

**The National Ombudsman,  
Ombudsman for Children  
and Ombudsman for  
Veterans Annual Report  
2019**

**ORGANISE OVERSIGHT!**

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Ombudsman for Children and  
Ombudsman for Veterans Annual Report  
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## FOREWORD

«Organise oversight!» This is the title of the 2019 joint annual report published by the National Ombudsman, the Ombudsman for Children and the Ombudsman for Veterans. It reflects a cry from the heart that we have heard in almost every field in which we are active. The way in which we as a society have organised our public services has become very complex in recent years. Not least for our citizens. They are expected to take a more active role and to organise things for themselves. But who they can turn to for help or support is all too often unclear. Does the responsibility lie with the government or with a private contractor? And if municipalities outsource certain tasks to other organisations, where does the final responsibility lie? As a result, people can find themselves dealing with a different kind of government, one they no longer feel they know. That calls for a government that provides clarity. This often means that the government has to oversee the various organisations that work for citizens on its behalf and provide a degree of management. And, just as often, it calls for public servants who use the «regulatory scope» at their disposal to either help citizens or refer them to someone who can help. But their response can never simply be: sorry, you've come to the wrong place.

The decentralisation of government tasks did not bring the government and its citizens closer together in 2019; if anything, it increased the distance between them. Moreover, citizens are witnessing and experiencing the often needlessly complicated methods of the large organisations in charge of implementing government policy. All this not only increases the physical distance, but also erodes the mutual trust between citizens and their government. Citizens can no longer see the forest for the trees and are asking government bodies and the other organisations involved to give them clear guidance on where to go and what to do.

The year 2019 was a milestone, not only for the National Ombudsman, but also for the Ombudsman for Children and the Ombudsman for Veterans. For the Ombudsman for Children, 2019 marked the thirtieth anniversary of the Convention on the Rights of the Child and saw the launch of the roadmap *The best decision for the child*. The Convention on the Rights of the Child is central to everything the Ombudsman for Children does. This starts with making good decisions in the best interest of the child. In this annual report, you can read how the Convention on the Rights of the Child helps us meet this need. The Ombudsman for Veterans arises from the Veterans Act, which entered into force in 2014. The year 2019 therefore afforded an ideal opportunity to look back on five years of the Veterans Act. In 2019, the main duties of the National Ombudsman had been explicitly stated in the constitution of the Netherlands for twenty years.

Complexity, the lack of clarity and direction, and the sense of desperation they instil in our citizens: these aspects are increasingly coming to the fore in our research and in our interaction with citizens themselves and with the professionals who help them deal with government-related problems on a daily basis.

Take 16-year-old Halina, for example. She has been admitted to a young people's mental health institution several times with a crisis placement. Every time she is sent home within days, only to be placed back in the institution a day or two later. She is waiting for a long-term admission for

intensive treatment, but no institution wants to take responsibility for providing that treatment immediately and the waiting lists are long. In the meantime, Halina is left without the help she so badly needs, and the longer she has to wait the more the severity of her problems increases. Or veteran Rick, who returned from his tour of duty in Afghanistan with post-traumatic stress syndrome (PTSS). As a result, he ran into all kinds of problems and lost his way in life. He applied to the Ministry of Defence for a Military Disability Pension, but the assessment of his application was so complicated and took so long that he ended up facing serious financial difficulties. For him, too, clear guidance and effective procedures are essential.

Citizens are entitled to proper treatment, even in areas where the government no longer provides direct support. It is precisely by focusing on the propriety of government action that the National Ombudsman can call government bodies to account in cases where they seem to have lost sight of citizens' interests. For the Ombudsman for Children, the Convention on the Rights of the Child provides the ethical compass; for the Ombudsman for Veterans it is the special duty of care. This is how we come to the aid of citizens, veterans and children who encounter problems in their dealings with government agencies and other organisations. Where public services in the common interest are concerned, there is a role for the National Ombudsman, regardless of who is tasked to perform these services. That role is to continue helping people to find the assistance and support they need and to consistently remind the government of its responsibilities.

Today, citizens and politicians expect more from the government than ever before. Problems often turn out to be highly complex and not limited to a single field. The government seems to be overwhelmed by the continually growing number of new policy questions. In order to be able to meet expectations while delivering quality in the future, choices need to be made. Above all, people want honest and simple answers which show that the government understands their needs. The last thing they want is for things to become more complicated. But it often seems like the government's knee-jerk response is to make things more complicated rather than simpler when faced with new questions, priorities or technical possibilities. Our appeal to politicians, administrators and executives is therefore fourfold:

- Be honest about what the government does and does not do. Be transparent about the role of government and that of the citizen in specific situations.
- Trust your citizens. The government is expecting more and more from its citizens, yet often fails to give them the options or the trust to organise things for themselves. A mistake is easily made. The government is there to help in such cases, not to impose sanctions that only make the problems worse.
- Put the child's best interests first in all life decisions and involve the child in the decision-making process. The central question is: what does this child need and how are we going to make it happen?
- Provide clarity, guidance and structure! Make smart and clear choices so that policy and implementation are future-proof. That way everyone will know where they stand, today and tomorrow.

This annual report covers the year 2019: the year before the coronavirus transformed life throughout the world at a single stroke. We greatly appreciate the tremendous efforts being made by central government, municipalities, healthcare professionals, emergency services, the business community and many others in the Netherlands and beyond in dealing with the corona crisis. But even in the current situation, we will continue to perform our duty of drawing attention to the needs of those most deeply affected, such as small businesses, children, the elderly, informal caregivers and veterans. It is essential that the measures taken by the government at this time are as effective as possible when it comes to helping those in need.

Ombudsman for Children,  
Margrite Kalverboer

Delegate Ombudsman,  
Joyce Sylvester

National Ombudsman and Ombudsman for Veterans,  
Reinier van Zutphen

## **ABOUT THIS REPORT**

Chapter 1 of this annual report examines the work of the National Ombudsman in each of its five key focus areas. Chapter 2 is concerned with the activities of the Ombudsman for Children, while Chapter 3 is devoted to the work of the Ombudsman for Veterans. Chapter 4 provides information about the human resources of the three organisations.

All reports, letters, press releases and articles mentioned in this report can be found online at [www.nationaleombudsman.nl](http://www.nationaleombudsman.nl) or [www.dekinderombudsman.nl](http://www.dekinderombudsman.nl).

The majority of complaints we receive can be resolved by means of a simple intervention. A number of cases are included in this report by way of illustration. Names have been changed for reasons of privacy.



## 1. THE WORK OF THE NATIONAL OMBUDSMAN

The work of the National Ombudsman centres around the question of whether citizens are being treated fairly and decently by the government. Is the government being open and honest in its dealings with the public? Does it communicate in an understanding way? Is there due regard for the «human dimension»?

Part of our work involves helping citizens whose relationship with the government breaks down. We might refer them to the appropriate source of assistance, or we might provide advice and tools which will help them to rectify matters themselves. Where necessary, we investigate the complaint and will always adopt a thorough, effective approach. Our work also involves encouraging government organisations to look at their own services, processes and innovations in a different light. We therefore examine the current situation and think about ways in which things could be done differently and – more importantly – better. We bring any shortcomings to the attention of the organisation concerned and ask for the necessary improvements to be made. We encourage government authorities to view their work from the citizen's perspective.

We maintain close contact with central government and both houses of parliament. In 2019, the government issued ten official responses to reports or letters submitted by the National Ombudsman. Eight parliamentary questions were directly prompted by one of our reports or letters, while a further sixteen questions touched on matters which had been investigated by the National Ombudsman.

The National Ombudsman can assist when a citizen has some dispute with a government department that he cannot resolve himself. We can bring the parties together, act as mediator or may opt to investigate a complaint in greater depth. The National Ombudsman can also initiate its own investigations examining matters of general public concern. In 2019, the National Ombudsman received 30,775 enquiries and requests for assistance from members of the public. In the vast majority of cases, initial contact was made by phone: we received 17,666 calls during the report year. We received 9,406 requests via email or the online contact form, and a further 3,559 by post. The remaining 144 requests were made in person, either at our offices or during one of the National Ombudsman's public outreach events.

Of the total 30,775 requests for assistance, the National Ombudsman organisation was able to resolve 2,338 by means of a direct intervention. In 48 cases, the National Ombudsman acted as mediator. With the help of staff, the National Ombudsman wrote 417 letters and put his name to 53 investigation reports which present an «opinion» and make recommendations for further action. In the remaining 27,919 cases, the National Ombudsman's staff were able to offer complainants a sympathetic ear, provide relevant information or refer them to another source of assistance. Some investigations were terminated before the matter was fully resolved, usually at the complainant's request. A summary of complaints and queries broken down by the government departments concerned can be found on our website.

### **Better complaints handling and service**

In addition to dealing with requests for assistance, the National Ombudsman works to improve the service provided by government authorities. This involves various activities, one of the most important being the investigations undertaken at the National Ombudsman's own initiative. A total of 29 such investigations were completed in 2019. Each resulted in a public report or a letter to the Minister responsible.

Among the other activities undertaken during the report year were 20 presentations and 50 workshops on «professional complaints assessment» and «complex complainant behaviour». Staff were responsible for some 50 lectures, briefings and interviews calling attention to (ongoing) problems, as well as over ten more formal training courses. We organised various brainstorming sessions on «the future relationship between citizen and government», as well as a social media «hackathon» for professional advisers. On 31 October, the National Ombudsman hosted a large-scale conference attended by over 450 delegates.

### **In contact with the government**

The citizen must always know where he can obtain help with any problems or questions relating to government services. Following the recent wave of decentralisation and outsourcing, this is no longer as clear-cut as it used to be. Lines of communication have become blurred. Citizens remain entitled to fair treatment, even if central government has decided to «take a back seat».

In 2019, National Ombudsman staff visited many public sector and civil society organisations to emphasise this point. We visited local authorities («municipalities») of various sizes, and did so for various reasons. In some cases, we were working on an ongoing investigation. In others, we wished to help staff improve their internal complaints assessment procedures. We met with a number of local authority executives to share information about our work and to strengthen our existing contacts. We visited universities, colleges and other organisation to give presentations, lectures and workshops on a range of topics, including complaints assessment, conflict management and the relationship between citizen and government, with particular reference to the citizen's perspective.

### **From local to national**

The National Ombudsman is not only the designated complaints assessor for central government but also for provincial authorities, water management authorities and approximately three quarters of local authorities («municipalities») in the Netherlands. Almost all social provisions fall within our remit. We are a proactive organisation: we do not wait until people come to us with a problem but maintain a dialogue with local authorities and the general public. We have a «mobile lounge» with which we tour the country and meet members of the public in a relaxed and informal setting. We make regular working visits to (public sector) organisations, and we hold meetings with officials and administrators.

Each year, the National Ombudsman visits two of the Netherlands' twelve provinces to meet with the public and form an overall impression of the concerns people have. In 2019, our «roadshow» stopped off in various towns in the provinces of Groningen (Veendam, Winschoten, Appingedam, Loppersum, Winsum and Leek) and Zeeland (Oostburg, Terneuzen, Middelburg, Kapelle, Zierikzee, Tholen and Goes). The events in Zeeland were also attended by the province's own ombudsman,

Gertjan van der Brugge. In 2020, the National Ombudsman will visit Flevoland and Gelderland.

The National Ombudsman advises local authorities, both on request and as we consider necessary, by means of presentations and workshops. In 2019, we did so in Apeldoorn, Montferland, Helmond, Veenendaal, Bloemendaal, Alphen aan den Rijn and Bronckhorst.

### **The National Ombudsman online**

An increasing number of people use social media, which therefore represent an important communication channel through which the National Ombudsman can keep in touch with citizens and offer advice. At present, Facebook is the most important means of reaching the general public, while Twitter and LinkedIn are used to maintain contact with the professional field. We use Webcare software to monitor interactions on all social media channels. We then contact users with a complaint or query with a view to further action.

Many people know how to reach us through our website, which attracts some 594,000 visitors each year. The various tools offered on the site have proven particularly popular. They include sample letters, a checklist of criteria for complaint admissibility, and a directory of the organisations which fall within the National Ombudsman's remit. In 2019, these tools were downloaded a total of 57,946 times.

