

Speech by Emily O'Reilly at EUI's academic seminar on the Evolving Role of the European Ombudsman

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Thank you and good morning everybody. This conference has been a long time in the planning, a testament to the importance that my colleagues and I place upon it and to our wish to come away from these two days re-inspired and re-invigorated when it comes to planning for the future of the European Ombudsman.

Your work as academics is critical to that work by feeding into the intellectual underpinning of the office and assisting in our reflection on our role and I thank you all for engaging so enthusiastically and so generously with this initiative.

This morning I will outline where I take my inspiration as Ombudsman from, the thinking behind the strategy the office has pursued since my first election as Ombudsman in 2013 and where I see further potential for the Office's development.

An exiled Swedish King, we are told, appointed the first Ombudsman in 1713, to ensure that his subjects were not being mistreated by his administrators back home. The story is a little more complex than that but the impulse that led to the creation of an institution that would in time spread around the world has barely changed – an Ombudsman serves to prevent, detect and rectify, the abuse of power, or, as we more generally put it – maladministration.

Critically, maladministration may not necessarily offend against the law but rather against more general principles primarily concerned with fairness and with equity, in other words doing the right thing not just according to the law but to the principles and values that guide and underpin an administration.

I conceptualise an Ombudsman as an entity that ensures balance as between the great power of the state and the rights of those with little executive or any other kind of power. They do that by lending their resources, their expertise, their status to the individual or entity allegedly wronged, in order to have – essentially – a fair contest.

The Ombudsman therefore gives to the complainant what the administration already has; power, status, knowledge, and consequently the ability to state their case and play on a level field.



But crucially, that does not mean that the Ombudsman is on the side of the complainant. The Ombudsman is a disinterested party, on the side only of the established rules and principles of good administration and not therefore a mediator in the sense of looking for a solution that keeps everyone happy.

In one example of how we balance out the power equation, a former stagiaire complained that trainees at the European External Action Service, received no pay or any assistance towards travel and subsistence.

The complainant argued that this wasn't fair as it gave a career competitive advantage to those whose families could afford to subsidise them.

There was no specific law compelling the EEAS to pay the trainees but we looked rather to the highest law – to the Treaties and the EU value of non-discrimination and invoked that in our case to the EEAS, who initially refused. But the European Parliament and Council were supportive in providing the budget and so the over 800 EEAS trainees around the world are now paid. On her own, that young woman would not have been able to change anything; what the Ombudsman did was to amplify her voice and her arguments, gather a coalition of support, and arrive at a just and equitable solution.

I use the words fair and fairness a lot when I talk about my work. It can often be reasonably straightforward to describe something as legal or illegal – and particularly in countries where public administration procedures are highly regulated – but in administrations – such as that of the EU – where there is no law of administrative procedure which might help to copper fasten or codify 'fairness', challenges arise when trying to convince an administration that something is simply 'not fair' or not quite right especially when it is also 'not illegal'.

An Ombudsman's sensitivity to these subtleties is critical. In a recent case involving the awarding of a Commission contract to the BlackRock investment firm, we found that while the Financial Regulation and its conflict of interest guidelines had been followed, they nonetheless failed to capture the type of conflict at interest at play in the case – a subtle but critical difference.

The complainant had argued that it wasn't right that a company with clients heavily vested in the fossil fuels industry should be engaged in the development of sustainable investment regulations for banks.

We in turn didn't think it was right to find maladministration as the officials involved were following the Financial Regulation and the narrow guidelines correctly. Instead, we asked the legislators to examine the issue with the result that the specific article of the Financial Regulation and the conflict of interest guidelines are now being reviewed.

At member state level the misuse of power – maladministration - can be easier to spot. The harm is more obvious and concrete as most of the complaints have to do with the issues of everyday life whether housing, health, or social protection more generally.



At EU level, the nature of the complaints is very different. Alongside disputes over grants and contracts, staff cases, failure to reply, access to documents appeals, we get many complaints about conflicts of interest, revolving doors, secrecy around the legislative decision making process, the balance of influence around that legislative process and other matters that do not always lend themselves to solutions by algorithm.

But what is not different is the simple question that we ask of every complaint? Is what is alleged to have happened appropriate and correct or is it an abuse of power, is it maladministration?

Is information that should be made public not being published? Is advice on proposed legislation being disproportionately influenced by single or narrow interests? Are public servants too easily being allowed to take up positions in private sector companies heavily vested in the work that those same public servants did in the administration?

Are adequate reasons being given for administrative actions or omissions? Is the public interest being fully considered when making decisions on access to documents?

