

Ombudsman free to reject complaints, but does not bar his making inquiries. Specifically, he need not reject a complaint because another judicial or administrative remedy exists. Normally, one may suppose, the Ombudsman will insist that matters proceed through regular channels. Explaining to a complainant the steps he can take to obtain review will usually suffice. But assuredly some cases will arise in which the burdens of expense and time are realistic barriers to a complainant's pursuing the theoretically available remedies. In those instances access to the Ombudsman should not be precluded. Subsection (1) leaves the avenue open, but the traffic is still subject to control.

Another policy choice is reflected in Subsection (3) which does not require that every complaint be based on a claimed invasion of a strictly personal interest. This permits a complainant to bring to the Ombudsman's notice a matter of public rather than purely private concern. But if the complainant's concern with the subject matter is too attenuated, the Ombudsman may choose not to investigate.

Subsection (7) does not contain an explicit "statute of limitations" on complaints, though the Ombudsman is left free to reject those based on stale claims or ancient grudges. In Sweden complaints must be acted on if filed within ten years of the events in question; Denmark, New Zealand, and Norway, by contrast, require rejection of any complaint pertaining to occurrences beyond the preceding twelve months. Neither extreme seems desirable. The present draft lays down no rule in this respect, but allows the Ombudsman to pick his way at the outset. Later, in the light of experience, he may wish to promulgate some rules of his own, as is allowed by Section 9(b), above.

(b) After completing his consideration of a complaint (whether or not it has been investigated) the Ombudsman shall suitably inform the complainant and the administrative agency or agencies involved.

Comment: A decision not to investigate a complaint does not mean that it has been altogether ignored. For example, the Ombudsman and the agency involved may regard the complaint as an adequate equivalent of a petition for administrative review of which the complainant has not yet availed himself; the Ombudsman may in such a case simply forward the complaint to the appropriate appellate authority, advising the complainant that this has been done in his behalf. In other instances very extensive legal analysis may be undertaken preliminarily, leading to the conclusion that no grievance could be found to exist. In such a case the Ombudsman may be expected to write an explanatory opinion that, if foreign experience is duplicated in this country will in the generality of instances prove wholly persuasive to the complainant. Flatly requiring the Ombudsman to state reasons whenever he decides not to investigate should, however, be avoided. Numerous complaints show on their face that they are psychopathic rather than governmental in nature. The Ombudsman's judgment must be relied upon to determine the suitable response in those instances. All practicing ombudsmen do in fact take great pains to communicate fully and frankly with complainants, in general. This is particularly true as to cases whose merits have been explored. The Ombudsman's findings and reasoning have powerfully shaped public opinion as well as official attitudes. Conclusions adverse to a complainant's position deserve to be well explained, as has been done consistently by all foreign ombudsmen.

Some proposals have explicitly required that if a complaint has reached the Ombudsman through a member of the legislature, the Ombudsman must report his findings and recommendations (if any) to the legislator who had forwarded his constituent's complaint. Undoubtedly the Ombudsman, guided by ordinary tact and prudence, would routinely furnish to legislative intermediaries copies of his explanations to complainants and affected officials; making statutory provision for simple courtesy seems unnecessary. If anything more is intended by the suggested requirement that the Ombudsman "report" to a legislator who has forwarded a constituent's complaint, the requirement should be resisted. The Ombudsman should not be perceived as a staff aide whose activities may be directed by individual legislators, to whom he must then report back.