### **Looking ahead to 2030**

In 2019, it was twenty years ago that the core task of the National Ombudsman was formally established by means of a legislative amendment to the Constitution of the Netherlands. This is a very special milestone and one which prompted the National Ombudsman to look ahead to the year 2030. What social developments are about to emerge? How will they change the way in which we all live and work together? How will they affect the relationship between citizen and government? And, most importantly, how will we respond? To answer these questions, the National Ombudsman has entered into a dialogue with government representatives, administrators, researchers and members of the general public. The overall aim is to ensure that the work of the National Ombudsman continues to meet the wishes and requirements of all parties, while we also wish to encourage those parties to think about their future role.

The first step was a study, conducted with the help of the market research bureau KANTAR, examining public perceptions and expectations with regard to public sector services.<sup>1</sup> We discovered that people generally describe their relationship with the government as «necessary», «complex» and «distant». The key improvement measure is therefore «simplification». This calls for the use of everyday language and straightforward procedures.

Armed with the study's findings, we held three brainstorming sessions with researchers, administrators from various executive agencies, local government officials and other interested parties. The topics discussed included e-government (online service provision), the role of AI and algorithms, the outsourcing of government tasks to private sector organisations, the government's position and responsibility towards more

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<sup>1</sup> Study by KANTAR examining the relationship between the citizen and the government in 2030

vulnerable social groups, and the role of «good governance» in the future. The dialogue was continued during a social «hackathon» attended by over forty professionals including social welfare advisers, GPs, community police officers and foodbank managers, all of whom encounter people whose dealings with the government have reached a «dead end» on an almost daily basis. We asked the professionals to suggest ways in which closer cooperation with the National Ombudsman would help to bolster support for more vulnerable citizens. One outcome of the meeting was the launch of a special phone number in early November 2019. Any professional with a client who is experiencing difficulties in their dealings with a public sector organisation can now call 070 356 3550 and speak to a member of the National Ombudsman's staff who will help to find a solution.

On 31 October, we brought all the results of the various activities together at our conference «Who's in? The citizen and government in 2030». Alongside over four hundred delegates, we put the clocks forward by ten years to see how citizens can best be helped if they become bogged down by government systems, rules or procedures. We also published a magazine describing some of the insights gained in 2019.<sup>2</sup> It looks at the four key themes for the National Ombudsman in the run-up to 2030:

1. New definition of «good governance»
2. Further improvement of the role and work of the National Ombudsman
3. Broader, closer cooperation with all stakeholders
4. The citizen's right to fair, effective treatment even where the government itself opts to take a back seat.

#### **A new agenda**

This annual report is based on the five key themes of the National Ombudsman's Agenda 2019:

1. Poverty and debt
2. Access to social provisions
3. Digitalisation
4. Rights protection
5. Participation and consultation.

These themes determine the focus of our work to improve the relationship between citizen and government. In 2020, we shall refine the themes, giving extra visibility to *Fundamental rights, Participation and influence, Access to social provisions, Poverty and Liveability*<sup>3</sup>. The first four of these themes were included in the National Ombudsman Agenda for 2019 but will now take a slightly different approach. «Poverty» for example, will no longer focus exclusively on problematic debt but will also consider the position of people who are living in hardship or poverty but have not (yet) fallen into debt. «Digitalisation» will no longer be treated as a separate theme but will form an intrinsic part of all projects on the agenda. «Liveability», or quality of life, is introduced as a new theme for 2020 and beyond.

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<sup>2</sup> Congresmagazine «Wie doet er mee? Burger en overheid in 2030» (in Dutch)

<sup>3</sup> National Ombudsman Agenda 2020 (pub. 20 January 2020)

The following five sections describe our activities in each theme. We then offer an account of our work in the Caribbean Netherlands, followed by details of our international cooperation.

## 1.1 Poverty and debt

**There are still some 700,000 Dutch households struggling with problematic debt. Many families can no longer afford basic essentials. Some find themselves in even deeper trouble as they are evicted or have their health insurance cancelled. Debt is often accompanied by other issues, such as psychiatric problems. The government has implemented various measures and provisions to help people escape from debt and get their lives «back on track». Nevertheless, we regularly receive reports of citizens who fail to receive the help they need due to a lack of oversight and inadequate coordination between the bodies responsible for administering provisions. They soon find themselves in an even worse position. In 2019, the National Ombudsman devoted particular attention to the manner in which government agencies collect money that is owed to them, the now familiar Childcare Allowance issue, and debt restructuring services.**

### **Fair and considerate debt collection**

The National Ombudsman has monitored the way in which government agencies collect outstanding amounts for several years. In 2013, we published the report *In het krijt bij de overheid* («In debt to the government»)<sup>4</sup> which identified various problems and shortcomings. Six years later, we could see little improvement. Far too often, the collection policy applied by government departments serves only to drive people further into debt.

In 2019, we therefore produced the report *Invorderen vanuit het burgerperspectief* («Debt collection from the citizen's perspective»)<sup>5</sup>. Among its conclusions are that many people find the official debt assistance provisions too complex and difficult to access. They have to «jump through too many hoops» to contact the government organisation concerned, and sometimes receive correspondence or financial statements which they do not understand. Many are confused because each government department has its own policy and rules.

Another problem, to which the National Ombudsman has drawn attention in the past, is the «protected earnings threshold». If someone owes money, the government is able to «attach» or «garnish» their income at source. However, the law stipulates that the debtor must be left with an adequate amount to pay for basic necessities. This amount is known as the protected earnings threshold. There is no standard amount: the protected earnings threshold is calculated on a case-by-case basis and depends on the debtor's personal situation. Our research suggests that government departments do not always respect the protected earnings threshold. In some cases it is set at such a low level that the debtor soon faces worsening financial problems.

### **The protected earnings threshold is essential**

Francine lives with her adult daughter Marije. Both receive benefits. The money goes into a joint bank account from which they pay their rent and utility bills and buy the weekly shopping. Francine has recently suffered a heart attack from which she is still recovering. She is also due to have eye surgery but does not have enough money to get to the hospital. Marije has various debts including outstanding health insurance premiums totalling € 500. The

<sup>4</sup> Report NO2013/003 *In het krijt bij de overheid* (in Dutch)

<sup>5</sup> Report NO2019/005 *Invorderen vanuit het burgerperspectief* (in Dutch)

insurance company, VGZ, sent several reminders and demands but the arrears were never cleared. VGZ took the claim to court, where Marije offered no defence. As a result, she must now pay not only the original € 500 but VGZ's costs as well, almost doubling the amount due. Marije cannot see how she will ever be able to clear this debt.

Based on the court's ruling, VGZ obtained an attachment order on the ladies' joint bank account. However, the order made no provision for any protected earnings threshold, the amount that Francine and Marije should be allowed to keep in order to pay for essentials. (There is no obligation to do so if the attachment order is on a bank account as opposed to earnings at source.) Francine and Marije very quickly experienced serious financial difficulties. They had no money for food.

The National Ombudsman contacted the court bailiffs to insist that Francine and Marije should be permitted to keep a minimum amount for basic essentials. Two days later, the bailiffs refunded the amount of € 517.82, which was enough to tide them over until their benefits were paid.

A bill was been submitted to parliament which, when enacted, will ensure that the protected earnings threshold also applies to an attachment order on a bank account. However, it will be some time before this law comes into effect. In 2017, the National Ombudsman therefore made agreements with various government agencies, including the Tax and Customs Administration, the Central Judicial Collection Agency (CJIB), DUO (which administers student grants and loans), LBIO (alimony and child maintenance), SVB (Social Insurance Bank) and the UWV (Employee Insurance Agency) whereby they would respect the protected earnings threshold when attaching a bank account, on request and on a voluntary basis. The Royal Professional Organisation of Judicial Officers in the Netherlands (KBvG) pointed out that court bailiffs are only able to apply the protected earnings threshold when instructed to do so by the client.

Countless citizens have found themselves in the same position as Francine and Marije. When presenting the report «Debt collection from the citizen's perspective», the National Ombudsman expressed his disappointment that it was taking so long to implement legislation which will simplify the protected earnings threshold system. The current inefficient and unsatisfactory arrangements will remain in place until at least 1 January 2021. The planned expansion of access to the «attachment register» is also taking too long. At present, only court bailiffs can consult the register. If government organisations such as the Tax Administration and CJIB are also given access, they will be able to share information about all current attachment orders held against an individual. This will help to avoid the situation in which combined claims exceed the protected earnings threshold and will also reduce the total number of attachment orders required. Although a bill to this effect is in preparation, the National Ombudsman fears that its implementation will be subject to further significant delays. For this reason, in 2019 the National Ombudsman once again urged government agencies to do everything possible to ensure that people have enough money to pay for basic essentials.

Another problem in connection with the protected income threshold is the lack of coordination when multiple claimants attach a person's wages or benefits. This has been evident for some time within the UWV. If a person's benefits are subject to several attachment orders, with each



claimant allowing a different protected earnings threshold, the UWV's standard policy was to apply the lowest threshold amount. In many cases, this resulted in the amount withheld being too high, leaving the people concerned unable to afford basic essentials.

The National Ombudsman therefore entered into discussions with the UWV and the Tax Administration to seek a solution. The UWV decided that, with effect from 1 October 2019, it would no longer apply the lowest protected earnings threshold<sup>6</sup> but that calculated by the party that is to receive the current payment. The National Ombudsman welcomes this move, which is seen to be in the interests of the citizen.

To encourage other government organisations to respect the citizen's interests, the National Ombudsman's recent report includes a «Fairness Framework» which sets out what people can reasonably expect when a government body claims payment of an outstanding amount. For example, the National Ombudsman believes that every effort should be made to prevent the citizen falling further into debt. The government organisation should communicate clearly and seek personal contact to the greatest extent possible. It should act «reasonably» at all times, assess each situation on a case-by-case basis, respect the protected earnings threshold, cooperate with any debt restructuring proposal, and seek coordination with other government agencies to safeguard the protected earnings threshold. If a government department outsources its debt collection activities, the same principles of fairness and consideration must be applied.

### **Allowances cause major problems for young parents**

The Childcare Allowance affair continued to attract much media attention in 2019. The issue involved a number of parents whose allowance had been withdrawn in 2014 because, it was alleged, they had submitted fraudulent claims. The Donner Commission, which had been formed to review the administration of various social allowances, conducted an intensive investigation into the case. In its first interim report<sup>7</sup>, the commission concluded that the national Tax and Customs Administration had shown «institutional prejudice». Its decision had caused many families long-term financial hardship. The National Ombudsman drew the matter to the attention of the State Secretary for Finance on several occasions. In 2017, we published the report *Geen powerplay maar fair play* («No power play but fair play»)<sup>8</sup> which brought the problem to the attention of a wider public for the first time. The National Ombudsman concluded that the Tax Administration had been unduly harsh in its treatment of the 232 families concerned, and that the withdrawal of their Childcare Allowance had been unjust.

In the report, the National Ombudsman recommends that the Tax Administration should offer compensation to those affected. In 2018 and 2019, following reports in the national newspaper *Trouw* and on RTL television news, several members of the House of Representatives joined the call for compensation. They were able to cite an important ruling by the Council of State, which had examined the case of one of the families mentioned in our report. This family had lodged an appeal against the Tax Administration's decision to reclaim the entire amount of Childcare Allowance paid in 2014. The family was not entitled to the allowance, it

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<sup>6</sup> National Ombudsman. (2019, 9 July). UWV stapt af van laagste beslagvrije voet bij meerdere beslagleggers (in Dutch)

<sup>7</sup> «Omzien in verwondering, Interim-advies Adviescommissie uitvoering toeslagen, 14 November 2019 (in Dutch)

<sup>8</sup> Report NO2017/095 *Geen power play maar fair play* (in Dutch)



claimed, because not all childcare costs had actually been paid in 2014. The Council of State disagreed.<sup>9</sup> It ruled that the Tax Administration had been wrong to withhold or reclaim any amount and ordered that the balance due should be paid.

This ruling prompted the National Ombudsman to write to the State Secretary for Finance requesting that all families in a similar position should receive compensation. In response, the State Secretary set out the steps he intended to take to resolve the situation. One such step was the appointment of the Donner Commission. The State Secretary agreed to suspend all payment claims and legal action against the families until such times as the Commission had returned its findings. For the National Ombudsman, this was the first indication that the government acknowledged the serious financial hardship experienced by those families.<sup>10</sup> In November 2019, the Donner Commission produced its interim report in which it called for the families to be «quickly and generously» compensated. The State Secretary for Finance accepted the report and acted upon its recommendations. In December 2019, the majority of the affected families received notification of the amount to be paid (subject to verification). Actual payment followed shortly thereafter.

