

The Insurance Ombudsman Bureau - the early history

by Peter J. Tyldesley

The Insurance Ombudsman Bureau (IOB) was the first private-sector ombudsman scheme to be established in the UK. It operated from March 30, 1981 to November 30, 2001, when it was replaced by the Financial Ombudsman Service. The IOB has had a lasting impact on the way that personal lines insurance business is conducted. Its annual reports and bulletins continue to provide an invaluable source of guidance for insurers and policyholders alike. Moreover, the influence of the IOB can be seen far outside the field of insurance. It has provided the inspiration for a wide variety of other ombudsman schemes, both in the UK and overseas.

Little has previously been published regarding the background to the establishment of the IOB. One early account, whilst stressing the paucity of evidence, suggested it could be hypothesised that the founders of the IOB were seeking to deter statutory intervention¹. More recently the importance of the involvement of the National Consumer Council has been highlighted². And in 1999, Laurie Slade, then Insurance Ombudsman, outlined the key role of Mike Harris of Guardian Royal Exchange: "One man with an idea can change the world. In our case, the man was Mike Harris, formerly senior general manager with Guardian Royal Exchange. His idea, set out in an internal management paper dated 26 September 1975 was that the insurance industry should take the initiative in establishing its own ombudsman".

This article seeks to outline the events that led to the founding of the IOB. It is an abridged version of a working paper, arising from a wider research project and it is hoped that it will encourage further contributions towards the final publication³.

S. M. F. Harris

As Slade has identified, the starting point for any history of the IOB must be Mike Harris. Born in 1930, Harris was educated at Midhurst Grammar School. He won an open scholarship to King's College, Cambridge, where he took a degree in modern languages from 1949 to 1952. In 1953, he joined the overseas department of Caledonian Insurance Company (Caledonian), and spent two years being trained in the fire, accident and marine departments.

At the age of 25 Harris was posted to Caracas, Venezuela. He was sent as resident inspector to take over the business after the local agent of Caledonian had run into difficulties. This posting gave Harris considerable freedom. At the outset there was just one other person in the office - a 16 year-old typist. One of Harris' first jobs was to apply for a licence to operate, a task which necessitated translating into Spanish all the standard documentation - proposal forms, policy documents, and so on. Harris comments: "There is nothing like translation for giving one a real insight into clauses and wordings, often involving real wrestling with the meaning (or asking, is some of this meaningless?)."

Once a licence had been obtained, Harris had to find customers, persuade them to insure with what was to them an unknown foreign insurer, and then deal with any underwriting or claims issues. For some years, he was also Caribbean inspector for the company. In 1962, he was appointed branch manager for Venezuela.



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¹John Birds and Cosmo Graham, "Complaints Mechanisms in the Financial Services Industry" [1988] Civil Justice Quarterly 313, at page 317

²Rhoda James, *Private Ombudsmen and Public Law*, Ashgate 1997, pages 21-22

³A copy of the full working paper is available from Peter J Tyldesley, Centre for Financial Regulation Studies, London Metropolitan University, 84 Moorgate, London, EC2M 6SQ, www.ombudsmancentre.com.

Harris remained in Caracas until he was 33 years old. Those were important years. Of necessity, he had regular contact with the Caledonian's customers and he recalls that it is during this period that he started to develop his ideas on the quality of service that insurers should provide. Perhaps, too, the distance from the UK encouraged more innovative thinking than was common in the insurance industry of the time.

In 1963, Harris returned to the Caledonian's head office in Edinburgh, leaving the overseas division and rejoining the accident department. Caledonian had, in 1957, become allied with Guardian Assurance Limited (Guardian). When the Caledonian's head office was closed in 1967, Harris moved to London, as assistant agency manager. In March 1968, Guardian merged with Royal Exchange Assurance to form Guardian Royal Exchange Assurance (GRE). Harris became marketing planning manager in 1968 and was appointed planning manager in the field operations department in 1969. With effect from January 1, 1972, he became assistant general manager (UK) with responsibility for GRE's personal and commercial non-life insurances.

The business environment

In the early 1970's the issues concerning the insurance industry included a run of insurance company insolvencies, the abandonment of the tariffs, inflation, and the growth of consumerism.

- 19 insurers collapsed between 1951 and 1971, leaving more than 2m policyholders without either insurance or compensation. On March 1, 1971, the most notorious collapse occurred. The failure of Vehicle and General left more than 800,000 motor policyholders without cover. Urgent discussions between industry and government followed. Harris chaired an industry working party to consider government proposals that were later enacted, much amended, as the *Policyholders Protection Act 1975*.
- The tariffs operated by the Accident Offices' Association (AOA) and the Fire Offices' Committee (FOC) were being abandoned. On December 31, 1968, the motor insurance tariff operated by the AOA was discontinued and on December 31, 1970, the fire tariff operated by the FOC ceased to apply to domestic insurances. Harris recalls that when these tariffs were abandoned many insurers chose to make few, if any, changes to existing policy wordings. However, the general manager of GRE, George Williams, who had just returned from a long period working in the more competitive Canadian market, decided that a wider reassessment was required. Harris was responsible for reviewing personal lines policies and, amongst other changes, introduced pre-carboned proposal forms, so that proposers could be given a copy of what they had signed: "The sets were very expensive to print but I had always felt it unfair the way when a

claim occurred points were raised on the proposal that only the insurer had, most proposers having forgotten what they had declared, sometimes years before."

