

## Impact case study (REF3)

<b>Institution:</b> University of Westminster		
<b>Unit of Assessment:</b> 18 Law		
<b>Title of case study:</b> Changing ombudsman policy and practice to better serve the public		
<b>Period when the underpinning research was undertaken:</b> Feb 2016 – Dec 2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Dr Naomi Creutzfeldt	<b>Role(s) (e.g. job title):</b> Reader	<b>Period(s) employed by submitting HEI:</b> Feb 2016+
<b>Period when the claimed impact occurred:</b> Feb 2016 – Dec 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> <input checked="" type="checkbox"/> N		
<b>1. Summary of the impact</b> (indicative maximum 100 words)		
<p>Dr Naomi Creutzfeldt's innovative research into the experiences of consumers using ombudsmen schemes in different European countries has provided new insights into complaints processes and helped ombudsmen rethink and change the way they deal with their users. This has been achieved in the following ways:</p> <ul style="list-style-type: none"> <li>• <i>Impact on the practice of UK ombudsman services:</i> Creutzfeldt's work has reshaped the quality and procedural standards set out by the Ombudsman Association and the Local Government Ombudsman and has refocussed The Ombudsman Services on improving their customer-service.</li> <li>• <i>Impact on policy within the broader field of administrative justice in the UK:</i> The Parliamentary and Health Service Ombudsman, the Administrative Justice Council, and the Ministry of Justice have all drawn on Creutzfeldt's work and advice in making their policy decisions and improving their procedures.</li> <li>• <i>Impact outside the UK:</i> The German government's Federal Ministry of Justice and Consumer Protection has incorporated Creutzfeldt's research findings into their policies for improving their ADR processes, directly resulting in the establishment of a new a universal arbitration board of the federal government.</li> </ul>		
<b>2. Underpinning research</b> (indicative maximum 500 words)		
<p>As a method for resolving disputes outside of the courts, ombudsman systems deal with cases in both the public and private sectors and have become a highly significant and permanent feature of the legal systems in many parts of the world. However, despite the significance of ombudsmen to our constitutional and civil justice landscapes, very little had been known about how users perceive the fairness of the procedures and practices of ombudsman, and the extent to which such perceptions impact upon their trust in particular ombudsman offices.</p> <p>Creutzfeldt's research has filled this gap, as one reviewer of her ESRC FRL project proposal acknowledged "Her chosen topic must score very highly for originality and contribution to knowledge. There is very limited independent research on the ombudsman, and there is even less genuinely empirical academic study on the institution. She enters a field of study calling out for projects such as this one. The applicant identifies accurately one important 'hole in the market': the issue of the experiences of the user of the service. Most academic works in this area have concentrated on the role of the ombudsman when offset against the remainder of the civil justice system". Creutzfeldt is now the leading researcher in this field, which has been recognised through her appointment as an academic advisor to the government and the invitation by Sir Ernest Ryder to co-chair the academic panel of the Administrative Justice Council.</p> <p>Creutzfeldt's ESRC FRL project on the impact and legitimacy of ombudsmen in Europe, undertaken at the University of Oxford from October 2013 and completed at the University of Westminster in September 2016, involved collecting a unique and rich dataset of recent experiences of users of ombudsmen. She designed a consumer satisfaction survey to measure public trust in ombudsmen and received over 3,000 responses. It was the first study to bring together consumers' complaints data from across 14 different ombudsman schemes based in three nations (the UK, Germany, and France) [1].</p> <p>Following completion of the project, Creutzfeldt conducted detailed analysis of this empirical evidence, which resulted in her 2018 monograph, <i>Ombudsmen and ADR: A Comparative Study</i></p>		

of *Informal Justice in Europe* [2]. Her comparative analysis of the everyday relationship people have with the informal justice system in the UK and in Germany provided an innovative theoretical and empirical statement about the future prospects for informal justice in Europe, and made recommendations on best practice that would help consumers experience a fairer process.

Further, a series of research articles authored by Creutzfeldt aimed to ensure procedural justice (fairness of process and outcome) in ADR by exploring this informal justice process from the perspective of both the ombudsmen and their users in various facets, and then assessing how negative perceptions could be corrected.

Creutzfeldt applied theories of procedural justice to this context for the first time in an article seeking to identify the predictors of perceptions of procedural justice, and the factors that shape acceptance of the process' outcome, for users of ombudsmen [3]. She found that decision acceptance in ADR differed from other dispute contexts as here substantive outcomes from the process played a far more important role than the perception of the fairness of the process.

Further interrogation of her dataset (an analysis of 2,775 recent ombudsmen users in Germany and the UK) suggested the reason for the above. Four roles became apparent in cross-cultural narratives in the dataset: people who interact with ombudsmen expect them to be interpreters, advocates, allies, and instruments [4]. As such, unfavourable outcomes may be considered by users as a betrayal of trust in what is understood by users as a system for the facilitation of justice.