To determine how many other people have been disadvantaged in similar cases, an investigation has been launched by the Central Government Audit Service (ADR). Once the results are available, the Donner Commission will produce a second report setting out whether, and if so how, these people should be compensated. The National Ombudsman will continue to monitor developments very closely. We shall take a particular interest in whether the State Secretary offers prompt compensation to any further victims of injustice.

### **Debt restructuring**

Debt restructuring, as provided under the *Wet schuldsanering natuurlijke personen* (Debt Restructuring (Natural Persons) Act 1998; Wsnp), has enjoyed the National Ombudsman's attention for some time. We have noticed that people in serious debt are often unable to solve their problems unaided. For this vulnerable group, however, it is often unclear where they can turn for help. The National Ombudsman therefore conducted an investigation examining the experiences of people who had used local authorities' debt restructuring services and identifying issues which preclude others from accessing those services. In 2019, we performed a preliminary investigation looking at the declining number of successful applications for debt restructuring and the consequences for people with a significant level of debt. Based on the findings, a more comprehensive investigation is to follow in 2020.

A person with unmanageable debts is able to apply to the court for a form of «voluntary insolvency agreement». We refer to this here as a «Wsnp application». The National Ombudsman is particularly concerned to note a serious decline in both the number of Wsnp applications and the number of successful applications. Between 2014 and 2018, the number of applications fell by 43% while the number of people accepted onto a debt restructuring programme fell by 54%. This downward trend continued in 2019, even though there has been no decrease in the number of households with problematic debt (estimated to be around 700,000). The number of people able to «start again with a clean slate» with the help of a local authority debt restructuring programme has remained more or less

<sup>9</sup> ECLI:NL:RVS:2019:1333

<sup>10</sup> Nationale Ombudsman. (2019, 27 November) Eerste teken dat regering inziet dat gezinnen in grote financiële nood zijn (in Dutch)

constant. The National Ombudsman wishes to find out what happens to people whose Wsnp application is rejected by the court, as well as those who are unaware of the possibility of making an application.

### **Local authority programmes**

In 2019, central government began a consultation round in preparation for the planned amendment of the legislation which provides for local authority debt restructuring programmes. The changes are intended to improve those programmes. The current proposals draw upon several recommendations made in the National Ombudsman's reports *Een open deur?* («An open door?») <sup>11</sup> and the follow-up, *Een open deur? Het vervolg*. <sup>12</sup> One important suggestion is that self-employed persons should also be able to access the debt restructuring programmes, which is not currently the case. Another is that local authorities and creditors should be able to share information more easily. This would help to identify those with (impending) financial problems at an earlier stage, whereupon more effective help can be offered.

The National Ombudsman welcomes the proposals but has nevertheless written to the State Secretary listing a number of points for attention. <sup>13</sup> He suggests, for example, that the new legislation should establish a notice period with regard to the disclosure of personal information to third parties. He also suggests that those taking part in a debt restructuring programme should, on request, be given a complete statement of their debts within two weeks, while all creditors should be required to respond to an offer of restructured payment instalments within the same period. The National Ombudsman believes that local authorities which outsource their debt restructuring services to external parties must retain overall responsibility for the process and must deal with any complaints about that process itself.

The National Ombudsman is gratified to note that some government organisations have shown a proactive attitude and are willing to cooperate in devising custom-made solutions when citizens experience financial difficulties. The Social Insurance Bank (SVB), for example, has set up a «Workshop» to find ways to prevent, solve or reduce problematic debt. If a client is subject to recovery measures and has failed to make use of the provisions available, the SVB will make personal contact to provide information and seek solutions. Another fine example is the Schulden-LabNL Foundation, an alliance of public sector organisations (including local authorities and executive agencies) and private parties (such as banks, insurance companies, utilities providers and housing associations). These organisations work together to ensure that successful debt-reduction initiatives can be upscaled as quickly as possible, thus preventing fragmentation.

### **Gradual progress in dealing with problems surrounding women's refuges**

Each year, some twelve thousand women (most of whom are accompanied by young children) seek a place in a women's refuge, or «safe house». In recent years, we have noticed that these women often have various problems, including financial problems. In 2017, the National

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<sup>11</sup> Report NO2018/010 Een open deur? (in Dutch)

<sup>12</sup> Report NO2018/070 Een open deur? Het vervolg (in Dutch)

<sup>13</sup> National Ombudsman. (2019, 28 May). Nationale ombudsman positief over wetsvoorstel wijziging gemeentelijke schuldhulpverlening (in Dutch)

Ombudsman therefore published the report *Vrouwen in de knel* («Women in Trouble»)<sup>14</sup> In many cases, women are not told how much they are expected to pay towards their stay in the refuge. By no means all are able to register with the local authority, which is a condition of various benefits and state allowances. There have also been problems on leaving the refuge. For example, it is often difficult to obtain social housing because local authorities apply different rules with regard to priority.

In October 2018, the National Ombudsman organised a meeting of stakeholder organisations to discuss the current situation and examine whether earlier recommendations had been taken up. It was clear that few concrete steps had been taken. The National Ombudsman therefore decided to conduct a further investigation, which resulted in the publication of the follow-up report *Vrouwen uit de Knel?* («Women out of Trouble?»)<sup>15</sup> in May 2019. It once again considers whether there has been adequate improvement in the situation of women in refuges, and whether the problems identified earlier had now been resolved.

The conclusion is that gradual progress is being made. Central government and local authorities have implemented various measures to improve access and mitigate the problems that women can experience during their stay in a refuge. For example, it is now easier to register with the local authority, while they are told the amount that they are expected to pay towards their stay sooner. Decisions with regard to income provisions, benefits and child allowance are also being made more quickly. However, there are still too few refuge places available. Debts continue to mount up during the stay in the refuge and remain a problem even after leaving. This must change, the National Ombudsman has stated.

The transition from refuge to more permanent housing is also beset by various problems. Cooperation between local authorities is not satisfactory. They often apply different rules governing priority for social rented accommodation, which results in confusion and inconvenience. Moreover, if a woman wishes to move out of a refuge in one local authority area and into a new home in another, she will have to re-apply for benefits and other social provisions such as debt restructuring. It appears to the National Ombudsman that local authorities do not trust each other. Women leaving a refuge often «fall between two stools» as a result. Meanwhile, their debts remain in place.

The National Ombudsman also notes a problem in connection with the entitlement to rent allowance (also known as housing benefit). Some women who were allocated self-contained accommodation by the refuge organisation were paid rent allowance. Later, it was decided that they had not been entitled to the allowance because there was only a temporary lease agreement. This problem has since been solved by the introduction of a new «model lease agreement» but those who received the allowance in the past are now required to repay significant amounts. The National Ombudsman considered this an unfair burden and asked the Ministry of the Interior and Kingdom Relations (BKZ) to propose a solution as quickly as possible. It has since done so. Shortly after the publication of the report, the Minister informed the ombudsman that he had instructed the Tax Administration to review the files of everyone whose rent allowance

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<sup>14</sup> Report NO2017/075 *Vrouwen in de knel* (in Dutch)

<sup>15</sup> Report NO2019/022 *Vrouwen uit de knel? Het vervolg* (in Dutch)

had been stopped or who had been ordered to repay amounts already received, and to do so based on rules which are more appropriate to the practical situation.

Although measures have been taken, the National Ombudsman remains concerned about the time taken to implement the solutions in practice. We shall therefore continue to monitor developments extremely closely and shall request regular updates from the various parties. Both central government and local authorities must take affirmative action. Together with all other stakeholders, they must provide essential support to a particularly vulnerable group of women who are trying to rebuild an independent existence. The Minister of Health, Welfare and Sport (VWS) has been asked to continue oversight of the process.

### **Financial insecurity among students**

In recent years, the National Ombudsman has regularly received complaints concerning DUO, the agency which administers student grants and loans. Notably, students complain of a lack of assistance when they have queries or problems. They find it difficult to contact the organisation, or the appropriate department, by phone. They therefore experience (financial) uncertainty for longer than is appropriate or necessary.

The following complaint illustrates how the lack of coordination and oversight deprived a student of the help and support he needed.

#### **Extra time requested due to exceptional circumstances**

It was a very stressful year for Sara's grandson Oscar. Both his parents died within weeks of each other. This greatly distressed Oscar, who was unable to devote his full attention to his MBO (Intermediate Vocational Education) course. He had already missed numerous lessons while helping to care for his sick mother and had been required to repeat a year. Because he had been on the course for the maximum permissible period of four years, his monthly student allowance was stopped. This only caused more stress. Oscar really needed that money because he was now living alone in his late parents' house.

A student on an MBO course is entitled to a maximum of four years' financial support in the form of a «performance-dependent grant». Sara had heard that this period could be extended to five years in exceptional circumstances. An extra year was precisely what Oscar needed to complete the course and gain his qualifications. With the help of the college, Oscar submitted an application to DUO. But he didn't receive a reply. His problems were now worsening because he was falling into debt. After a few months, Sara's patience was exhausted. She wanted to know exactly what was happening and contacted the National Ombudsman.

It seems that Oscar's application had fallen at the first hurdle. He had inadvertently ticked the wrong box on the form. In order to process the application, DUO would now require a doctor's certificate. Sara collected all the requested papers and the National Ombudsman requested DUO to process the new application as a matter of urgency.

Fortunately, DUO did indeed extend the grant period soon thereafter, and Oscar received the extra year's backpayments as one lump sum. That was a sizeable amount!

Anyone's life can take a sudden turn. A young student like Oscar, who recently lost both parents, can use a little extra support from the government. His application was eventually successful, largely

through the intervention of the National Ombudsman. DUO did take prompt action when requested. In this difficult period of his life, Oscar can now complete his studies at a somewhat less stressful tempo.

The National Ombudsman has intervened on several occasions to assist students who were unable to contact DUO by phone. We note that the organisation has now made significant improvements in this regard. On 16 October 2019, the Minister of Education, Culture and Science (OCW) made a statement in which she noted, «Many more students are now able to administer their own account information online. This means that there will be fewer occasions on which they need to phone. This is good. Through extra effort and investment, we have managed to greatly reduce call waiting times. The original agreement with DUO was that no one should have to wait more than eight minutes. We are now at an average of three minutes. I am very pleased that our measures have been successful.» The National Ombudsman has also seen a significant reduction in the number of complaints about the difficulty of contacting DUO by phone. This is a welcome development.

In July 2019, the National Ombudsman began an investigation examining the recovery of outstanding student loan repayments from former students living in other countries. There are many former international students who experience problems in repaying their loans because the instalments are too high compared to local incomes. The National Ombudsman has received complaints that DUO is not open to any rescheduling of the debts with more affordable repayment terms, and that the organisation continues to use «passport flagging» whereupon the debtor may be unable to renew his or her passport and hence unable to travel. The purpose of this investigation is to determine whether DUO is acting fairly and with consideration towards those who are willing to repay their student loan but are unable to do so within the period allowed. We expect to complete the investigation in March 2020.

## 1.2 Access to social provisions

**Some groups within society are particularly dependent on the government, perhaps because they need care or extra support. Where people rely on several social provisions, it is essential that the government maintains oversight and ensures good coordination. In practice, it is clear that the government does not always succeed in applying the necessary «individual» approach, examining requirements on a case-by-case basis. As a result, vulnerable citizens are denied access to essential provisions. In 2019, the National Ombudsman devoted attention to various aspects of «access to social provisions», including sheltered employment, cooperation between executive agencies and the importance of ensuring that everyone is able to register with a local authority.**

### **Sheltered employment**

In 2019, the National Ombudsman launched an investigation further to several complaints and reports from people who are dependent on sheltered employment.<sup>16</sup> This term refers to special facilities for people with a physical or cognitive disability who therefore need extra support, and perhaps adapted resources, in order to be able to work and earn their own income. Local authorities are responsible for ensuring that sheltered employment places are available.

People who rely on sheltered employment are part of a particularly vulnerable group who are unlikely to «kick up a fuss». This is not only because they may not know where to take their grievances but also because they fear negative consequences. Where local authorities cooperate, providing community services on a more regional basis, or have outsourced the practical arrangements to «social employment companies», it is especially difficult to determine exactly who is responsible for what and who should be contacted in the event of problems. Is that the local authority itself? The regional alliance? The social work organisation? Or perhaps all three? Because the local authority has opted to outsource certain tasks, it is possible that several parties are involved. Each may simply refer anyone with a complaint or query to the others: «passing the buck».

#### **Not taken seriously**

Miranda is in sheltered employment because she has a physical disability. She has experienced problems. In her opinion, her employer is in breach of several conditions of the applicable Collective Labour Agreement. Miranda is not one to let things pass. She complains to the employer but to no avail. Her complaint is not being taken seriously, she concludes.

