by Professors Douglas Lewis and Ian Harden, and work by Rhoda James and Mary Seneviratne specifically on Ombudsmen. Kirkham's early work (2003-06) identified innovatory trends and unfulfilled potential in the operation of Ombudsman schemes in the UK [R1]. In 2006, Kirkham and two colleagues from other universities (Buck and Thompson) delivered an ESRC-funded project which explored Ombudsman schemes around the world in the context of the operation of the wider AJ system (2006-10). Kirkham was principal author of most of the main outputs, including [R2] [R4] [R5] [R6]. The research has:</p> <ul style="list-style-type: none"> • Developed a critical theoretical framework for exploring the nature, limits and potential of Ombudsmen by conceiving of Ombudsmen as a vital part of the evolving integrity branch of the constitution [R2] [R3], a fresh idea that challenges standard constitutional theory. • Shown how the office has evolved over the last decade [R2], and become a considerably more dynamic and valuable institution than formerly understood [R2] [R3] [R5]. Throughout the world there has been innovation both in the uses to which the office has been put, and in the methods applied by Ombudsmen in implementing their tasks. Kirkham and colleagues have argued that such developments should be mirrored in the UK, where appropriate. In particular, the research has explored the range of ways that Ombudsmen could be deployed to enhance public administration before disputes occur. • Identified a series of deficiencies in UK Ombudsman legislation, and made recommendations for legislative reform ranging from measures targeted at revamping the technical provisions that distribute work between the Ombudsmen and the courts, to the harmonisation of Ombudsman schemes through structural reorganisation [R2] [R6]. • Argued for more standardised and rigorous oversight of the office and explored different approaches by which this can be achieved [R3] [R5], including through enhanced interaction with Parliament, judicial scrutiny, and improved corporate governance schemes.
<p>3. References to the research</p> <p>R1. Kirkham, R., 'Challenging the Authority of the Ombudsman: The Parliamentary Ombudsman's Special Report on Wartime Detainees' [2006] 69 <i>Modern Law Review</i> 792-818.</p> <p>R2. Buck, T., Kirkham, R., and Thompson, B., <i>The Ombudsman Enterprise and Administrative Justice</i> (Farnham: Ashgate, 2011). (Foreword by Tony Wright, former MP and Chair of Public Administration Select Committee). (Kirkham 50% contribution, see Preface). The research for</p>

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the book was funded by ESRC: Thompson, B. (PI), **Kirkham, R.** and Buck, T., (2007-08) 'Public Services Ombudsmen and Administrative Justice: Models, Roles, Methods and Relationships' RES 000-22-2133.

- R3. **Kirkham, R.**, 'The Constitutional Role of the Ombudsman', *The International Ombudsman Yearbook*, Volume 10, 2006 120-140. (n.b. published in 2009).
- R4. **Kirkham R.**, Thompson, B., and Buck, T., 'When Putting Things Right Goes Wrong: Enforcing The Recommendations of the Ombudsman' [2008] *Public Law* 510-530.
- R5. **Kirkham, R.**, Thompson, B. and Buck, T., 'Putting the Ombudsman into Constitutional Context' (2009) 62 *Parliamentary Affairs*, 600-617.
- R6. Buck, T., **Kirkham, R.**, and Thompson, B. 'Time for a 'Leggatt' Style Review of the Ombudsman System' [2011] *Public Law* 20-29.

4. Details of the impact

The main pathway to impact of the research was the commissioning (by the Parliamentary Ombudsman and Local Government Ombudsman in the UK, and by the Gibraltar Ombudsman) of Kirkham to undertake three separate evaluations of Ombudsman schemes, resulting in three reports:

(1) *The Parliamentary Ombudsman: Withstanding the Test of Time*, HC 421 (2006-07). Published as a Parliamentary Paper, this report identified the Parliamentary Ombudsman's flexible legislative scheme as key to the office's success, but outlined a series of key aspects of its work as in need of reform.

(2) *External Evaluation of the Local Government Ombudsman* (2013) (with Richard Thomas, Chair of the Administrative Justice and Tribunals Council (AJTC) and Jim Martin (Scottish Public Services Ombudsman)). The report was produced in response to a recommendation of the Parliamentary Select Committee on Communities and Local Government (CLG), following user dissatisfaction with the organisation, *The Work of the Local Government Ombudsman* (2012-13) HC 431, (para 69). Kirkham was the lead researcher and author on the evaluation team (with Richard Thomas (Chair)).