Creutzfeldt's analysis indicated that the first contact between users and ombudsmen determined the perceived quality of the rest of their complaint experience [5]. Therefore, Creutzfeldt's recommendations were to focus on managing expectations from the outset and to place more experienced staff at the first point of contact. For it is at this point that the tone is set for the quality of communication, the quality of service, and the role of the user's voice in the process. This understanding is of major importance for policy and practice regarding ombudsman services, given increasing dissatisfaction from users. A later article examined the phenomenon of the "ombuds watchers": groups of dissatisfied users of public service ombuds schemes who engage in legal protest against the current system of redress for citizen-state complaints [6]. Through her analysis of their collective dissent, Creutzfeldt helped to address the misconception that most people only complain because they want compensation.

### 3. References to the research (indicative maximum of six references)

- [1] Creutzfeldt, N. (2016) *Project report: Trusting the Middleman: Impact and legitimacy of ombudsmen in Europe*, University of Oxford. Available on the [project website](#). This project was awarded an Economic and Social Research Council (ESRC) Future Research Leader Award of £224,660 across 2013-2016.
- [2] Creutzfeldt, N. (2018) *Ombudsmen and ADR: A Comparative Study of Informal Justice in Europe*. Palgrave Macmillan. Monograph.
- [3] Creutzfeldt, N. & Bradford, B. (2016) 'Dispute resolution outside of courts: procedural justice and decision acceptance among users of ombuds services in the UK', *Law and Society Review* (50: 4): 985-1016.
- [4] Creutzfeldt, N. (2016) 'What do we expect from an ombudsman? Narratives of everyday engagement with the informal justice system in Germany and the UK', *International Journal of Law in Context* (12:4): 437-452. As a result of the quality of this work, Creutzfeldt won an ESRC Impact Acceleration Award for a project on 'Critics of the ombudsman system: understanding and engaging online citizen activists', Sept– Nov 2017 (£5,836) (with C. Gill, Glasgow).
- [5] Creutzfeldt, N. (2016) 'A voice for change? Trust relationships between ombudsmen, individuals and public service providers', *Journal of Social Welfare and Family Law* (38:4): 460-479. As a result of the quality of this work, Creutzfeldt won an ESRC Impact Acceleration Award (£4,160) and an AHRC networking grant (£22,145) (both with R. Thomas, Manchester) for further engagement activities.
- [6] Gill, C & Creutzfeldt, N (2017) 'The "Ombuds Watchers": Collective Dissent and Legal Protest Among Users of Public Services Ombuds', *Social & Legal Studies* (27:3): 367-388. Creutzfeldt (as PI) and Gill were granted an ESRC Award for a project on "Access to Justice, Alternative Dispute Resolution (ADR), and consumer vulnerability in the European energy sector" 2017-2020 (£364,821) following the above work.

#### 4. Details of the impact (indicative maximum 750 words)

##### ***Impact on ombudsmen practice in the UK***

The Chief Executive of the Ombudsman Association writes that “Naomi’s research into Trust [between users and ombudsman services] helped inform the discussions and work undertaken by **the Ombudsman Association** to develop a generic Service Standards Framework for all our members. The Framework sets out what we believe to be best practice” and “[i]n clarifying what service users can expect, the Framework acts as a tool with which to manage expectations and build trust and confidence in the services that members provide” [a-i].

This framework came into effect in May 2017 and applies to all of their 47 members within the UK and Ireland. This Framework is of great importance as it is **the first industry-wide best practice guidance for complaint handling in the UK, “provid[ing] a ‘roadmap’ that members can use to raise their own performance, embed good practice, and demonstrate the quality of the service they provide”** [a-i]. Further, the Framework comprises the optimal standards for such services and thus acts as a benchmark to which alternative standards frameworks that may be used by such companies are compared: “Members who choose not to adopt this Framework are expected to publish the standards they operate to instead” [a-i].

The ongoing impacts that arise from providing such best practice guidance are attested to by the Ombudsman and Chair at the **Local Government Ombudsman (LGO)**: “The Local Government Ombudsman has two strategic aims, with the first being to remedy injustice. Naomi’s research has helped us to better identify the types of remedies that our customers are seeking and what motivates people to bring a complaint to us. This, alongside our customer satisfaction research, is **supporting us in improving the service we provide and is informing the way we communicate what our service is about**” [a-ii].

Further, Creutzfeldt’s “research has also been invaluable to [the LGO’s] work around our second strategic aim to improve local public services. We have used the qualitative findings in training sessions with public service complaint handlers across local government. The findings [have] helped to address the misconception that most people complain because they want compensation and have **supported LGO in encouraging local authorities to take a less defensive and adversarial approach to complaints**” [a-ii].