Miranda then contacts the local authority. After some time, she is invited to explain her grievances in person. Once again, however, her complaint is not taken entirely seriously. She is told to speak to her employer, even though she has already done so with no result. Where now?

<sup>16</sup> Report 2019/058 Onderzoek naar de behandeling van klachten van mensen met een arbeidsbeperking (in Dutch)

Miranda is disappointed that the local authority has not taken action. Moreover, she finds the complaints procedures of both her employer and the local authority overly complex and confusing. Why won't anyone take her seriously?

In early 2019, the National Ombudsman set up a dedicated helpdesk in order to gain a better understanding of the employment situation for people with a disability. We received over fifty reports, from which it was clear that people who depend on sheltered employment experience a range of difficulties. First, there is the question of access to sheltered employment, which is by no means guaranteed. Having found a place, not everyone is satisfied with their work. People can encounter various problems which they are not always willing or able to discuss. Some complain of inadequate guidance. Some feel intimidated or bullied by other groups. Many experience a very high workload and pressure to perform. Last but not least, many people find it difficult to make a complaint because they fear negative consequences such as losing their job. Some simply do not know where they should take their complaint.

The National Ombudsman notes that local authorities are inclined to adopt a formal approach to complaints, restricting themselves to an assessment against the applicable legislation. If everything appears to be «within the letter of the law», no further action is taken. They are also too quick to refer complainants elsewhere, such as the regional alliance which organises sheltered employment. The ombudsman believes that a local authority must accept and act upon its overall responsibility. The fact that it has outsourced its (statutory) tasks to another organisation is irrelevant. The local authority is and remains responsible for all aspects of sheltered employment. It must also be accountable. People with a disability must know precisely where to go with any problems and complaints about their employment situation. The local authority's door must be wide open for all citizens, and especially for those who need additional support. The National Ombudsman therefore calls on all local authorities to:

1. create a clear point of contact where citizens, and especially vulnerable groups such as people with a disability, can take their problem or complaint.
2. monitor the handling of all complaints received from people with a disability, regardless of where the complaints assessment procedure actually takes place.
3. actively investigate how people in sheltered employment experience their work: are they satisfied?

### **Homelessness and registration**

Most social provisions require the citizen to be registered with a local authority. The «Key Register of Persons» (BRP), or «civic register», supposedly contains the name, address and date of birth of everyone who is resident within the municipality. Unfortunately, the National Ombudsman is regularly contacted by people whose application to be placed on the register is refused. Anyone who does not have a permanent address is likely to be turned away.

In 2019, the National Ombudsman undertook various activities to draw this situation to the attention of local authorities. In particular, we urged them to ensure that the «self-reliant homeless» are not allowed to fall



further down the social ladder.<sup>17</sup> This term refers to people who have no fixed address, perhaps due to redundancy, a broken relationship or debt, but are not deemed to be in need of more intensive social care because they are not suffering from serious psychiatric problems or addictions. They do not qualify for a place in an «official» shelter for the homeless, and most would not wish to go down this route anyway. However, even those who have some temporary accommodation, such as with friends and family, or know someone who is willing to accept mail on their behalf, are unable to register with the local authority. This only worsens their problems because they are unable to claim benefits, obtain health insurance or take part in a debt restructuring programme.

#### **No fixed address but self-reliant**

Albert is recently divorced. Because he is no longer able to live in the same house as his ex-wife, he is now «drifting». Given the severe housing shortage in the Netherlands and the resultant long waiting lists, he is unlikely to find permanent accommodation anytime soon. Fortunately, he is able to stay with his brother. It is not an ideal situation since his brother has a family of his own. Albert does not want to get in the way so he regularly sleeps on other people's sofas. Occasionally, he can use a friend's holiday chalet to spend a weekend with his children.

Albert goes to the town hall to renew his passport. To his surprise, he finds that he has been removed from the civic register. Because he has been moving around so much, he has not been able to check his mail. And because he is no longer registered, he cannot renew his passport. He cannot simply register using his brother's address because that would have implications for his brother's benefits entitlements.

Albert calls the local authority where he used to live before his divorce. He is told that he cannot register here either, because he is no longer a resident. Neither is he able to use a postal address there. Eventually, he learns that he would be able to use the address of the local homeless shelter, but only if he actually slept there for a while. He does not wish to do so because he has some perfectly good sofas at his friends' houses! Albert is already in a very difficult position. Now he discovers that his health insurance has been cancelled. Enough is enough. Something has to be done, and quickly. Why won't the local authority help him with his registration so that he can get his life back on track?

Situations like Albert's are not only unnecessary but a complete waste of government time and money. The National Ombudsman considers it essential for government authorities to look beyond the letter of the law. They must engage in dialogue with people and seek solutions – possibly creative ones – which will help them move on as quickly as possible. The lack of permanent accommodation will then be no bar to claiming provisions to which they are entitled. They will be able to solve their own problems. Overly restrictive rules and regulations should be bent, or even ignored, when appropriate.

At the invitation of the State Secretary for Health and Welfare, the National Ombudsman has provided a more comprehensive explanation of this standpoint. The National Ombudsman has also contributed to the

<sup>17</sup> National Ombudsman. (2019, 15 October). Nationale ombudsman: laat «zelfredzame» adreslozen niet verder afglijden (in Dutch)



presentation *Blij aan de balie* («Happy at the counter») by the Ministry of the Interior and Kingdom Relations (BZK)<sup>18</sup>. It is about the everyday work of the «frontline» staff who deal with members of the public at a local authority office. The presentation shows that it is not always easy to make balanced decisions when someone asks to be added to the civic register. Staff must sometimes look beyond the rules and consider the citizen's perspective.

The National Ombudsman has shared examples of complaints and reports about the civic register with the Ministry of the Interior. We shall continue to monitor the situation in 2020.

### **Urgent letter to Minister-President about housing and homelessness**

In 2019, the National Ombudsman received a growing number of reports about people who have no fixed address and are not able to provide for themselves, but who nevertheless do not qualify for admission to a homeless shelter because they have no serious psychiatric problems and are not addicted to drugs or alcohol. In some cases, it is simply because the shelters are already full. The Ombudsman for Children and several local ombudsman services note a similar trend. They have seen women and children forced to continue living in an unsafe situation because there are no places available in the women's refuges. While the majority of homeless and «unsheltered» people used to be single adult men, the group now includes a growing number of young people and families with children. They are often directed from one local authority area to another, with no effort made to find them temporary accommodation or even allow them to register as a resident.

In late August 2019, Statistics Netherlands/CBS published figures which show that homelessness has doubled in the last ten years. The National Ombudsman concludes that current housing policy, long-term plans and action programmes are not enough to halt this trend. The government announced that it would produce supplementary policy as a matter of urgency. By December, however, no concrete plans had emerged and there had been no improvement in the situation. Local authorities were now facing an acute housing shortage and had no resources with which to tackle the problem.

On 4 December, the National Ombudsman and the Ombudsman for Children therefore submitted an urgent letter to the Minister President, making clear that they were also writing on behalf of all local and regional ombudsman services.<sup>19</sup> The letter urged central government to accept and act upon its responsibility to resolve the housing shortage and the homelessness problem. It is for the government to make the next move. Local authorities may be expected to devise and implement creative, perhaps even unorthodox, solutions to mitigate the problems in the shorter term. Those solutions must, of course, be feasible. However, the problems are now far too serious for local authorities to solve unaided. Central government must provide coordination and exercise oversight. Working with the authorities, it must facilitate short-term solutions in order to pave the way for more permanent solutions. The joint letter requested central government to suspend legislation or policy which

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<sup>18</sup> Nationale ombudsman. (2020, 17 June). *Blij aan de balie* (presentation, in Dutch)

<sup>19</sup> Nationale ombudsman. (2019, 4 December). *Oproep van alle ombudsmannen aan Minister-President Rutte: er is nú actie nodig van Rijk in huisvestings-en daklozenproblematiek* (in Dutch)

could stand in the way of prompt progress, and to ensure that no new obstacles are created. Further to this letter, a meeting was held in January 2020 with Paul Blokhuis, State Secretary for Health, Welfare and Sport. Mr Blokhuis stressed that he fully appreciates the seriousness of the situation and is already working alongside local authorities to implement appropriate measures. The National Ombudsman will continue to devote close attention to the housing and homelessness problem in 2020.

### **Uncertainty about resources for the disabled**

Another topic to which the National Ombudsman devoted particular attention in 2019 was support for those with a chronic illness or disability. Due to overly complex policy, the outsourcing of tasks, and a lack of overall coordination and oversight, many people are denied the support they need. A prime example is the supply of mobility aids, as required by the *Wet Maatschappelijke Ondersteuning* (Social Support Act 2015; WMO). For some time, the National Ombudsman has been receiving complaints and reports about the quality of resources such as (electric) wheelchairs and mobility scooters, as well as problems with supply, repairs and replacement. Responsibility for the implementation of the Social Support Act rests with local authorities. The ombudsman has requested them to accept and act upon that responsibility.<sup>20</sup> The consumer affairs television programme *Kassa* has also devoted airtime to the issue.<sup>21</sup> It affects people who, in many cases, are entirely dependent on mobility aids if they are to visit family and friends, or leave the house at all. In other words, to participate in society.

### **Confined to the house**

Esther has suffered extremely restricted mobility since December 2018. She is unable to walk more than a few steps and needs an electric wheelchair to get around. In March 2019, she asked her local authority to provide one.

She heard nothing for two months. In early June, however, a social worker «dropped in for a chat» The local authority then contacted its preferred supplier and ordered an electric wheelchair to be delivered to Esther's home. In early July, someone came along to take measurements. There then followed another long period of complete silence. Esther tried to contact the supplier on several occasions to ask what was happening but was unable to get any further than the person who answers the phone. Messages were taken and Esther was promised at least four times that someone would call her back within a few days. They didn't.

In mid-August, Esther contacted the Social Support department of her local authority. They said that there was little they could do other than send a memo to the Contracts and Procurement Manager. After Esther called the supplier again, this time with threats of «further action», someone finally phoned her back. However, they could not tell her anything about the status of the order, how much longer she would have to wait, or even the average delivery time for an electric wheelchair. A week later, Esther phoned yet again, and yet again she came up against a brick wall. In late August an exasperated Esther asked the National Ombudsman for help. We immediately contacted the local authority and reminded staff of their (statutory) responsibility. Someone then called Esther and promised

<sup>20</sup> Nationale ombudsman. (2019, 16 November). Nationale ombudsman: nog steeds grote zorgen over problemen met Wmo-hulpmiddelen (in Dutch)

<sup>21</sup> Kassa (BNNVARA). (2019, 12 October). *Wat gaat er mis in de hulpmiddelenzorg?* (in Dutch)

that they would follow things up immediately. The supplier was asked to respond to Esther's complaint. An interim solution was found in the form of a loan wheelchair, so at least Esther could get out and about again. Later the same week, she was told that her own, brand new, made-to-measure electric wheelchair would be delivered within days. It was, and it is absolutely perfect. Esther has her mobility back!

Under the Social Support Act, local authorities have a duty of care. Complaints alleging any breach of that duty of care must be dealt with immediately. Moreover, the local authority must exercise oversight. Where necessary, it must actively contact the supplier and do whatever is necessary to solve the problem. If straightforward cooperation does not work, the National Ombudsman expects the local authority to seek alternative solutions so that the citizen has the resources he or she needs as quickly as possible.

In addition to contacting local authorities, the National Ombudsman also wrote to the Minister of Health, Welfare and Sport asking what action would be taken to solve the problems once and for all.

In November, the Minister held a meeting with the National Ombudsman, informing him that a dedicated team had been set up and was working diligently to resolve all complaints from members of the public. Solutions to ongoing problems were also being sought. A panel which includes all stakeholders had been formed for this purpose. The Minister and the National Ombudsman agreed to take joint action in dealing with complaints concerning resources provided under the terms of the Social Support Act.

Despite these welcome efforts, the National Ombudsman continues to receive reports of problems, many concerning local authorities whose contracted supplier is now in financial difficulties. This supplier holds a significant market share. The National Ombudsman has asked the Minister to take appropriate action, to assist local authorities in finding solutions to the problems that have already emerged, and to discuss the situation with the stakeholder panel. The fact of the matter is that people are still not receiving the resources they need, while local authorities are not able to reach agreement with the supplier. In the National Ombudsman's view, local authorities must act upon their own responsibility and fulfil their duty of care. However, if the situation becomes so serious that they are unable to do so unaided, the Minister must take charge to protect the interests of those who rely on mobility aids and other medical devices.