- There were increasing concerns about the impact of inflation on the insurance industry. Harris states that some motor insurers increased premium rates "up to three times in a single year in a desperate attempt to recoup soaring claims costs". This angered policyholders and caused a significant number of complaints. In November 1972 the government announced a statutory standstill on prices generally, and in March 1973 it established the Price Commission. Harris chaired an industry working party to agree a formula that insurers were to use in getting premium increases approved without excess profits being made. Inflation peaked at 26.9% in August 1975. Harris states: "Things eventually settled down but the experience emphasised to me the need for companies to communicate sensibly with their customers and to be sensitive to their complaints."
- This was also the period in which the consumer movement started to flex its muscles. The Consumers' Association came into existence in 1957. In 1963, the Consumer Council was established and the National Federation of Consumer Groups was created to bring together local consumer groups. The Office of Fair Trading (OFT) was created under the *Fair Trading Act 1973* and in 1975 the National Consumer Council was set up with a government grant. During this period there was also significant reform of the law to the benefit of consumers - for example, the *Misrepresentation Act 1967*, the *Trade Descriptions Act 1968*, the *Unsolicited Goods and Services Act 1971* and the *Consumer Credit Act 1974*. The media were also taking a keen interest in consumer matters. One of the best-known consumer programmes, "That's Life", was introduced by the BBC in 1973 and was to run until 1994. Little wonder that Gordon Borrie, who was successively a member of the Council of the Consumers' Association and Director General of Fair Trading, referred to progress over this period as "the militant march of the consumer". Insurers were no doubt only too conscious of these developments. An early sign of this awareness is the decision of the British Insurance Law Association (BILA) to invite Professor Aubrey Diamond to speak on "Insurance Law and the Consumer" at its annual general meeting in October 1970.

The Scott Report

In April 1973, the Scott Committee presented its report on linked life assurance to parliament. This report is of some interest as it contains what appears to be the first mention of an insurance ombudsman. The committee was aware of some of the potential benefits of an ombudsman, but dismissed the idea that one might be appointed on the

rather peculiar ground that it had no remit to recommend an ombudsman for other areas where the consumer was “inexpert and vulnerable to pressure selling”.

A strong dissenting voice was that of Eirlys Roberts of the Consumers’ Association, whose note of reservation advocated the appointment of an ombudsman along the lines of the Industrial Assurance Commissioner⁴.

Earlier accounts of the IOB have speculated that this note of reservation might have influenced Harris. This point can now be settled. Harris has confirmed that he was unaware of the comments made by Roberts until they were drawn to his attention in 1997, and that they therefore played no part in his earlier thinking.

The BILA London Colloquium 1975

On July 16-18, 1975, BILA held its London Colloquium at University College. The theme was “Insurance and the Consumer”. Some 61 delegates heard speakers from the US, Canada, Europe and Scandinavia describe what consumers gained from insurance in their respective jurisdictions. Harris was a somewhat reluctant delegate, having been asked to attend by Ernest Bigland, managing director of GRE.

One of the contributors to the discussion sessions was Hans Petter Lundgaard, head of the Norwegian Bureau for Insurance Disputes. Lundgaard, who is referred to as the insurance ombudsman in the Colloquium papers, stated that of the cases he had dealt with, roughly 11% resulted in a better settlement for the complainant. He explained many of the complaints he received about insurers were unfounded, but suggested that such complainants were more likely to be satisfied by an explanation from an independent body. Other contributors commented on the success of independent complaints systems in Switzerland, the Netherlands, France, and Belgium.

Mike Harris’ memorandum of September 26, 1975

As reluctant to attend the BILA Colloquium as he had been, Harris’ imagination was caught by the ideas put forward by Lundgaard and by the fact that markets as different as those in France and Switzerland seemed to find the concept of value. He believed there was a place for an ombudsman scheme in the UK. In September 1975, he put forward a memorandum entitled “discussion draft”, for consideration within GRE.

Within the memorandum was the basic plan for what would become the IOB. Perhaps most importantly, Harris stressed the need for the ombudsman to be independent. He also recognised the need for input from a consumer perspective, and recommended consultation with the Consumers’ Association. In the event consultations with both the Consumers’ Association and the National Consumer Council were to occur and to prove vital to the development of the IOB. The ways in which the IOB was

to differ from Harris’ initial thoughts are of equal interest. Harris did not envisage the ombudsman having the power to make binding decisions, and he envisaged policyholders paying a registration fee to use the services of the IOB. It is a mark of the genuine nature of the consultation that later took place with the consumer organisations that Harris was to change his views on these points.

Reluctance within the insurance industry

Within GRE, Harris found his ideas were warmly received. George Williams, the general manager, was particularly enthusiastic. Encouraged by this backing, Harris sought external support. He felt that it would be desirable for the project to proceed under the auspices of the British Insurance Association (BIA). Regrettably the response he was to receive from many other insurers was less than keen.