Such a response to Creutzfeldt’s research findings, widely disseminated in reports and presentations as the data were being collected [a-iii], is also found in **The Ombudsman Services**, who have shifted their strategy towards a customer-service focussed approach. Referring to outputs [1] and [2], the Chief Executive of The Ombudsman Services states that he has been particularly influenced by “Naomi’s work on protection for energy consumers, especially those in vulnerable circumstances, [which] has been insightful and provocative. She has **encouraged a person-centred approach which regulatory and redress models can sometimes miss in their focus on the macro issues of economic regulation**. I’ve found her work crucial in developing thinking around where redress can work most effectively as part of a system to tackle issues such as fuel poverty and affordability. We have implemented some of her recommendations into our everyday practise” [a-iv]. The Ombudsman Services’ Energy Sector Report 2019 demonstrates this shift to a person-centred approach: “Our customer relations team have taken a collaborative approach to complaint feedback in 2019, pooling our data with other business areas to improve insight and highlight the main causes of dissatisfaction for customers, helping to make these a priority for action. One of our main priorities for 2019 into 2020 was to focus on our relationships; to support this, we’ve worked on improving our customer experience” [a-v, p.16]. Actions in 2019 include appointing a Customer Experience Manager, who “can consider the customer impact, whilst ensuring our relationships and services are built with all of them in mind”, and the creation of new surveys sent to their energy business partners to gain benchmark customer experience scores, as well as customer surveys launched in Q1 2020 [a-v, p.17]. Having established their Customer Satisfaction Score and Customer Effort Score, the Energy Ombudsman will now be able to improve and enhance their services in a customer friendly way.

##### ***Impact on policy within the broader field of administrative justice***

In April 2017, Creutzfeldt was appointed as an independent academic adviser to the **Parliamentary and Health Service Ombudsmen (PHSO)** by invitation of its Chair Rob Behrens, CBE. Behrens writes that: “As a practitioner in the field of public rights and the resolution of

disputes, I rely upon the scholarship of a small number of academics in the UK and Europe who are familiar with both the conceptual and operational challenges in the world of public administration and the Ombud. Amongst this small group, Naomi Creutzfeldt is a distinguished and accessible member. Her output is prolific and directly relevant to my work and that of other Ombud colleagues. [...] My thinking and practice has directly benefited from Naomi's writing and I enjoy her open, non-dogmatic but rigorous approach to conversation and debate" [b-i]. Behrens cites one of her key initiatives in this role as her convening a "Familiarisation Workshop" that brought together, for the first time, ombudsman and tribunal judges in order to put into action a programme of interoperability. By drawing on her stakeholder base, formed at both PHSO and Administrative Justice Council (see below), Creutzfeldt has **helped "to facilitate the better joining-up of Courts, Tribunals and Ombuds"**, through the "conversation and exchange on an inter-personal level between people who rarely have the opportunity of being in the same room" [b-i]. For this reason, Behrens confirms, the "workshop was symbolically (and practically) important" [b-i].

In May 2018, Creutzfeldt was invited by the Senior President of the Tribunals, Sir Ernest Ryder, to co-chair the academic panel of the **Administrative Justice Council** (AJC), an all-party law reform and human rights organisation. The AJC advises the judiciary and the government, including the devolved governments, on the development of the justice system, and is the only body with oversight of the whole of the administrative justice system in the UK. Sir Ernest writes: "Naomi has **helped identify and draft the headline themes that are at the core of the council's business plan for the next 3 years**. She has worked with each of the specialist decision makers and their support and interest groups to develop those themes into investigative work that will help to solve problems and she has advised upon the methodological requirements that will need to be met to ensure that the projects can be scrutinized in the public arena" [b-ii]. This work has resulted in four research projects and Sir Ernest believes the "impact of this work will be considerable", especially in regard "to improv[ing] access to justice in a rapidly developing legal landscape" [b-ii].

In connection to the latter point, Creutzfeldt was also invited to join the Evaluation Sub-group of the **Legal Support Advisory Group for the Ministry of Justice** (MoJ) in July 2019. This Group advises the MoJ on how to enact the Legal Support Action Plan, which aims to "provide crucial support for the most vulnerable in society, ensuring they can effectively access justice when they need to" [b-iii, p.3]. Creutzfeldt is part of the "separate group with experts in the field of evaluation [formed] to assist [the Advisory Group] in the design of a robust evaluation framework" [b-iv]. Development of this evaluation framework is ongoing, and this group has also been re-purposed to assess the impact of COVID-19 on access to legal support.