In 2020, the National Ombudsman will hold further talks with the Minister of Health, Welfare and Sport.

### **Subscription charges unclear**

In addition to complaints about the supply and repair of resources, the National Ombudsman has also received complaints about the new subscription charges for assistance provided under the Social Support Act.<sup>22</sup> According to the government's own website and that of the Central Administration Office (CAK), all clients would pay a fixed charge of

<sup>22</sup> Nationale ombudsman. (2019, 16 November). Het nieuwe abonnementsstarief Wmo: vallen sommige mensen buiten de boot? Nationale ombudsman vraagt Minister VWS om opheldering (update 12 April 2019, both in Dutch)

€ 17.50 from 2019. However, many people are still being charged the former (higher) rate for domestic help, which eats up their health insurance deductible. The National Ombudsman wrote to the Minister of Health and Welfare asking him to clarify who is expected to pay the new rate and how local authorities should apply it. The National Ombudsman stated that people should be given full information about the costs of their care so that they know where they stand.

The Minister replied that, in 2019, the new rate applies only to «individualised» provisions. If a local authority has designated domestic help as a «general» provision, clients will pay the existing, higher rate. In 2020 and beyond, the new charge will apply to all provisions. He considered it regrettable that anyone found the information to be unclear and agreed that the system in 2019, with its differing amounts, could be seen as confusing. The Minister undertook to have the online information rewritten and promised to encourage local authorities to improve their public communications. Once the rates are standardised in 2020, he pointed out, there could be no further confusion.

The original intention was that information would no longer be submitted to the CAK directly by care providers but would be channelled through local authorities. In mid-2019, however, an external study concluded that the introduction of the new system using the approach then in place would not be practicable. The Minister undertook to improve that approach, but conceded the possibility that a number of local authorities would not be ready in time. He also admitted that the administration system was flawed and that the CAK had failed to implement all available functionality.

The National Ombudsman was again concerned, particularly with regard to the consequences for the citizen if the 2020 implementation did not go to plan. In December, representatives of the National Ombudsman therefore held a meeting with the Ministry of Health, Welfare and Sport to discuss the status of the project and the possibility of payment problems for end users. In late December, the Minister announced that the introduction of the new charges would be phased, with careful interim testing to preclude any risks. The National Ombudsman will remain vigilant to any complaints on this topic. If any problems emerge, we shall notify the CAK and the ministry immediately.

### **Safeguard dementia care**

In 2018, the National Ombudsman published the report *Borg de zorg* («Safeguard care»)<sup>23</sup>. In a slightly earlier report *Zorgen voor burgers* («Care for citizens») the ombudsman identified certain problems which can restrict access to care and support services.<sup>24</sup> *Borg de zorg* was a follow-up investigation which focused specifically on the problems experienced by people with dementia and their informal carers. It concludes that this group encounters unreasonable obstacles when attempting to access formal care. They rarely enjoy the support of a case manager, which the National Ombudsman considers to be essential. The National Ombudsman has called for a single point of contact through which all necessary care and support is arranged. He also states that good, practical information must be available both before and after

<sup>23</sup> Report 2018/090 *Borg de zorg* (in Dutch)

<sup>24</sup> This investigation focused on the problems experienced by citizens whose situation is covered by more than one of the social care statutes

diagnosis. There must be daycare facilities with an appropriate activities programme. Respite care must be available. There should also be a regular professional care adviser for everyone who needs one. Last but certainly not least, the procedure for admitting a patient with dementia to the secure unit of a care home must include every possible safeguard.

The Minister of Health, Welfare and Sport responded to the report in March 2019, stating that he had already implemented several measures to improve access to care and support for people with dementia and their informal carers. The National Ombudsman welcomes the Minister's proposals, which will make it easier to obtain the support of a case manager. The Minister has also appointed an official to conduct a study of respite care, from which the ombudsman expects prompt and effective results. The aim is to ensure that respite care is more readily available to ease the burden on informal carers. The National Ombudsman contacted this official to explain the report in further detail. He continues to monitor developments and wishes to ensure that this topic is given due attention. On World Alzheimer's Day (21 September), for example, the National Ombudsman wrote a column about the report for the national daily newspaper *De Telegraaf*.<sup>25</sup> It once again stressed the importance of a case manager for patients with dementia and broached the subject of advance directives, more commonly known as «living wills».

In late 2019, the National Ombudsman launched a follow-up investigation looking at the difficulties citizens can experience in obtaining appropriate care and support. It will examine whether the recommendations of the earlier two reports have been implemented in practice.

### **Inflexibility at the CAK**

#### **A mistake with major consequences**

Jolanda is proud of her daughter Lisanne. Although she has learning difficulties, Lisanne has been living independently for some time. She shares a nice house with her friend, where she can rely on daily care and supervision. Jolanda had few concerns until Lisanne suddenly received a large bill from the CAK. She was now expected to pay several hundred euros as her personal contribution towards her care. Jolanda did not understand. She had notified the health insurer of all changes in her daughter's situation, as per the rules. Soon after Lisanne moved into independent accommodation, Jolanda noticed that she was no longer being charged any personal contribution. She called the health insurer, Zilveren Kruis, and was told that all changes were automatically notified to the CAK so there was no cause for concern. However, this was clearly not the case. Eighteen months later that huge invoice landed on the doormat. Jolanda lodged an objection with the CAK. It was rejected. The CAK told her that it couldn't just write off the amount: it had to be paid. Those are the rules! The CAK laid the blame squarely at the door of the health insurer. They had been far too slow in passing on the information.

The claim caused Lisanne considerable stress and distress. This annoyed Jolanda because her daughter is already vulnerable enough. The health insurer sent a letter of apology but Jolanda did not consider this enough. In her view, she was being penalised for

<sup>25</sup> *De Telegraaf*. (2019, 23 September). Ombudsman: Stilstaan bij Wereld Alzheimer Dag [Column, in Dutch]

someone else's mistake – a mistake which had major consequences for both mother and daughter.

Jolanda's story was one of several reports concerning late claims of this type. In early 2019, the National Ombudsman therefore requested a meeting with Zilveren Kruis and CAK. Several members of the public had received invoices, with penalties added, because the CAK had not received information about the care provided in good time. Several people had experienced (financial) problems as a result. The informal meeting focused on how things could be improved in future. Jolanda's story was read out by way of illustration. Jolanda and her daughter were left with the impression that they were being penalised for a mistake that they hadn't made. The public sector organisation concerned had shown absolutely no understanding or flexibility. All parties were given the opportunity to talk about the various aspects of the problem and to suggest solutions. The discussion considered the cooperation between Zilveren Kruis and the CAK as well as the manner of communication with the individuals concerned. The ombudsman noted that many of the reports were from citizens who did not understand how such mistakes could have been made.

It was a constructive and fruitful discussion. The participants were able to share experiences and ideas about the process, and could draw lessons from each other. They agreed that greater attention must be given to the question of who should take overall responsibility for communications with the citizen. If a mistake is made, it is important to apologise immediately and to show understanding, especially if that mistake has a major financial impact. Every case must be considered individually, with a payment plan offered where appropriate.

The National Ombudsman also conducted an in-depth review of all complaints and reports received in 2018 and 2019 about the manner in which the CAK implements the «personal contribution» system. It would seem that the citizen quickly becomes embroiled in a world of automated decision-making systems and administrative processes. Those who contact the CAK often feel that they are not being given adequate assistance. The National Ombudsman notes that the CAK's implementation of other regulations has drawn similar complaints. At the request of the Dutch Healthcare Authority (NZa), the National Ombudsman has produced a summary of the most common complaints and criticisms. The NZa has drawn on this information in its own study of the CAK's implementation of the personal contribution system.

In addition, the National Ombudsman approached the CAK directly to ask what improvements will be forthcoming. In response the CAK stated that work is already in hand to improve the collection of the personal contribution and services in general. The National Ombudsman has informed the CAK that we intend to monitor developments closely and in 2020 will assess whether there have indeed been improvements from the citizen's perspective.

### **Cooperation remains crucial**

Executive agencies must work together to ensure that the citizen is given access to appropriate provisions. This seems obvious, but in practice the National Ombudsman regularly sees situations in which members of the public are inconvenienced because public sector bodies fail to communicate with each other. Often, their rules and procedures are not properly

coordinated. Because the government has placed responsibility for various tasks with various organisations, there is no longer a single body which can take charge when things go awry. People with a problem do not know where to go for help. This is why the National Ombudsman is calling for a single point of contact – a «front office» – where citizens can take any questions they might have about public sector services. A complaint we resolved in 2019 illustrates the impact of a government which fails to exercise oversight.

#### **Residence permit**

Esra contacted the National Ombudsman through her legal adviser because the Tax Administration had stopped her rent allowance, healthcare allowance and child allowance. Fortunately, two of the three allowances were restored with retroactive effect. The rent allowance, however, was not. Esra and her family found themselves in financial difficulties as a result.

The National Ombudsman contacted the Tax Administration by phone to seek a solution. We were told that one of the children in the family had spent (part of) the year in the Netherlands unlawfully: his residence permit had expired and the application for renewal had not been submitted on time. That is why the rent allowance had been withdrawn.

We contacted the Immigration and Naturalisation Service (IND), which informed us that the residence permit had since been renewed, and that the failure to submit an application on time had been ruled «excusable». This meant that the new permit was backdated to cover the entire period since the expiry of the old permit, whereupon there was no question of any «unlawful residence».

The National Ombudsman passed on this information to Esra's legal adviser, explaining that the best course of action would be to contact the Tax Administration again to discuss the implications for the rent allowance entitlement.



### 1.3 Digitalisation

**Computer technology is rapidly penetrating all aspects of society: the process known as «digitalisation». Public sector authorities are no exception and are introducing various forms of digital services, or «e-government». This can increase efficiency and convenience but there is also a downside for the citizen. The digitalisation of government services is sometimes at the cost of other forms of contact. Moreover, the design of the services does not always take account of the end user's wishes and requirements. The National Ombudsman regularly receives complaints from people who are unable to conclude their business with a government body precisely because it uses digital systems. In 2019, we devoted particular attention to aspects such as the user-friendliness of online forms, contact by telephone, and the use of algorithms.**

#### **User-friendly online forms**

The National Ombudsman believes that the public sector must use digitalisation in the interests of the citizen. In 2017, the ombudsman produced a «vision document»<sup>26</sup> about digital service provision, in which he stated four basic principles:

- Take responsibility.
- Be accessible.
- Be user-friendly.
- Be solution-oriented.

It is clear that government organisations do not always observe these principles in practice. One example is the design of online forms which members of the public can use to make an appointment, submit an application, for example for unemployment benefits, or register information such as the annual tax return or a change of address. Government organisations have a statutory obligation to ensure that their apps and websites meet the guidelines for disabled access. Those guidelines are mostly concerned with the technology and can therefore increase accessibility for everyone. Nevertheless, an online form can comply with all requirements and still not be «user-friendly». In recent years, we have received various complaints about online forms. In March 2019, the National Ombudsman therefore launched an investigation examining the user-friendliness of the online forms used by various public sector authorities.

Complaints relate to various aspects, such as overly complicated language (long words), problems in uploading attachments, forms which automatically close down if you take too long to complete them, and those that request unnecessary information. Broadly speaking, the same complaints are heard from both members of the public and professionals such as bookkeepers who complete forms on behalf of their clients.

*«Often too complicated, lacking logical structure, too many technical limitations, insufficient explanation of questions. I am a professional service provider so I know my way around forms. For the average citizen, who is submitting their first application for benefits, an allowance or some other financial provision, the online forms are often a bridge too far.»*

<sup>26</sup> Ombudsvisie op digitalisering overheid (7 December 2017, in Dutch)



The National Ombudsman published his report in late August 2019.<sup>27</sup> Its main conclusion is that the government has devoted some attention to the user-friendliness of online forms, but end-users are still not being involved closely enough in the development of new forms or the improvement of existing forms. The ombudsman has therefore formulated some basic principles to help government organisations make their online forms even more user-friendly. In essence, the government must involve the end-user in various ways and in various phases of the development process. The National Ombudsman also believes that government organisations should make greater use of existing initiatives and «lessons learnt». Thus far, we have shared the new principles with the Association of Municipalities in the Netherlands (VNG), Logius (the central ICT organisation for the public sector), and the Ministry of the Interior and Kingdom Relations (BZK). All welcomed the principles and endorsed the need to involve the business community and general public in the development and improvement of online forms and e-government services in general. VNG and Logius have stated that they will include the principles in their further policy development processes and in their ongoing initiatives.