The difficulties that Harris experienced are easier to understand in the context of the past reactions of the insurance industry to any suggestion of reform. Today, it is widely accepted that the state of English insurance contract law is unsatisfactory. In particular, there is concern about the position of the private policyholder with regard to non-disclosure, misrepresentation and breach of warranty. Reform has been recommended in a series of reports by bodies including the Law Reform Committee, the Consumer Council, the Law Commission, the National Consumer Council, and BILA. However, the insurance industry has been remarkably successful in deterring any such move.

For example, an exemption from key provisions of the *Unfair Contract Terms Act 1977* was obtained in return for statements of practice. These statements were drafted by officials of the BIA and the Life Offices’ Association, without any consultation with consumer organisations. And, in 1995, the Department of Trade and Industry confirmed in a BILA lecture that it had worked with the Association of British Insurers to formulate proposals that had weakened the impact of the *Unfair Terms in Consumer Contracts Regulations 1994* on insurance contracts.

Prior to the establishment of the IOB, therefore, private policyholders were dependent on notions of “good practice” and the goodwill of insurers to ameliorate the harshness of the law. Until the statements of practice were issued in 1977, there was, of course, no formal statement of what “good practice” entailed. Standards varied considerably and it is by no means clear that the statements of practice brought any improvement.

As Harris discovered, some insurers were reluctant to give up the opportunity to be judge and jury in their own cause.

⁴Appointed under s32 of the Industrial Assurance Act 1923 (see also s68 of the Friendly Societies Act 1896)

Delay and the BIA

Over the next two years or so, Harris chaired a joint working party of the BIA and the OFT to analyse complaints arising under motor insurance policies. Harris' role on the working party was to be significant to the development of the IOB, as it was during these discussions that it became clear to him that General Accident Fire and Life Assurance Corporation Limited (GA) shared his desire to give a fair deal to policyholders. Harris continued to advocate that the BIA should be involved in setting up an ombudsman scheme, but made little progress.

At this time, the BIA ran a very basic complaints service. If a policyholder complained to the BIA, a copy of that letter was sent to a member of the senior management of the insurer concerned, with a request to provide the BIA with a response. The BIA did not investigate the matter, or take an independent view, and it had no powers to intervene in any other way. There was, perhaps, some value for policyholders in ensuring that matters were considered at a senior level. Beyond this, the service had little to offer.

In 1976 the National Executive Committee of the Labour Party had put forward proposals for the nationalisation of the four major clearing banks and the seven largest insurers. These proposals were approved at the Labour Party's annual conference in September 1976. Perhaps in reaction to the perceived threat, the Insurance Associations' Joint Research Council (IAJRC) set up the Public Affairs Working Party (PAWP), chaired by Mark Weinberg. Harris was a member of PAWP, which discussed measures to improve the standing of insurers with consumers.

Meanwhile, on June 21-22, 1977, the European Working Party on Insurance Contracts had agreed the fifth revision of a Draft Council Directive in the Co-ordination of Laws, Regulations and Administrative Provisions relating to Insurance Contracts. Article 4 stated that harmonisation of "the laws governing contracts of insurance" was to be achieved within three years of the Directive being issued. On May 17, 1978, the Lord Chancellor referred certain aspects of insurance law - notably non-disclosure, misrepresentation, and breach of warranty - to the Law Commission, which was specifically asked to consider these matters in the light of the draft Directive and to make recommendations.

In September 1978, PAWP established a provision of services sub-group, headed by Marshall Field, actuary of Phoenix Assurance, to see what could be done to improve service to policyholders and remove causes of dissatisfaction. Before the sub-group could meet, further attention was focused on this area. In October 1978, Gordon Borrie, then Director General of Fair Trading, criticised the industry in an address to the Insurance and Actuarial Society of Glasgow. And, in November 1978, Christopher Zealley, chairman of the Consumers'

Association, spoke to the Financial Times World Insurance Conference. The Consumers' Association would, he said, be seeking "a quick and easy redress in dealing with complaints" for those purchasing insurance. Later that month the BIA and the AOA met with the OFT to discuss complaints procedures.

On January 3, 1979, the Law Commission issued Working Paper No 73, outlining its initial views, including the finding that there was a need for significant reform in the law of non-disclosure and breach of warranty. Later that month, the provision of services sub-group decided to prepare a position paper, which considered what might be done about complaints from policyholders. This position paper was submitted to PAWP on May 5, 1979. It outlined a range of options from "least change", which would simply require more effort in making policyholders aware of the existing BIA complaints procedure, to "greatest change", which would involve the appointment of an adjudicator akin to the Industrial Assurance Commissioner. PAWP considered the position paper at a meeting on May 24, 1979. Harris believes that there had been support for his proposals, but that the objections of a few eventually prevailed. It seems that it was around this time that Harris began to start to look in detail at the form an ombudsman scheme might take. The matter was discussed on a number of occasions with Richard Allnutt, then a 26-year-old associate solicitor with Herbert Smith, a firm used by GRE. It was decided that the basic model for the IOB would be the Insurance Technical Bureau, which had been incorporated in 1974.

