

(5) unclear or inadequately explained when reasons should have been revealed;

(6) inefficiently performed; or

(7) otherwise objectionable.

(b) The Ombudsman may concern himself also with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

Comment: The statute desirably details the kinds of administrative acts whose occurrence has chiefly generated demands for the ombudsman system. This draft sets them forth as guides, not as limitations. The Ombudsman is told to devote himself to these types of problems, but he needs not feel himself confined to them if the catalog later be found to be incomplete. Moreover, subparagraph (b) makes clear that the Ombudsman should have a large and continuous interest in "preventive medicine" rather than solely in trying to abate a difficulty after it has arisen.

As for the types of problems listed in subparagraph (a), most are self-explanatory, but a few may deserve explanation. Subsection (3) refers to acts that rest on arbitrary ascertainment of fact. Very clearly, the Ombudsman must not attempt to be a super-administrator, doing over again what specialized administrators have already done and, if he disagrees, substituting his judgment for theirs. In some instances, however, the propriety of an administrative act may rest wholly on a factual determination that in turn rests on an excessively flimsy foundation. As in cases that go to courts for review, the Ombudsman should not regard as "arbitrary" anything and everything with which he disagrees; but he should be in a position to say, in essence, that reasonable men would not have found the facts in the way the administrator did.

Subsection (5) is not intended to create a new legal requirement that findings of fact and conclusions of law accompany every administrative act. It means merely that official actions should be understandable and, usually, should be explained when those affected by them seek fuller understanding. Experience abroad shows that this is one of the areas most fruitfully cultivated by ombudsmen.

Subsection (6) refers to administrative acts that may lie within the zone of legality, but might nevertheless be subject to improvement in the future. Thus, for example, the form of decision given by a Scandinavian administrator to old age pensioners caused later distress because the pensioners read into it some hopes that were not justified by existing law. The Ombudsman found nothing improper in the decisions that had been made, but suggested some purely stylistic changes that eliminated the bewildering "officialese" previously in use.

Subsection (7) uses a catch-all phrase, "otherwise objectionable." This will perhaps emphasize the Ombudsman's concern with such matters as rudeness and needless slowness, both of which bulk large among citizens' grievances.

SEC. 11. ACTION ON COMPLAINTS.—(a) The Ombudsman may receive a complaint from any source concerning an administrative act. He shall conduct a suitable investigation into the things complained of unless he believes that—

(1) the complainant has available to him another remedy or channel of complaint which he could reasonably be expected to use;

(2) the grievance pertains to a matter outside the Ombudsman's power;

(3) the complainant's interest is insufficiently related to the subject matter;

(4) the complaint is trivial, frivolous, vexatious, or not made in good faith;

(5) other complaints are more worthy of attention;

(6) the Ombudsman's resources are insufficient for adequate investigation; or

(7) the complaint has been too long delayed to justify present examination of its merit.

The Ombudsman's declining to investigate a complaint shall not, however, bar him from proceeding on his own motion to inquire into the matter complained about or into related problems;

Comment: The duty to act on every complaint should not be imposed, partly because the dimensions of the work burden cannot be exactly predicted and partly because some complaints will show on their face that they are unlikely to lead to productive findings. The above listing leaves the