### **Contact by telephone remains essential**

Although digitalisation opens up many new possibilities for the citizen, it must not be allowed to replace personal contact. As long ago as 2010, the National Ombudsman called on the government to improve accessibility by phone. Nevertheless, in 2019 we were still receiving complaints and reports about the difficulty of getting the right person – or indeed anyone – «on the line». In 2018 and 2019, several government organisations were particularly difficult to contact by phone, resulting in unreasonable waiting times.

In some cases, waiting times were caused by the transition (in computer terms, «migration») to digital services. Because that transition did not go according to plan, a greater number of people were trying to make contact by phone. Longer waiting times were also due to a decline in staffing levels, whether deliberate (numbers having been reduced in anticipation of digitalisation) or otherwise. To reduce waiting times, a number of public sector organisations have now invested in extra staff capacity. One example is DUO, the agency which administers student grants and loans, which can now report greatly reduced call waiting times. This is not only due to extra capacity but also a decrease in the number of incoming calls.

While some government organisations have shown an improvement, the National Ombudsman continues to receive regular complaints about the difficulty of making contact by phone.

#### **Ex-directory?**

Nelleke received a demand for water rates. The amount did not seem right to her, so she wanted to phone the water board. But there was no telephone number on the demand, only a website address.

Nelleke is not good with computers. She had to ask a friend to look up the number. Nelleke thought the absence of a telephone number on the demand was far from user-friendly. It took her considerable time and effort to find it.

<sup>27</sup> Report 2019/046 Houd het simpel: onderzoek naar de gebruiksvriendelijkheid van digitale formulieren van de overheid (in Dutch)

In view of the various reports received, in December 2019 the National Ombudsman called on all public sector organisations to remove any obstacles which prevent members of the public from contacting them by phone. The ombudsman stated three conditions which should be observed:

- Include the telephone number in all communications; do not hide it away in some corner of the website.
- Do not charge premium rates. Calls should cost no more than the standard local charge.
- Keep waiting times short: ensure that there is someone on the line as quickly as possible.

On 19 December 2019, the Minister of the Interior and Kingdom Relations was asked to respond to the National Ombudsman's request. This ministry has a coordinating role in ensuring that all public sector bodies are fully accessible. On the same date, we circulated an email bringing the National Ombudsman's comments to the attention of as many public sector organisations as possible.

### **Using DigiD when abroad**

Everyone must be able to conduct their business with the government online. For Dutch citizens living abroad, online services can be a godsend. However, they can sometimes experience major obstacles when attempting to use them. This is partly because the government has imposed extremely high security requirements for digital systems, making access from any country other than the Netherlands more difficult.

«DigiD» is the authentication system which allows users secure access to online government services. Its use by the Employee Insurance Agency (UWV) is one example of how overseas users are at a disadvantage. In May 2019, the UWV upgraded its DigiD login to include «SMS two factor authentication». This means that the user first enters his standard password and is sent a code by SMS (text message). He has to enter that code on the website in order to continue. The upgrade was prompted by a ruling of the Dutch Data Protection Authority, which required the UWV to increase its security level because it processes medical information. The UWV implemented two-factor authentication across the board, without distinguishing between the various client groups. People living abroad who receive benefits administered by the UWV now face a problem. To add two-factor authentication to the app on a phone or computer, a user requires an «activation code». This is normally sent by Logius (the ICT division of the Ministry of BZK) by regular post.

People living abroad who receive a pension or benefits administered by the Social Insurance Bank (SVB) can simply request the activation code via the SVB website and it will be sent to their home address. This is because they are required to submit evidence of their current address, and proof that they are still alive, every year. However, this requirement does not apply to the benefits administered by the UWV. Logius does not therefore regard these users as «adequately verified». To obtain an activation code, they must report in person to the DigiD Desk at a Dutch diplomatic mission in their country of residence. For some, this can mean a round-trip of hundreds of kilometres.

Further to several complaints about this situation, the National Ombudsman contacted the GOED Foundation, an advocacy group which represents the interests of Dutch citizens abroad, as well as the UWV and the SVB. We held discussions with Logius about their procedures and the problems which some people encounter, with particular reference to people who are entitled to a Dutch pension or benefit but happen to live abroad. The National Ombudsman has urged the government to create a single point of contact to assist Dutch citizens living in other countries in this and other relevant matters.

### **Access to «MijnOverheid» and «Berichtenbox»**

In recent years, the National Ombudsman has devoted much attention to the problems experienced by some citizens when using the *MijnOverheid* («My Government») website and its two-way communication channel, the *Berichtenbox* («Message Box»). Although these online facilities have made life easier for some citizens, who are now able to read personal communications from government authorities online, the National Ombudsman receives regular complaints about failings and shortcomings. Some people have accidentally activated an account on MijnOverheid. Because they do not (or are unable to) check their messages online and do not receive communications such as tax demands through the post, they have missed payments and been fined. We have also heard from people who continue to receive messages addressed to a deceased relative, even though the death has been properly notified.

In 2017 and 2018, the National Ombudsman conducted an investigation into these complaints and called on the government to place the citizen's interests first at all times. It must ask what the citizen needs in order to communicate with government authorities successfully. The National Ombudsman is gratified to note that the Ministry of the Interior and Kingdom Relations has made significant progress in implementing the recommendations. Nevertheless, it is clear that *MijnOverheid* and the *Berichtenbox* remain inaccessible to some, perhaps due to difficulties in obtaining or using the DigiD log-in codes. Citizens can reasonably expect the government to resolve their problems as quickly as possible. The following example illustrates that this is not always the case.

#### **DigiD-elay**

Astrid lived in New Zealand for 24 years. Last year she returned to the Netherlands, where she intends to remain. Much has changed. Gone are the paper tram tickets: we now use smartcards. The government has issued everyone with a Citizen's Service Number and has introduced the DigiD code to provide access to online government services. Everyone now has a personal «inbox» on the MijnOverheid.nl website. Astrid contacts the local authority at her new address to request a Citizen's Service Number and DigiD log-in code.

At first, everything seems to be fine. After a few months, however, she is unable to log in. Her Citizen's Service Number is no longer valid because it is based on her old «Social and Fiscal Number». As a result, her DigiD code is also invalid and she cannot use any of the services it secures, including MijnOverheid.nl and the Berichtenbox messaging service.

Astrid complains and is contacted by Logius, the organisation responsible for e-government services. They tell her that it is a very complex ICT problem which requires a number of manual adjust-

ments. They're working on it, she is assured. Astrid receives a series of friendly phone calls to the same effect, but by now she has been unable to access the Berichtenbox for almost a year. That is irksome, since she knows that it contains several communications from the Tax Administration. Fortunately, she still receives the same messages by regular post.

Every now and then she calls Logius and is politely informed that they are still working on it. But a solution is imminent. Really ... any day now! And then she hears nothing more for several weeks. Eventually, Astrid decides to contact the National Ombudsman to ask whether we can help. We contact Logius. The problem is solved within days. Over a year since returning to the Netherlands, Astrid finally has access to e-government services.

### **Data and risk profiling**

Government authorities use automated decision-making algorithms for various purposes, such as assessing visa or benefits applications, and even issuing fines. The future is expected to bring even more opportunities for decisions to be based on artificial intelligence, data, algorithms and risk profiling. This could have negative implications for the citizen. We must ask whether the decisions made by a computer are always just and take adequate account of individual circumstances.

The National Ombudsman is keen that public sector bodies continue to respect the citizen's perspective. They must think carefully about the potential consequences of further automation in terms of their service provision. They must be made aware that the use of data, risk profiling and algorithms is not just a matter for IT specialists, but concerns everyone within the public sector. In 2019, the National Ombudsman held meetings with policy-makers, representatives of the executive agencies and IT experts to call for attention to be devoted to this important topic.

On 10 October, the National Ombudsman spoke at the symposium «Data-driven processes in social security». He emphasised that while digitalisation and technology open many new opportunities, it is essential not to lose sight of the citizen's perspective. If an individual queries a decision made by an automated system, there must always be real flesh-and-blood people on hand to explain that decision, review it and overrule it where appropriate. The public remains entitled to personal contact.

## 1.4 Rights protection

**Like everyone within society, the government must comply with current legislation. The rights and freedoms of the individual must never be infringed, restricted or revoked. Government authorities are, in certain situations, entitled to use force to protect society. But here too, the public is fully entitled to expect that action will be proportionate, that their rights will be respected, and that any complaints will be heard and handled in a correct manner. In 2019, the National Ombudsman conducted investigations into various related aspects such as personal searches at Amsterdam Schiphol Airport, actions on the part of the Public Prosecution Service (*Openbaar Ministerie*) which resulted in the victims of crime receiving inadequate compensation, and requests for legal assistance made by Dutch authorities to their counterparts in Thailand.**

### **Personal searches at the airport**

In 2019, the National Ombudsman conducted an investigation examining complaints procedures in connection with personal searches carried out at Amsterdam Schiphol Airport.<sup>28</sup> The use of personal searches, either by «frisking» or scanner, has increased in recent years due to the heightened risk of terrorist activity. A personal search can be regarded as intrusive and a violation of the basic constitutional right of the «inviolability of the person». Nevertheless, such searches are permitted provided strict protocols are observed.

Various parties are involved in carrying out security checks at Schiphol. The security of civil aviation falls under the responsibility of the Minister of Justice and Security. However, practical implementation of the security measures is in the hands of a private sector organisation, the Royal Schiphol Group, which in turn contracts various external service providers. The Royal Netherlands Marechaussee (KMar), a «gendarmerie» force which falls under the responsibility of the Ministry of Defence, is responsible for processing any complaints. The government retains overall responsibility and can be expected to exercise proper oversight, especially where there are any problems or shortcomings.

The National Ombudsman's investigation was intended to help the various organisations understand their responsibilities before, during and after a physical search is conducted. We also hoped to bring about further improvements to the complaints procedures. The investigation included a visit to the airport where we held talks with all parties involved. We also scrutinised a large number of case files and read the reports of meetings between KMar and private security companies.

In essence, passengers complain about the manner in which they are searched and the lack of adequate information. Some complainants report having been unpleasantly surprised by what they regard as unnecessarily intrusive searches. The National Ombudsman examined how KMar had responded to such complaints. We then produced a discussion document which formed the basis of a round table meeting attended by representatives of all parties involved. They indicated that steps to improve information provision and complaints procedures had been taken in response to the National Ombudsman's findings.

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<sup>28</sup> Report 2019/059 Behoorlijk fouilleren: onderzoek naar de behandeling van klachten over veiligheidsfouilleringen op Schiphol (in Dutch)

The National Ombudsman considers it important for the government to learn from the complaints it receives. We have therefore recommended that security staff should receive thorough training and instruction, that all complaints should be carefully registered and investigated, and that the effectiveness of the measures taken thus far should be monitored to determine whether they have led to any reduction in the number of complaints.

### **Entry of private premises by police**

Police officers are permitted to enter private premises to provide immediate assistance. They do not require a warrant or the owner's permission to do so. The National Ombudsman has received complaints from people who claim that forced entry by police officers represented a violation of their rights (the «inviolability of the home») and caused actual physical damage to the property. Clearly, having police officers enter your home unannounced can have a major impact. The National Ombudsman therefore believes that there must always be a balanced consideration of interests before police enter private premises without permission. In 2019, we conducted an investigation into this issue.<sup>29</sup>

The National Ombudsman concludes that, overall, police do respect the citizen's rights. Given that it is their duty to provide assistance wherever and whenever it is required, he accepts that it is sometimes necessary to enter a home without permission. The decision to do so involves complex considerations and is therefore a difficult one to make. Members of the public may nevertheless expect the decision to be taken with due diligence. Where officers do effect entry, the negative impact can be mitigated by providing good aftercare. The National Ombudsman's report therefore includes a number of recommendations for police:

- Inform the homeowner about the (proposed) forced entry and what arrangements will be made with regard to any physical damage.
- Treat the property and its contents with care.

The report also includes some tips for citizens who are concerned about a relative or neighbour.

The police have taken the National Ombudsman's recommendations very seriously and will incorporate them into both training programmes and operational briefings. Officers are also to be trained in skills which will enable them to avoid or minimise physical damage to property. A national damage registration system has now been set up to facilitate remedial action or claims handling.