On June 20, 1979, the assistant general manager at GA sent Harris a transcript of a television programme featuring Esther Rantzen in which comments had been made which were perceived as very damaging to insurers. Harris responded on July 20, 1979, suggesting that one possible response was to press ahead with establishing an ombudsman scheme even in the absence of widespread support from the market. This letter also marked the start of Harris' review of the approach taken by GRE to non-disclosure and misrepresentation, which he pursued alongside his work lobbying for an ombudsman scheme.

By September 3, 1979 IAJRC had sent PAWP a draft circular on industry complaints procedures. This proposed little change, other than the appointment of a designated person to deal with complaints in the head office of each insurer. Even this mild measure was further watered down in two subsequent drafts on September 28, 1979 and October 12, 1979, so that the requirement of a designated person was removed. It was clear, therefore, that Harris would have to pursue his plans for the IOB outside the BIA.

The formation of the IOB steering committee

On October 18, 1979, Harris received a telephone call from GA confirming that it wished to explore seriously the possibility of a joint insurance ombudsman. David Blaikie, chief general manager of GA from 1976 to 1980, recalls that he had made a point of seeing all the complaints that came into the head office. Having taken such a keen interest in complaints, he felt the IOB was the best way forward. In subsequent discussions, John Sheather was to represent GA. Sheather, born in 1917, had been with Yorkshire Insurance Company Limited when it was taken over by GA, and was at this time assistant general manager. He had known Harris since the early 1970s and the two men had a high regard for each other.

By the end of October 1979, it became known that Gordon Borrie, Director General of Fair Trading was to deliver a BILA lunchtime lecture on the subject "Complaints against Insurers - do we need an Ombudsman?". GRE and GA were anxious their plans for the IOB should be announced before the lecture, so that it would be seen as an independent initiative, rather than as a result of the Borrie lecture. Informal soundings were taken of other insurers, and interest was expressed by Royal Insurance Company Limited (Royal). At the UK General Managers' Meeting on December 5, 1979, it was mentioned that the three insurers - GRE, GA and Royal - would probably appoint an ombudsman. On January 10, 1980, Harris received a call from Ian Rushton, of Royal, who confirmed that Royal had decided to join GRE and GA, and that he had been nominated as its representative.

A steering committee was now formed - Harris for GRE, Sheather for GA, and Rushton for Royal. Subsequently, Rushton was posted to the US, and was replaced on the steering committee by Peter Sherman. It was the intention of the committee to issue a press release on January 24, 1980, announcing its plans prior to the Borrie lecture. As a matter of courtesy, BIA was informed. At its request, the three insurers agreed to defer any announcement.

In the event, Borrie argued that law reform was desirable, but that an ombudsman was probably unnecessary. Borrie was, of course, under a statutory duty to encourage trade associations to develop codes of practice. Unsurprisingly, therefore, he suggested that the insurance associations should build on the statements of practice, and take greater responsibility for the handling of complaints.

On January 30, 1980, Borrie's comments were discussed at a meeting of the Round Table - an influential group of chief executives of major insurance companies, which meets regularly to discuss matters of common concern. The notion that trade associations could fulfil a complaints handling role received no support.

The IOB steering committee continued its work. At a UK General Managers' Meeting on March 6, 1980, GA referred to the plans for an ombudsman and suggested that "consumerism was a growing force within the industry and that account had to be taken of it".

The contribution of the consumer organisations

No papers have been traced from the next few months. However, it is clear that at some point in the summer of 1980, the steering committee made an appointment to discuss their plans with Rosemary McRobert and David Watts at the Consumers' Association (CA). One issue resolved at this point was how the independence of the ombudsman could be protected. McRobert, then deputy director of the CA, strongly recommended the establishment of a council, comprised predominantly of public interest members, which would stand between the ombudsman and the insurers who would own the IOB. The idea came out of her recent membership of a similar council at the Advertising Standards Authority, set up in 1962. Harris recognises the importance of this contribution: "I picked up the idea of having a council as being a buffer between the pay master and the ombudsman from Rosemary and I think she deserves a great deal of credit for seeing so clearly at that stage what the right sort of framework should be."

McRobert also put the steering committee in touch with Joan Macintosh, vice-chairman of the National Consumer Council (NCC) and they arranged a meeting. Maurice Healy, head of policy at the NCC, was also present. It was agreed further meetings would be held to develop the proposed scheme.

Richard Thomas, who had joined the NCC as its first legal officer at the age of 30 in 1979, attended the subsequent meetings with Healy. Thomas had previously been the solicitor for the Citizens Advice Bureau for the Borough of Kensington and Chelsea, and so had a wealth of experience in dealing with consumer disputes. He states that one of the aspects of this work that concerned him was that "time and time again, you would have people who had rights, but who were absolutely terrified of going anywhere near the courts". In August 1980, Thomas had produced a detailed introductory paper for the NCC entitled "The effectiveness of consumer law". This spelt out the NCC concerns with the lack of consumer redress and the need for improved access to justice.

The discussion at the meetings was wide-ranging. However, Thomas identified six key features that he and Healy believed should be built into the scheme:

- As proposed by the CA, a "buffer" council should be in place to protect the independence of the ombudsman.