We have dealt with many of these issues, either by way of complaints or by way of own initiative investigation, the latter power reinforced through last year's revision of the Ombudsman statute, a testament to its effectiveness.

Central to all of those issues is the citizen's Treaty based right to take part in the democratic life of the Union, a matter that goes to the heart of the legitimacy of the EU itself.

Citizens can take part in the democratic life of the union only if they know what's happening in that life through a transparent administration. Accepting the legitimacy of the EU implies trusting that decisions are made only in the public interest.

Through our work therefore on the transparency of trilogues, the transparency of the Council, revolving doors, lobbying transparency, the balance of expert groups and other matters we have tried to give to the citizens what is legitimately theirs, the capacity to exercise the right to participate in the democratic life of the union by making the legislative decision making process – and the influences on it – more transparent.

I'd like to say something now about the strategy we have pursued since I was first elected in 2013 and the impact of my own background on the role.

No Ombudsman comes into office without importing into the role an imprint of their past professional life, that of a lawyer in the case of the first Ombudsman, an academic in the case of the second and that of a journalist and author in my own case

In an EU where most member state Ombudsmen are either lawyers, former judges, or both, my background could be seen by some as that of an outlier although I note that the 1713



Ombudsman was apparently a military leader and not a lawyer either.

Yet as a journalist and author, I was in many ways in the same space that I am in today – and for the last twenty years - as an Ombudsman. In both roles I have been an observer of, and actor in, that space between those who govern and those who are governed.

As a writer I observed and analysed the power plays of administrations, how policies are shaped, how citizens are treated by those with power over their lives, the ethical minefield that is politics, the interplay between influencers and the executive – all of which insight and experience I brought to the Ombudsman table both here and in Ireland. And I have wonderful colleagues who very ably support me in that role.

When first elected in 2013 I had a very clear idea of what I wanted my mandate to achieve. I knew the Office through the network of Ombudsmen, knew of its successes but also where improvements could be made.

I had heard it described by people -largely ignorant of what it did do - as ‘ a decoration on the face of the administration’, ‘a place where staff go to complain’ or in one instance – as ‘a place where people go who can’t afford a lawyer’.

But the office had already begun to tackle more issues of significant public importance and so I began to craft, alongside my colleagues, a strategy to build on this.

I took the view that as Ombudsman I could choose fully to embrace the major role it has been given through the Treaties and the Charter of Fundamental Rights or I could choose to see it as the literally tiny office it is and act in a tiny way. I chose not to go tiny.

In reality, few people will ever need to use or even know about the European Ombudsman as most of their concerns are dealt with at member state level. I never pretend otherwise. What I wanted to do was engage in work that if successful, would benefit even those who had never heard of the office. I wanted more visibility for the Office but targeted and strategic visibility and not catch-all.

The three, mutually reinforcing words I used for my first strategic plans were ‘visibility, impact, relevance’.

We created a strategic investigation unit and have rolled out a series of public interest inquiries. The first concerned the transparency of EU trade negotiations and contributed to a major overhaul of the Commission’s trade transparency policy.

Latterly we have worked with the OECD on how the distribution and spending of the Recovery and Resilience Funds can be made more visible and accountable to citizens and carried out investigations into how the Commission and the ECB manage the revolving doors issue.

Over time, the impact of our work served to draw greater attention to the office and we now



receive many complaints with a strong public interest character. That work nonetheless constitutes just five percent of the overall, and, in relation to our standard work, we have worked very successfully to speed up the time it takes to have a complaint dealt with.

In 2013, for example, just 59 percent of cases were closed in less than a year. In 2021 that figure was 93 percent. In 2013, over 41 percent of cases took 18 months or more to complete. In 2021 that figure had reduced to seven percent.

I have also flattened the management structure, given greater responsibility to more junior colleagues, and those changes, allied to the overall strategy, have made the Office, I believe, a much greater force within the administration.

The EU occasionally unveils what are described as citizen friendly initiatives such as the European Citizens Initiative or indeed the recent Conference on the Future of Europe, but at times fails to inject the necessary momentum into those initiatives to ensure success. And that can happen through deliberate choice.

The Ombudsman indeed could have been an insignificant decoration on the face of the administration. Building on the successes of my predecessors, I too chose to reject that impoverished description and I now look forward to seeing what lies ahead for this small office with its big mandate.

I won't at this stage say too much about the future of the office as I want first to listen to your insights. The Office remains small, but could it be made bigger and if it were to be made bigger, what additional uses could it serve?

So thank you for your attention and your presence here today and I very much look forward to listening to and reflecting on your deliberations.