### **Where's my property?**

For several years, the National Ombudsman has devoted attention to the question of property seized by the police, Public Prosecution Service (PPS) or other government authorities. In 2016, we published a report entitled *Waar is mijn auto?* («Where's my car»).<sup>30</sup> In the majority of cases, it is the police who seize property which is suspected of having been «used in the commission of a criminal offence» or which is thought to be «proceeds of crime». It is then for the PPS to determine what happens to that property.

<sup>29</sup> Report 2019/016 Binnentreden bij hulpverlening – Over de omgang met het huisrecht door de politie (in Dutch)

<sup>30</sup> Report 2016/075 Waar is mijn auto? Rapport over de uitvoeringspraktijk van inbeslagname van voorwerpen (in Dutch)

If it is to be confiscated altogether, it passes into the ownership of *Domeinen Roerende Zaken*, an agency of the Ministry of Finance. The items seized are generally vehicles, consumer electronics, clothing and cash amounts. The conclusion of the 2016 report was that the government exercises too little oversight and coordination. For the citizen, it was unclear where to take any questions about the seizure, the possibility of reclaiming property, or even the whereabouts of that property.

As a direct result of the report, the various authorities set up the *Beslagloket* («Seizure desk») as a pilot project. This is a single point of contact to which citizens can direct their questions by phone or email. In 2019, the *Beslagloket* received over six thousand enquiries. Staff have access to the registration system which shows the current status and whereabouts of all seized items. Callers can immediately be referred to the appropriate source of assistance, or the *Beslagloket* itself will take up the matter. The National Ombudsman is pleased that the authorities have opted to take such affirmative action and believes that the *Beslagloket* has proven its worth.

### **Right to compensation**

The victims of crime often believe that the loss or damage they have incurred should be compensated. If the perpetrator is identified, there are various options by which compensation can be claimed from him or her as part of the criminal process. For the victim, this has the advantage of letting the judicial authorities assume much of the time, trouble and expense that a civil claim would involve. However, things can go amiss. There have been instances in which the Public Prosecution Service has not informed the victim about the possibility of claiming compensation, or has not done so in good time.

The National Ombudsman has received a steady stream of complaints about such omissions over the years. We have devoted much attention to the question of how the PPS responds to direct complaints and claims for damages. The National Ombudsman believes that it is important for the PPS to acknowledge its mistakes and propose acceptable solutions on a case-by-case basis. In 2019, the National Ombudsman resolved a complaint brought by a gentleman who had suffered financial loss as the result of a crime committed in 2015. He was not satisfied with the way in which the PPS had handled his case and therefore contacted the National Ombudsman. In 2018, the ombudsman produced a report in which this complaint was found to be grounded.<sup>31</sup> This should have been the end of the matter but it took us some months to reach an acceptable settlement.

#### **Victim left empty-handed ... until the National Ombudsman becomes involved**

Laurens owned a moped. One day, it was stolen. The police soon apprehended the thief, who was a juvenile under the age of 18. Laurens' moped was returned to him but it was damaged. He informed the Public Prosecution Service that he wished to claim compensation for the damage, which would cost around 500 euros to repair. The PPS has a policy of making juvenile offenders pay for the damage they cause. The information that Laurens was given by the PPS seemed promising. The case was to be heard by the Juvenile Court, which would also consider the question of compensation. Over a year later, Laurens discovered that the PPS had

<sup>31</sup> Rapport 2018/024 Slachtoffer loopt schadevergoeding mis



decided to take a different approach. The young offender had been referred to Bureau HALT for an «alternative intervention». However, the PPS had not informed HALT about the damage to the moped. So, there would be no further criminal proceedings, Laurens had not been told what was happening, and he had received absolutely nothing from the youth who damaged his moped. The National Ombudsman ruled that the PPS could not just pass the blame to Bureau HALT. And indeed, that was not the «solution» that the PPS proposed. Instead, it advised Laurens to begin civil proceedings. That would be prohibitively expensive and time-consuming. The National Ombudsman called on the Ministry of Justice and Security to pay Laurens the money he would have received had it not been for the PPS» mistake. In the first instance, the Minister refused. However, following a number of meetings between the National Ombudsman and ministry officials, Laurens finally received the full amount he had spent on repairs ... four years earlier.

### **Visa applications**

The National Ombudsman has noticed that the way in which visa applications for admission to the Netherlands are now processed creates some distance between the government and the citizen. In the past, visa applications could be made directly to a Dutch diplomatic mission (embassy or consulate). The process has now largely been outsourced to commercial service providers such as VSF Global and TLS. Outsourcing is acceptable if the number of applications is so great that not all can be processed promptly enough, or where there is no Dutch diplomatic mission. By 2019, over 80% of all visa applications were made to an external provider which then undertakes the subsequent administrative process up to and including issuing the visa itself. As a result, applicants have absolutely no contact with embassy or consulate staff but must deal exclusively with the service provider. The actual decision whether or not to issue a visa is not made by the service provider but by the staff of the Regional Support Offices, who act on behalf of the Minister of Foreign Affairs.

The National Ombudsman has received several complaints about the external service providers, sometimes in combination with complaints about the service provided by the diplomatic missions. Some relate to the way in which staff (either external or consular) interact with the applicant. Others relate to the accuracy and completeness of the information offered by external service providers. We also receive complaints from people who have been unable to make an appointment within a reasonable period or are unable to ascertain where they can turn for help.

### **Wrong information**

Zhong is a Chinese citizen who wished to fly to Colombia via the Netherlands. He contacted the local external service provider to ask whether he needed an airport transit visa. He was told that he did. He was instructed to submit an application and pay the administration fee. Zhong duly paid the fee but later discovered that the external service provider had told him the wrong amount. When he asked for a refund, the service provider refused, telling him that it was his own mistake. He contacted the Consulate General in Guangzhou for assistance. In Zhong's opinion, the consular employee with whom he spoke was far from customer-friendly, bordering on the downright hostile. He then sought assistance from the Ministry of Foreign Affairs' 24/7 Customer Contact Centre. He



was given an email address which turned out to be incorrect. Patience exhausted, he made a formal complaint and was contacted by the Head of Consular Affairs at the consulate in Guangzhou. This phone call was the last he heard from the Ministry of Foreign Affairs. Zhong contacted the National Ombudsman. We forwarded his complaint to the ministry, requesting a response. The ministry informed us that it had found Zhong's complaint to be grounded and would reimburse all costs that he had wrongfully incurred.

These complaints illustrate what happens when the government fails to «organise oversight». When it outsources tasks to the private sector, the government ceases to be the unified body to which the citizen will automatically turn with questions, queries or complaints. It is no longer clear who is responsible for what. If anything goes wrong, there is a significant risk that the various organisations will simply blame each other, whereupon the citizen is passed from pillar to post. The National Ombudsman will remain alert to complaints of this nature during the year ahead.

### **Lack of professionalism when requesting legal assistance**

A Dutch man is living with his wife in Thailand. Authorities in the Netherlands suspect that he has committed a number of criminal offences, including laundering the proceeds of drugs trafficking, tax evasion and membership of a criminal organisation.

In 2014, the Public Prosecution Service submitted a formal «request for legal assistance» to the Thai authorities, asking them to conduct investigations to support the case being built in the Netherlands. To encourage prompt action, the liaison officer of the Dutch national police (having first consulted the prosecutor on the case), wrote to the Thai authorities suggesting that they might like to instigate their own criminal investigation into the man's dealings. Shortly thereafter both the man and his wife – who was not subject to any investigation in the Netherlands – were arrested. In 2015, they were sentenced to substantial prison terms.

The couple felt that they had been severely compromised by Dutch government authorities and submitted a complaint to the National Ombudsman. They assert that the PPS and police had shown a serious dereliction of professional standards by suggesting that Thai authorities should begin a criminal investigation. In March 2019, the National Ombudsman found the complaint relating to the actions of the PPS, the Ministry of Justice and Security and the national police to be grounded.<sup>32</sup>. He concluded that Dutch government authorities had failed to take adequate account of the couple's perspective and interests. With the full knowledge of the PPS, a letter had been sent to Thai authorities in which the wife was named as a suspect in various drugs-related offences. This had brought about extremely serious consequences for her.

As a direct result of the report, a personal meeting was held in 2019 between the National Ombudsman, the Minister of Justice and Security, and the head of the PPS. At this meeting, the Minister undertook to examine how he might go about rectifying the situation. He later informed the House of Representatives that he took the «powerful conclusions» of the National Ombudsman extremely seriously. The Minister flew to

<sup>32</sup> Report 2019/014 OM, Justitie en Veiligheid en politie onzorgvuldig na indienen rechtshulpverzoek aan Thailand (in Dutch)

Thailand where he met with his counterpart and the Prime Minister of Thailand to discuss possible solutions to what had become a particularly long and drawn-out affair. In January 2020, the man was repatriated to the Netherlands. He was not accompanied by his wife who, being a Thai national, is not subject to any extradition or repatriation treaty. However, authorities announced that she would be considered for early release «at the earliest possible opportunity». The Minister of Justice and Security indicated that the Netherlands would provide support for such a procedure where possible and appropriate. The National Ombudsman is gratified that the Minister took his findings seriously and that his report was the catalyst for action in this case.

### **The right to protest**

In recent years, the National Ombudsman has frequently devoted attention to the «right to protest», which in practice becomes the right to organise and attend public demonstrations. In 2018, we published the report *Demonstreren, een schurend grondrecht?* («Demonstration, an abrasive constitutional right»),<sup>33</sup> which concludes that police and local authorities do not always succeed in upholding the citizen's right to demonstrate. The topic continued to attract much public interest in 2019, a year which saw an unusually high number of demonstrations. Thousands of concerned school students marched to call for climate action, while teachers, farmers, nurses and construction industry workers were among the many other groups wishing to make their voices heard.

In 2019, the ombudsman once again placed the topic high on the agenda, not least during a visit to Groningen to discuss problems caused by gas extraction in the region. He took this opportunity to raise the question of demonstrations with the Mayor of Groningen and senior police officials. In August 2018, Code Rood, an action group against the use of fossil fuels, held a mass sit-in outside the headquarters of NAM, the company responsible for gas extraction in the region.

In June 2019, press coverage of the Pegida demonstrations in Eindhoven prompted the National Ombudsman to meet with that city's mayor. They discussed the practical challenges that can arise when attempting to safeguard the right to demonstrate. On 4 September 2019, the National Ombudsman took part in a symposium organised by the Ministry of the Interior and Kingdom Relations. The discussion centred around the demonstrations which have disrupted traditional Sint Nicolaas celebrations in recent years. Many people think that the portrayal of Sint Nicolaas' helper, «Black Piet», by white actors wearing blackface makeup is racially offensive.

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<sup>33</sup> Report 2018/015 *Demonstreren, een schurend grondrecht?* (in Dutch)

## 1.5 Participation and consultation

**The relationship between the citizen and the government is rapidly evolving. People expect to be consulted about any planned changes to their immediate environment. Those changes might involve a new bus stop, plans to let residents to manage their own community centre, or the construction of a new road. Civil participation calls for the government to find new ways to allow everyone to «have a say». In practice, this has proven far from simple. The National Ombudsman regularly receives complaints from people who feel that their voice has not been heard.**

### Information about planning permission

Many changes to the human environment require planning permission from the local authority. This is the case if a radio antenna is to be erected, a mature tree felled, or if your neighbour wants to build a roof extension. Similarly, a public event will often require a permit in view of the potential for nuisance and disruption. In 2018 and 2019, the National Ombudsman conducted an investigation examining public perceptions of the information that authorities provide about the permit applications they receive, the permits they grant, and the procedures involved. What can be done to improve the process?<sup>34</sup>

The first step in this investigation was to set up a dedicated helpdesk to receive comments and reports. It soon became apparent that many people feel that they are not being given timely and adequate information. This is not just a question of the choice of information channels but also the way in which announcements are worded. They can often be difficult to understand or are capable of misinterpretation.

Respondents' comments:

*«If I had known that the council was planning to remove all the lampposts in this neighbourhood, I would certainly have made my opinion known. What a missed opportunity.»*

*«Why do they talk about «a coppiced area» or «green amenities»? They mean trees. We just need to know what type of trees and how many.»*

In the National Ombudsman's view, official information about permits should be based on the citizen's perspective. This means that the method and style of communication should reflect the diversity of the target group. Not everyone reads the free local newspapers every week or checks the online announcements. Changes in the local setting can take them by surprise. To reach all citizens, authorities must sometimes use different communications resources. Diversity and inclusion must be the watchwords so that as many people as possible have the chance to make their voices heard.