- A policyholder should be able to reject a decision of the ombudsman and retain all his or her legal rights, but an insurer should be bound by the decision of the ombudsman if accepted by the policyholder. Thomas believes that this was purely an idea of the NCC's making - he was not aware of any precedent for such an arrangement, and it is the point on which he was least optimistic of success.
- The ombudsman should be able to make decisions on the basis of what was "fair", rather than being bound to apply the law. This was, of course, a key power not available to the courts or to arbitrators dealing with consumer insurance disputes.
- The ombudsman should operate on an inquisitorial rather than an adversarial basis. This demonstrated European influences on Thomas' thinking - the approach was a novelty in the UK but commonplace in civil law jurisdictions.
- No charge should be made to a policyholder for the services of the ombudsman.
- The ombudsman should be able to make significant awards.

Although these features are now common to many ombudsman schemes, they were undoubtedly radical at the time. Nevertheless, Thomas felt that in raising some of these points he and Healy were "pushing on an open door". Harris confirms that this was so. The steering committee was well aware of the inequities of insurance law, and so already had in mind some form of "fairness" discretion. It was therefore agreed that the ombudsman would be required to reach decisions in accordance with "general principles of good insurance practice". As far as the level of awards was concerned, Harris states that the steering committee's primary aim was to ensure that complainants with valid claims could obtain the sums to which they were entitled. However, interestingly, Harris confirms that there was another factor: "Subsequently, the three of us, after discussion, arrived at the limit of £100,000, not thinking of claimants but wishing to set a high hurdle that companies aspiring to join the IOB would have to accept. We wanted new members to be serious about what they were committing themselves to."

Implementing the plan

As progress continued, a working party was formed to deal with particular matters, primarily the drafting of the Articles of Association and the consideration of membership issues. The members of the working party were John Evans of GRE, Richard Whitaker of GA, and Jim Sandman of Royal. Evans, was a chartered accountant and chief accountant of GRE. Whitaker was research and development officer for GA, and Sandman was a legal consultant for Royal.

One of the matters that had to be settled was the name for the scheme. Whitaker recalls that the initial choice was "Insurance Offices Complaints Office", but that the steering committee decided it would be preferable for the name not to include the word "complaints". As the plans took shape, Richard Allnutt, of Herbert Smith, began drafting the required documentation.

At the UK General Managers' Meeting on May 30, 1980, it was reported that plans for the IOB were nearing completion. In June 1980, it was made clear to members of the Round Table that other insurers would be welcome to participate. By the time of the UK General Managers' Meeting on July 1, 1980, GA was able to state that the IOB steering committee was "close to arranging a suitable scheme which other offices would be able to join". A similar message was given at the July meeting of the Round Table.

Continued progress was reported at the UK General Managers Meeting on September 19, 1980. It was at about this time that the IOB steering committee began to look around for suitable candidates for the post of ombudsman. Harris telephoned the Ministry of Defence. The committee had it in mind that someone with a forces background could well have "the broad and common-sense approach" which was being sought. It is worth noting that this has continued to be a key criterion for the selection of ombudsmen - and is generally regarded as more important than any knowledge of the specific subject area involved. Slade comments: "This was radical and another example of Harris' instinct being spot on - the idea that you want someone from outside the field as ombudsman."

One candidate was supplied by each of the services, the army putting forward Lieutenant Colonel Haswell, a solicitor, who was about to leave the army after service in the Army Legal Corps. In addition, an advertisement was placed in the national press and produced two applicants. At the UK General Managers' Meeting on September 23, 1980, GA reported that candidates for ombudsman were being interviewed and, once again, the hope was expressed that the scheme might be operational by January 1, 1981. The eventual choice of the steering committee was James Haswell. Haswell states that his commanding officer had enquired what he was intending to do on leaving, and on hearing that he had no fixed plans, arranged the interview for him. The interview was clearly an enjoyable experience: "I have a clear recollection of my interview for the job. Within minutes it turned into a discussion of how the scheme would work. I well remember one of the committee describing it at a farewell lunch with the board and saying: "The door opened and in walked our ombudsman." I certainly felt at home from the first moment, but then the committee was made up of extremely nice men. As it began, so it went on. I never remember enjoying a job so much."

A chairman of council was also being sought. The steering committee approached Joan Macintosh, and she was offered the post.

In October 1980, the Law Commission presented its report to Parliament. As expected it recommended significant reform. It also made it plain that it did not regard the statements of practice as a satisfactory alternative to such reform.

Preparations for the IOB continued and a progress report was given to the Round Table on October 29, 1980. At around this time Hugh Cockerell OBE and Gerry Dickinson published a book entitled "Motor Insurance and the Consumer" which supported the appointment of an ombudsman.

By November 17, 1980, Allnutt had prepared the seventh and final draft of the Memorandum and Articles of Association for the IOB. There had been some doubts as to whether Royal would remain committed, apparently because of reservations expressed by its chief actuary about the potential for interference in his field. This was resolved by simply excluding actuarial matters from the ombudsman's jurisdiction. Industrial branch life assurance was also excluded. At around this time, the steering committee presented its final recommendations to the chief executives of the three insurers in a meeting held in the boardroom of the Royal Exchange in London. George Williams was also present.