(3) *The Gibraltar Public Services Ombudsman: A Model for the Future* (2013). The report explored the current jurisdiction of the Gibraltar Ombudsman and the limitations on its capacity to operate to its full potential. It made a number of recommendations, focusing in particular on corporate governance and on the need to enhance the interconnection between this office and Parliament.

The combined impact of Kirkham's research includes:

(i) *Changing approaches within Ombudsman schemes and informing best practice*

- Ombudsman schemes have changed their strategy and policies as a result of Kirkham's work. The UK Parliamentary Ombudsman has followed Kirkham's lead in seeking enhanced engagement with Parliament, a point accepted by the Parliamentary Public Administration Select Committee (PASC) when it examined Kirkham's report [S1] (Q.39-41). The Gibraltar Ombudsman's stated intention is to use Kirkham's evaluation as the basis for reform of the office, concluding that "without doubt, this report will mark a 'before and after' for the Ombudsman in Gibraltar" [S2]. The Local Government Ombudsman (LGO) has accepted almost all the recommendations of Kirkham et al's evaluation as confirmed in the minutes of its governing body, LGO Commission [S3], including proposals on independence and the restructuring of its corporate governance and quality control regime.
- The Parliamentary Ombudsman has placed Kirkham's consultation response at the heart of her efforts to obtain a legislative amendment to remove the MP filter (which denies citizens the right to bring a complaint directly to her) from the current scheme [S4] (p 23).
- Practitioner debate on best practice within the Ombudsman community has been regularly informed by Kirkham's research, with his work often directly cited by Ombudsmen [S5]. A

direct contribution to debate has been achieved through regular invitations to speak at the leading forums for senior practitioners, including the British and Irish Ombudsman Association (renamed the Ombudsman Association) in 2009, the Caribbean Ombudsman Association in 2008, and the International Ombudsman Institute (IOI) in 2012. The Chair of the IOI recently described Kirkham's presentation to its global quadrennial gathering as a 'stimulating opening to the Conference' [S6].

- Kirkham's argument that the Ombudsman should be considered as part of the integrity branch of the constitution [R2] [R3] has been taken up by several Ombudsmen in their writing, speeches and Parliamentary submissions [S5]. Kirkham's recent promotion of an own-initiative power of investigation for the Ombudsman has also been largely accepted by the British Ombudsman community [S5].

(ii) Influencing Governments' decision-making

- Kirkham's Gibraltar evaluation has been presented to the Gibraltar Chief Minister and separately to senior figures in the Gibraltar Government, with a view to introducing legislative reform [S2]. Kirkham's proposals are to: (1) amend the Ombudsman statute; (2) expand the office's jurisdiction; (3) reform the Ombudsman's legal powers; and (4) clarify key details of the relationship between the Ombudsman and the Government in Gibraltar.
- Kirkham's LGO evaluation was submitted to both the Department for Communities and Local Government (DCLG) and the CLG Parliamentary Select Committee for their consideration and response [S3]. Following the evaluation, the DCLG is conducting its own internal review, and the CLG is undertaking a Parliamentary inquiry in Autumn 2013. The evaluation includes the recommendation that the Government should grant greater autonomy to the LGO, and introduce amendments to legislation to facilitate enhanced independence and accountability.

(iii) Forming opinions within Parliament

- Kirkham's work with Buck and Thompson specifically recommended merger and reform of Ombudsman schemes in Northern Ireland [R2]. The need for legislative reform of the Northern Ireland Ombudsman has been accepted by the Committee of the Northern Ireland Assembly, citing their work [S7], with the Assembly taking the decision to introduce legislation.
- Kirkham was a member of a team of academics who submitted evidence to the Parliamentary Justice Committee arguing that the Administrative Justice and Tribunals Council (AJTC) should not be abolished, as per Government proposals. This work repeated the claims in favour of the AJTC made elsewhere in Kirkham's research [R2] [R6]. Citing the team's submission regularly, the Justice Committee produced a report (2012-13 (HC 965)) in favour of preservation of the AJTC, which led the Chair of the AJTC to thank personally members of the academic team. "Your combined submission was one of the most powerful the Committee received and clearly made an impact upon them" [S8].