For instance, **Her Majesty's Courts and Tribunals Service** (HMCTS) requested in March 2020 that Creutzfeldt sit on the expert panel advising the HMCTS Reform programme on how to evaluate the extent to which the increased use of video hearings due to COVID related restrictions may impact upon the provision of legal support for those involved in these "virtual AV hearings". As a member of the Data and Analytics Services Directorate at the MoJ states, Creutzfeldt's contributions to the project added "value to the project by drawing on [her] research and advising on research with users of the justice system in terms of procedural fairness, user satisfaction and experience of digitalisation"; this expertise was used to **ensure the best possible design for the evaluation of this AV strategy**, which will "help identify if the HMCTS reform programme has met its aims and what effects it had, for whom and why" [b-v]. This iterative process has reached the stage in which newly revised processes, based on the initial optimisation of current processes already achieved on the basis of the work of Creutzfeldt and colleagues, are being assessed by the expert panel.

### **Changing ombudsmen policy and practice in Germany**

Parts of a new law on ADR in Germany – Section 29 (1) of the Consumer Dispute Settlement Act (VSBG), in force since October 2019 – have been developed by the German government on the basis of an empirical investigation the Federal Ministry of Justice and Consumer Protection commissioned into their residual ADR body, undertaken by Creutzfeldt and Felix Steffek (Cambridge) between 2017 and 2020 [c-i].

As the Ministry confirms, "the knowledge gained through the research project that there is a direct connection between the cost burden of business and their willingness to participate, has **prompted us, within the framework of the latest legislative proposal to amend the**

**Consumer Dispute Settlement Act** of December 2019 and January 2020, from the obligation to cover the costs of the proceedings to refrain and significantly lower the fees (in favour of the business)” [c-ii]. This took the form of “the new § 42 (2) VSBG”, which specified the cost-structure that would be required to ensure entrepreneurs would be willing to adopt ADR over the court system when resolving disputes with consumers: “the fee system of the universal arbitration board of the federal government should be designed in such a way that it does not have a deterrent effect on entrepreneurs, but rather that entrepreneurs - despite their one-sided burden from the arbitration - consider them a sensible way to resolve a dispute with the consumer” [c-iii, p.14]. This recommendation **directly resulted in the establishment of a new universal arbitration board of the federal government**, the “Center for Arbitration eV”, based in Kehl, Baden-Württemberg: “For this reason, as stated above, a real alternative to state court proceedings should be created, especially in the area of low value disputes” [c-iii, p.14].

The “Center for Arbitration eV” was established on January 1st 2020 and encompasses all proceedings for which no specialist arbitration boards are available, providing the benefit of **ensuring all consumers have an avenue of easily accessible recourse when disputes arise**. For example, there has previously been no special ADR for the return of damaged items received from online shops or problems with payment in the retail sector more generally. It also allows consumers to resolve disputes involving payments of up to €50,000 without going to court, which can be costly and time-consuming. In this respect: “The two most important advantages of the ADR procedure compared to a court process for consumers are: The procedure costs the consumer nothing, business pay between 50 and 800 euros, depending on the value of the dispute. The duration of the ADR procedure is short. According to § 14 VSBG, the procedure should be ended within 90 days after the complete complaint file has been submitted (receipt of all necessary documents and statements from both parties)” [c-iv]. The relatively small amount of costs to business, as advised by Creutzfeldt and Steffek, along with the short duration of the proceedings, makes ADR more enticing to business than going to court, which is of great benefit to consumers.

##### 5. Sources to corroborate the impact (indicative maximum of 10 references)

- [a] (i) Testimony from Chief Executive of Ombudsman Association (ii) Testimony from Ombudsman and Chair at the LGO (iii) Creutzfeldt engagement activities (key presentations and docs) [\[link\]](#) (iv) Testimony from Chief Executive of Ombudsman Services (v) Ombudsman Services, *Energy Sector Report 2019* [\[link\]](#)
- [b] (i) Testimony from Rob Behrens, Chair of PHSO (ii) Testimony from Sir Ernest Ryder, Senior President of the Tribunals (iii) Ministry of Justice. *Legal Support: The Way Ahead*. Feb 2019 (iv) Invitation from Ministry of Justice to join the Legal Support Evaluation Sub-Group (v) Testimony from Data and Analytics Services Directorate, MoJ
- [c] (i) Creutzfeldt and Steffek. *ADR in Germany Interim Report* [German language] [\[link\]](#) (ii) Testimony from The Federal Ministry of Justice and Consumer Protection (iii) Draft bill by the Federal Ministry of Justice and Consumer Protection [German language] [\[link\]](#) (iv) Haufe, “New federal universal arbitration board for consumers since 1.1.2020” [German language] [\[link\]](#)