This was a crucial meeting for, whatever the steering committee had already achieved, the implementation of the scheme required the approval of the chief executives. Fortunately, the main sticking point was, as Harris recalls, the objection of all three chief executives to "the foreign flavour of the title, the word 'ombudsman'". And, after some discussion, it was agreed that there was no better alternative.

It was decided that the subscribers to the IOB were to be the three founding insurers. Two representatives from each of those insurers were selected for appointment as the first directors - George Williams and Mike Harris from GRE, Norman Graham and John Sheather from GA, and Hugo Johnson and Peter Sherman from Royal. Potential council members were also identified. It appears to have been at about this time that the IOB steering committee wrote to the Department of Trade (DOT) and the OFT, notifying them of the proposed scheme. The steering committee subsequently met with representatives from both the DOT and the OFT to answer queries about the scheme and secured their support.

On November 26, 1980, GRE sent all members of the Round Table details of the IOB and an invitation to join. The question of how further insurers might be approached was discussed at a meeting of the prospective board members on December 3, 1980. Subsequently, on or around December 5, 1980, an invitation to join the IOB was sent to Provincial Insurance, Cornhill Insurance, Co-operative Insurance, and Eagle Star Insurance by GA. Co-operative Insurance took advantage of the UK General Managers' Meeting on December 16, 1980 to express its reservations. It argued that the IOB "appeared to be a

complaints scheme and involved consumer groups rather than an arbitration procedure in the event of disputes".

On December 18, 1980 there was a joint meeting of the prospective board and council members and the ombudsman at the London offices of GA. A number of matters were discussed, including how other insurers might best be invited to join. Early interest in joining the proposed scheme was expressed by Phoenix Assurance Company Limited (Phoenix) and by Legal and General Assurance Society Limited (L&G).

Practical preparations continued. It was recognised that as Haswell had no insurance experience, he would need some technical support. The decision was taken to appoint a single person to act both as clerk to the council, and as an assistant to the ombudsman. That person was Sidney Mackelworth.

Mackelworth, known universally simply as "Mac", had for some years been branch manager for GRE at Ilford, East London. However, the branch was scheduled for closure, and Mac was intending to retire on his 60th birthday, December 27, 1981. He recalls that he was on leave of absence when, several days prior to Christmas, he received a telephone call from Evans. Evans, described the post had arisen, and suggested that it might suit Mac. Subsequently, Mac was interviewed and appointed. Given what was to follow, he recounts with some amusement that the post was described to him as "part-time - two days a week at most". Officially, Mac was not to take up his post until February 1, 1981 but in fact he held a number of earlier meetings with Haswell.

On December 31, 1980, invitations to join the IOB were sent to all the remaining insurers in the UK who were believed to transact personal lines insurance. Plans were also under way for the launch of the IOB. Michael Auld, chief information manager at GRE, Alex McIntosh, public relations officer at GA, and Roy Randall, corporate information manager at Royal, collaborated in the production of a detailed report that was completed in January 1981. It recommended that a press conference be held on Thursday March 19, 1981, at Ironmongers' Hall, London Wall, London.

The structure and powers of the IOB

On January 20, 1981, the IOB was incorporated. As a result of the recommendation made by McRobert, the Articles of Association provided for a three-tier structure - board, council, and ombudsman. The board was to comprise not less than three and not more than 12 members, all of whom would be senior officials from insurers which had joined the IOB. It had overall responsibility for the "business and affairs" of the IOB, agreeing the budget, and levying members for their respective shares of expenses. The council was to comprise not less than six and not more than 12 members. Up to three were to be appointed by the board,

and up to nine by the council itself (to start the process, three of those nine were at outset to be appointed by the board).

The council was to have responsibility for appointing the ombudsman, determining his terms of reference, and offering him such assistance and guidance as it deemed expedient. It was also to prepare a budget at least once a year for approval by the board. The ombudsman was empowered to act as “counsellor, conciliator, adjudicator or arbitrator” in references to the IOB that fell within the scheme. His powers were to be expounded in terms of reference produced by the council, subject to the Articles of Association.

GRE’s move on non-disclosure and misrepresentation

As noted above, in July 1979, alongside his work on the IOB, Harris had begun to review the GRE approach to non-disclosure and misrepresentation. In January 1981, this resulted in a directive to staff stating that provided full and truthful answers were given to the specific questions asked by GRE there would be no repudiation for non-disclosure. Harris explained his reasons for this move in a typically robust letter to a trade journal: “...Look at the matter from another angle. Defence of the traditional duty implies that although for many years we have handled millions of transactions, we still do not know all the right questions to ask. If this is so, then surely many of us should be seeking a living in some less demanding walk of life. I do not believe it is so...”

“This letter expresses not only my own deeply held personal convictions but also the attitude of my company which has taken steps to make its own position on the matter both morally and logically unassailable.”

Industry reactions to the IOB, and the finalisation of the scheme

On February 2, 1981, there was a BIA council meeting. Some insurers reacted angrily to the establishment of the IOB and despite the earlier efforts of Harris to involve BIA, it was implied that the founding companies had in some way acted in an underhand manner. The council appointed a working party headed by Brian Corby, of Prudential, to look at the possibilities of either amending the IOB scheme or establishing an alternative scheme.