(iv) Shaping the debate at the policy-making level

- Kirkham's research has shaped the policy and recommendations of the Law Commission in its review of remedies in Public Law, as published in a series of Law Commission reports [S9]. Influenced by Kirkham's work and his responses to its consultation process, the Law Commission was persuaded to include Ombudsman reform at the heart of its study of administrative law remedies. With the bulk of the Law Commission's work on remedies failing to attract support, later reports of the Law Commission were redirected specifically on the Ombudsman, again partially in response to the arguments made in Kirkham's research and thereafter submitted to the Commission.
- Many of Kirkham's recommendations were adopted by the Commission. Specifically these include (1) the removal of the statutory bar which prevents the Ombudsman accepting complaints that could otherwise go to court, and (2) the transfer of complaints from the

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Ombudsman to the courts and vice versa. The influence of the research on the Law Commission's thinking on Ombudsman reform is evidenced by citations in their papers between 2008 and 2011 [S9].

- In its final report, the Law Commission accepted the conclusions of Kirkham's research with Buck and Thompson [R2] [R6] in recommending that a wholesale review of the overall AJ system, and in particular of the public service Ombudsmen network, was necessary in order to address the ad hoc nature of its evolution and current incoherence [S9]. Kirkham was invited in June 2012 to lecture at a special conference of the AJTC on this issue [S10]. The conference was attended by over 50 people from public sector organisations, government, lawyers and voluntary associations affected by administrative justice. The idea of a review of the public service Ombudsmen network is currently being pursued by the Parliamentary Ombudsman [S5].

5. Sources to corroborate the impact

- S1. The Public Administration Select Committee Minutes (18/10/2007) (HC 1086 (2006-07)) detail the discussion between the Committee and the Parliamentary Ombudsman on this point.
- S2. The Gibraltar Ombudsman can confirm the progress and impact of the report, e.g. as in emails received, 7 December 2012 and 12 April 2013.
- S3. The Local Government Ombudsman can confirm the progress and impact of the report, e.g. as in an email received, 16 April 2013.
- S4. The report of the Parliamentary and Health Service Ombudsman (PHSO), *Report on the Parliamentary Ombudsman Consultation Paper on MP Filter* (2011), cites Kirkham on this.
- S5. Lectures by Ombudsmen citing Kirkham in support of their position: e.g. Ann Abraham (Parliamentary Ombudsman), 'The Ombudsman and the Constitution', Gabriele Ganz Lecture (2009), p.2; Dame Julie Mellor (Parliamentary Ombudsman), 'The Constitutional Role of the PHSO', Constitution Unit Lecture (April 2013), *Submission to Political and Constitutional Reform Committee* (2012); Arlene Brock (Bermuda Ombudsman), 'Toward a Common Ombudsman Identity', *20 Ombudsman Seminário Internacional*, Brazil, 4-6 November 2009.
- S6. In a letter from the Chief Ombudsman of New Zealand and President of International Ombudsman Institute, 21 December 2012, thanking him for his contribution.
- S7. The minutes of the Northern Ireland Assembly corroborate the influence of Buck, Kirkham and Thompson on the debate: Northern Ireland Assembly 2010, Committee for the Office of the First Minister and Deputy First Minister, *Assembly Ombudsman for Northern Ireland* (Hansard) 2 June 2010, p.4.; Northern Ireland Assembly 2011, Research and Library Service. *Research Paper: The Office of the Northern Ireland Assembly*. NIAR 145-11 (Paper 43/11), p.19 & 26-27.
- S8. The personal letter received from the Chair of Administrative Justice and Tribunals Council, April 2013, underlines the importance of the team's submission to the thinking of the Justice Committee.
- S9. Throughout the Law Commission's publications, Kirkham's consultation responses and publications are referred to: see Law Commission, *Administrative Redress*, Law Com CP 187 (2008), part 5; *Administrative Redress: Public Bodies and the Citizen*, Law Com 322 (2010), part 5; *Public Services Ombudsman*, Law Com CP 196, (2010); *Public Services Ombudsman*, Law Com 329 (2011) paras. 2.41, 2.45, 3.64, 3.87, 4.21, 5.125 and 6.6.
- S10. Administrative Justice and Tribunals Council, *Report on 'A Seminar on Public Services Ombudsmen'*, 20 June 2012.