In the meantime, the development of the IOB continued apace. The first meeting of the board was held on February 11, 1981. Williams was appointed chairman, Sheather as vice chairman, and Evans as secretary. In addition to the interest previously shown by Phoenix and L&G, four other insurers had applied for membership. Arrangements for the press conference to launch the IOB were agreed, with invitations to be issued on March 6, 1981. Negotiations were in progress to secure office accommodation for the ombudsman and his staff at 31

Southampton Row, London. The board confirmed its first two appointees to council - Geoffrey Deyes of Phoenix and Alan Bland of L&G. It noted that four other members of council had been agreed - Joan Macintosh, Tony Dunford of the National Federation of Consumer Groups, Sylvia Green of the Citizens Advice Bureau, and Mike Hall of the CA.

The first council meeting took place on February 26, 1981. Most important amongst the items on the agenda was the appointment of James Haswell as ombudsman. As has been noted above, the power to appoint the ombudsman lay with the council, yet Haswell was selected by the steering committee. Was the steering committee misguided to choose the first ombudsman in this way? One concern is that by doing so it may have set the wrong tone for the relationship between board and council, and that this may have contributed to some of the tensions that were to arise in the future. On the other hand, the steering committee was no doubt very conscious of the need for the first ombudsman to be a success - it knew the scheme would be vulnerable in the early years, and that it could be doomed by the wrong appointment. Whatever the merits of the process, Macintosh has no doubts that the choice of Haswell proved to be sound: “As you say, the ombudsman had, in effect, been selected before the council got into the saddle. Did that make a nonsense of our power of appointment? We did not, so far as I can remember, think of insisting that the selection process start again. We did, of course, require to meet and interview James Haswell...It was far too early to start a confrontation - and in any case this was a new appointment and all of us had still to learn what qualities were most valuable in an ombudsman. As it happens, James looked to us right for the job - and so he was.”

Once he had been appointed, Haswell was invited to join the meeting. The appointment of Mackelworth as clerk to the council was agreed, and he then also joined the meeting. The terms of reference for the ombudsman were agreed, but the council made a point of recording that they trusted that “in due course any recommendations they might formulate, based on experience of bureau operations, would be seriously considered by the board.”

On March 4, 1981, the Corby working party reported to the BIA council. It found that there would be no great difficulty in establishing an alternative scheme if one was thought desirable. As far as the IOB was concerned, various concerns were expressed. Some insurers argued that the ombudsman’s decisions should be binding on both parties. For many insurers, the power of the ombudsman to go beyond the terms of the policy, and indeed the law, by applying “good insurance practice” appears to have been the main impediment to membership of the IOB. Life companies were particularly opposed to the IOB. In particular, it was felt that the fact that areas such as surrender values and paid-up policy values, and bonus rates were to be specifically excluded from the ombudsman’s jurisdiction might draw unwelcome attention to those areas. It was agreed that Corby should see if these and other perceived difficulties could be resolved with the IOB.

A meeting therefore took place the next day between Corby, Harris, Sheather, and Allnutt. In a subsequent memorandum to Williams, Harris recorded the outcome: "After detailed discussions we identified only one point of principle where agreement will require either an act of faith on the part of the as yet uncommitted companies or, at the other extreme, an abandonment of an essential feature of the scheme by the three founder companies. This relates to item 2(d) of the terms of reference and in particular to the phrase "with general principle of good insurance practice". The steering committee felt unable to recommend that this phrase be deleted."

The steering committee did agree five changes in other areas, but only one of these was of particular significance. As noted above, subject to the Articles of Association, the council had the power to determine the ombudsman's terms of reference. This power was amended, so that the terms of reference were subject to the approval of the board.

A further meeting of the Corby working party was held on March 9, 1981. It concluded that the changes made were insufficient, and that sponsorship of an alternative arrangement should be recommended. Recognising the divisiveness of such an approach, it was proposed to have a further meeting with the IOB steering committee at which it would be indicated that this recommendation could be varied if certain other changes could be made. In particular, if it were specified that in making any adjudication the ombudsman should have regard to the terms of the contract, and that in seeking information as to "good insurance practice" the ombudsman would refer to the industry and not the council.

These changes had been suggested to the IOB board by the time of its second meeting, which took place on March 12, 1981. The board agreed that the changes needed to be discussed with Macintosh. It was decided in any event not to hold the extraordinary general meeting that would be required to amend the Articles of Association until after the BIA council meeting on March 17, 1981. It was anticipated that the BIA council would reach a decision on the ombudsman question at that meeting. Corby met Williams and Macintosh on March 13, 1981, and received a positive response to his suggested changes. It was impossible to arrange a further meeting of the Corby working party before the BIA council met. However, in a note to the BIA council dated March 16, 1981, Corby expressed his personal view: "On the assumption that the changes which have been discussed will be accepted by the council of the Bureau, the BIA (and the other associations) should not encourage the formation of any alternative complaints procedure."

At the meeting of the BIA council on March 17, 1981, strong objections to the IOB were again voiced. Amongst other issues raised, some insurers believed that the agreed changes were "cosmetic only", and repeated the view that the ombudsman should be subject to the terms of the insurance contract. Those insurers supporting the IOB pointed out that there "would be an opportunity for

the "ground rules" to be changed as experience was gained". However, it was clear that further changes would not be forthcoming in the short term.

On March 17, 1981, Emms wrote to all the BIA members, indicating that he proposed to arrange a meeting at Aldermay House, the headquarters of the BIA, for representatives of the IOB to give any further information that insurers might require.

The launch of the IOB

On March 19, 1981, the press conference launching the IOB was held as planned. Reaction in the trade press was mixed. Perhaps most encouraging was the response of Policy Holder Insurance Journal, which devoted the entire editorial page to the subject. The editorial included the following comments: "The arguments in favour of an ombudsman scheme are clear-cut. It is no good simply saying that the aggrieved consumer has access to the courts."

The IOB board also held its third meeting on March 19, 1981. A short adjournment occurred whilst an extraordinary general meeting was held to make the agreed changes to the Articles of Association. At 3.00pm on the same day, the IOB council held its second meeting. It discussed the changes to the Articles of Association, and formally determined the ombudsman's terms of reference. It is believed that it is subsequent to this meeting that an administrative officer was recruited for the IOB - Daphne Vandersteen.

There was one slightly sour note on the day. Eight insurers chose to issue a press release announcing that in addition to considering the merits of the IOB, they would be looking at the possibility of an arbitration scheme as an alternative. Few details were given - the release comprised just three sentences.

Having described the events that led to the founding of the IOB, it is now possible to turn to the consideration of two key questions. What were Mike Harris' motives in proposing the IOB, and why did consumer groups co-operate in the project?

Mike Harris' motives

As indicated earlier, the idea that the IOB was established to deter statutory intervention appears to stem from an article written in 1988. Gradually the notion has developed, to the extent that it was recently suggested that the IOB was the result of an agreement entered into by the industry: "The common law of insurance is often perceived as being weighted against the insured, a perception which has attracted the attention of the Law Commission, which in 1980 recommended reform of the most problematic part of insurance contract law, that relating to non-disclosure, misrepresentation and breach of warranty. In order to forestall this reform, the industry

had to agree to the creation of the Insurance Ombudsman Bureau for the resolution of complaints involving personal lines policyholders.”⁵

Given the history outlined above, this viewpoint is now unsustainable. There was no such deal by the industry - only a small minority of insurers joined the IOB at outset, and of those who chose not to do so, some were openly hostile. Furthermore, it is quite clear that Harris had been arguing for an ombudsman since September 1975 - some two years and eight months before the Law Commission was even asked to consider the subject of insurance law. Perhaps not surprisingly, therefore, Harris recently described the suggestion that the IOB was a ploy to avoid implementation of the Law Commission’s recommendations as “complete nonsense”. Healy supports this viewpoint: “I agree that there was no specific intention to try to put off legislation; given the attitude of the BIA it would be hard to demonstrate that there was such an intention.”

Surely, therefore, the more reasonable explanation of Harris’ motivation is that his actions were based on sound principles, not on a desire to avert intervention. In essence, he recognised that providing a high standard of customer care was both ethically desirable and commercially advantageous. Harris’ championing of the IOB, and his move on non-disclosure and misrepresentation, can be seen as coherent parts of this strategy.

Why did the consumer groups co-operate?

Why were consumer groups prepared to co-operate with the insurers in establishing the IOB? There was, after all, a risk that they would be criticised for supping with the devil. It seems that the consumer groups were driven by two factors - a belief that such co-operation could be beneficial for consumers, and an acceptance that the government was unlikely to intervene. Interestingly, Healy reveals that the support of the NCC initially extended to a policy of not publicly criticising the IOB: “In the early days it was clear that the IOB’s position was delicate. The NCC had decided that the scheme was a potentially very valuable innovation for consumers and the appointment of Joan Macintosh as chairman demonstrated our commitment. So we resolved to refrain from public criticism of IOB until it had become firmly established.”

The IOB begins its work

The IOB could therefore rely on support from the consumer organisations. Yet it was clear that elsewhere it would have a fight on its hands. Some insurers remained undecided as to the IOB’s merits, whilst others were openly hostile. Life insurers were a particular problem. The IOB needed to win far wider support if it

was to meet the intentions of its founders and the hopes of the consumer organisations. And it needed to do so against the likelihood that a rival scheme would shortly be available.

The founding insurers had their own apprehensions. They had given the IOB significant powers. Would it operate as intended? There was, in fact, a “doomsday mechanism” in place - the IOB would be closed after two years if the insurers concerned considered that it was not operating satisfactorily. Harris confirms that this mechanism existed. He adds it was felt that after two years the IOB would have “gained a life of its own”, and that closure after that point would therefore be impracticable.

On the morning of March 30, 1981, James Haswell, Mac, and Daphne Vandersteen travelled to 31 Southampton Row to open the IOB for the first time. All recall that on arrival they found that plenty of mail had already been sent by policyholders. Whatever the future held, the work of the IOB had begun.

⁵Andrew McGee, “The Single Market in Insurance”, Ashgate 1998, at page 5