To help public authorities in future, the National Ombudsman has formulated three core principles for communication about permits:

- Adopt a proactive approach

<sup>34</sup> Report 2019/004 «Informereren = Publiceren? Behoorlijke informatieverstrekking aan omwonenden rondom vergunningverlening (in Dutch)

- Be flexible and tailor the message and channel to the target group
- Ensure that the information is accessible.

The National Ombudsman has produced a poster based on these principles.<sup>35</sup> It presents an «information scan» which helps local authority staff to select the most appropriate form(s) of communication in a given situation, thus maximising public outreach. In 2020, the National Ombudsman will continue to discuss the possibilities and challenges with the relevant public sector organisations.

### **Public consultation on major infrastructure projects**

Major infrastructure projects demand a high level of public engagement and support. What effect will the plans have on the setting in which people live and work? What opportunities will there be for consultation? There is no point waiting until the plans have been finalised. The public must have a chance to contribute ideas and objections whenever important decisions have to be made. The National Ombudsman regularly receives complaints from citizens who feel that they have not been adequately consulted on major infrastructure projects. In 2018 and 2019 we therefore conducted an investigation examining the issue in depth.<sup>36</sup> From the complaints and reports received, the National Ombudsman concludes that citizens attach great importance to being involved in the consultation process at a very early stage.

Respondent's comment:

*«The less that is already «set in stone», the more people feel that they are being listened to. Most people are very practical and know what issues affect their local area. Name something for which the government wants to make a plan, then invite people to come forward with ideas and suggestions. Listen to the public and incorporate good ideas into the initial plans.»*

If the government ensures that a project begins well, it becomes far more likely that members of the public will wish to contribute. This increases the chance of a positive experience and good results from the participation process.

When considering participation and consultation in major infrastructure projects, the National Ombudsman notes that there is sometimes some distance between theory and practice. The Ministry of Infrastructure and Water Management (I&W) has produced a Code for Social Participation which sets out principles for good participation. The principles correspond with what citizens actually expect from participation in practice. Nevertheless, some people continue to feel that they have not been adequately consulted, and we note that the government is still struggling to structure participation processes in a way that ensures public engagement from the outset. Even where this is the case, the frameworks and opportunities for consultation are not always clear to the public. In some cases, officials do not show an open and engaged attitude.

<sup>35</sup> Poster: Informatiescan vergunningverlening (in Dutch)

<sup>36</sup> Report 2019/041: Een goed begin is het halve werk: Een onderzoek naar participatie bij infrastructurele rijksprojecten (in Dutch)

To offer the government some support in this area, the National Ombudsman has formulated some basic principles for effective participation in major infrastructural projects:

1. Provide full clarity about frameworks so that citizens are aware of the influence they are able to exert.
2. Ensure that officials show an open attitude and awareness that citizens do have relevant knowledge and experience.
3. Make adequate time and money available and ensure that any project delays do not detract from opportunities for participation.
4. Conduct periodic evaluations and apply the «lessons learnt». This should be a standard component of all central government infrastructure projects.

During the investigation, the National Ombudsman met with the Minister of I&W to exchange ideas about ways of further improving the participation process. The Minister stated that she regards finding ways of engaging all stakeholders from the very earliest stages of a project to be an important responsibility of her ministry, and one to which it is to devote even greater attention in future. Participation is an important topic for the National Ombudsman. We shall continue to monitor how the government structures and implements participation and consultation processes. During the first half of 2020, the National Ombudsman will meet with the Minister of I&W for an update on developments. Are the basic principles and conditions now being met or is further effort necessary?

The basic conditions for a good start to public participation are not exclusive to large infrastructure projects but can be applied in various fields. Other ministries, as well as local and regional authorities, face the challenge of allowing all citizens to participate in projects addressing spatial development, water management and climate adaptation, for example. The National Ombudsman will therefore approach relevant public sector organisations to stress the importance of having such projects get off to a good start. We shall also hold a dialogue with experts in social participation and will ensure that the topic has a prominent place on the agenda. Last but not least, we shall remain alert to complaints and comments from members of the public who do not feel adequately engaged in participation and consultation processes.

### **Gas extraction in Groningen: still a long way to go**

In recent years, the National Ombudsman has regularly called attention to the problems surrounding gas extraction in the province of Groningen. Gas extraction has caused seismic activity of varying magnitudes, including some significant earth tremors. The impact on the local population has been great, not only in terms of physical damage to property but also the ongoing uncertainty they experience. People here feel that they have not been listened to. Their trust and confidence in the government has been seriously eroded.

In 2019, the National Ombudsman once again considered the situation of those who have experienced the adverse impact of gas extraction. We note that some measures have been taken but authorities have yet to implement the necessary coordination and oversight. Moreover, they have failed to take decisive action based on the citizen's perspective.

We have seen the relationship between citizen and government becoming even more strained. It is not inappropriate to speak of a crisis, which means that a different approach is now needed. In a letter to the Administrative Consultation Group for Groningen dated 3 June 2019, the National Ombudsman expressed his concern and called upon the government to take measures to improve the situation for local residents. The following is an extract from the letter (here in translation):

*«The National Ombudsman has for some time had serious misgivings about the way in which the effects of gas extraction are being addressed, and are concerned about the impact of gas extraction on local residents. During visits to the region, we saw that impact at first hand, and have heard harrowing personal accounts. People do not know what the future holds and feel that they are not in control of their own lives. The long delays in settling compensation claims and the lack of remedial measures demand that a different approach is now adopted, as do people's concerns about their personal safety and that of their children.»*

For the people affected, it is essential that:

- There is open and sincere acknowledgement of the situation they have experienced for many years, to which no immediate solution is in sight.
- Compensations claims are processed promptly, based on «high trust».
- Remedial work must be undertaken as a matter of urgency. There must be adequate public consultation. Ideally, an integrated regional and rural development plan will be in place.
- The citizen must be the focus of the approach itself and all related communications.
- All stakeholders must continue to be engaged in the process, with adequate opportunity for participation and consultation throughout. This applies equally to midfield organisations such as the *Gasberaad* (which brings together representatives of the various sectors) and local residents' groups.
- All relevant public authorities must work together to regain public trust and confidence, demonstrating that the citizen's perspective is respected at all times.

Such is the importance of the situation in Groningen, the National Ombudsman made three working visits to the province in 2019. He met with residents, administrators and representatives of various stakeholder organisations, including the *Groninger Gasberaad*, *Groninger Bodem Beweging*, the *Tijdelijke Commissie Mijnbouwschade Groningen* (Temporary Committee on Mining Damage; TCMG) and the National Coordinator for Groningen (NCG). The National Ombudsman also conducted an investigation further to a complaint about the NCG's internal complaints assessment procedures. This complaint illustrates that government authorities are still struggling to implement the necessary coordination and oversight.

#### **Complaints assessment by the NCG**

In 2019, the National Ombudsman considered a complaint submitted by a homeowner who had requested the National Coordinator for Groningen (NCG) to replace his chimney. The complainant was concerned about the safety of his family and had been advised by NAM to have the chimney replaced. No action was taken further to this request and even after an internal complaints procedure, no

appropriate solution was offered. The complainant was referred to the Temporary Committee on Mining Damage (TCMG) but it was also unable to help. Only after mediation by the National Ombudsman did the NCG propose a solution which did justice to the individual circumstances of the case. The National Ombudsman stresses the importance of effective complaints assessment and calls on the NCG to be more flexible in its approach. It is also important to remember that not everyone with complaints or concerns relating to gas extraction is able to argue their case effectively.

### **Noise nuisance and the role of local authorities**

Every day, local authorities face a barrage of complaints and reports, some of which are concerned with noise and other forms of public nuisance. There are various interests and expectations at play. A local authority must show a high level of engagement and be able to strike an appropriate balance between the interests of local residents, businesses, institutions, etc. Public officials, both elected and unelected, must also respect the general societal interests. In 2019, the National Ombudsman was asked to consider the following case, which illustrates the difficulty that local authorities face in this extremely complex role. They do not always succeed in exercising the appropriate degree of oversight.

#### **Who is responsible?**

Gerda has lived next to a primary school in Utrecht for over twenty years. Her back garden looks out onto the school playground, with only a narrow pathway less than a metre wide between them. When it first opened, the school was small and had relatively few students. Over the years, however, it has grown and now has some 790 young children on site every day. The original buildings have been extended and new buildings have been added. The school now has a full-sized, fully equipped gymnasium, for example. It also provides childcare and an activities programme outside normal school hours. Gerda began to experience ever more disturbance from children playing outdoors.

Gerda and her neighbours found themselves unable to sit outside in the garden, such was the noise. She contacted the local authority to ask whether it can do anything to improve matters. It would not be easy: there is no legal noise limit for children at play so the local authority has nothing it can enforce. It did however feel responsible for the «liveability» of the human environment and was willing to explore the options. Meetings were arranged between the residents, school managers and the local authority staff. An engineering company specialising in acoustic studies was commissioned to assess the likely effects of various noise reduction measures. Based on its results, the local authority awarded the school a grant with which to install a «baffle wall». Gerda and her neighbours were pleased that something was being done.

But things took an unfortunate turn. According to the plans, the baffle would not be as high as the one used in the calculations. After the summer holidays, the local authority ordered another noise measurement. This shows that even the lower baffle would reduce noise levels on Gerda's side. The baffle was installed but the neighbours remained dissatisfied. They didn't think it was high enough. Moreover, the school had changed the layout of the playground, which did nothing to reduce the noise. Sometimes it was even worse. Gerda continued to submit complaints to the local authority, calling for further action. However, the local authority



decided that it had already done enough. This was now a matter for the residents and the school to settle between themselves. The authority informed Gerda and her neighbours that it intends to take no further action. Gerda considered this unacceptable and contacted the National Ombudsman.

This case illustrates the importance of government authorities being able to take control and «exercise oversight» whenever there is a dispute between residents and other users of the public domain. If an authority is not fully transparent about its role, and about what it can and cannot do, it is likely to be drawn ever deeper into that dispute. In this case, the National Ombudsman sees a citizen who just wishes to enjoy her home and garden. This is made impossible by the noise she experiences. Gerda was more than willing to join the local authority, the school and other local residents in finding a mutually acceptable solution. She had every confidence that they would be able to do so. However, the noise became worse rather than better, tempers frayed, and the parties reached an impasse. As a result, Gerda felt abandoned and alone. She felt that she had come up against a wall of indifference. The local authority's internal complaints procedure failed to break the impasse. Rather, it worsened the feelings of frustration and impotence on both sides. After all, the officials concerned had set out to improve the situation. It was only later that they decided that the local authority had no further part to play.

The National Ombudsman concluded that, although the local authority is not able to take formal enforcement action, it is nevertheless responsible for ensuring that the human environment remains «liveable» for all users. Just because it is not a party in the dispute does not absolve it from the duty of taking charge of the situation. In fact, the local authority must be able to rise above the dispute and exercise oversight in a wholly impartial manner. In any dispute of this nature, the local authority's role is to bring the parties together in order to seek mutually acceptable solutions. This role must be assumed at the earliest possible stage, while a realistic chance of finding a workable solution still exists. This will help to avoid any (further) escalation. A solution-oriented approach, transparency and de-escalation are essential. These three principles demand consistent action, awareness of the expectations on all sides, and open communication at all times.

### **Parents and youth welfare services**

The National Ombudsman regularly receives complaints from parents who believe that they have not been adequately consulted about decisions relating to child protection measures. These measures are implemented by certified institutions or local authorities' youth welfare departments. In this type of situation, the ombudsman generally attempts to arrange a mediation meeting intended to improve cooperation between parents and professionals. Good cooperation is clearly in the child's best interests. At the meeting, parents are invited to express their wishes and concerns. The institution is able to explain what the parents can reasonably expect. Once the requirements for better cooperation have been established, it is often possible to make practical agreements.

### **In conversation**

A court ordered a child to be placed under a temporary supervision order and instructed the institution implementing that order to report on the child's future prospects within six months. The child's mother contacted the national ombudsman because she has no confidence



in the child protection officer assigned to her case. She believes the officer to be biased and is intent on having the child taken into permanent care. Moreover, she thinks that the case notes («family plan») contain material errors. Other things had gone wrong as well. This was a crucial period for the mother. She wants the best for her child but has not always been able to do everything that youth welfare services have asked of her, not least because she lives far away. She wants a greater say in the decisions that are now being made, such as those relating to therapy, access and travel. It is important that all arrangements are practical.

The National Ombudsman asked the mother and the institution whether they would be prepared to take part in a confidential meeting mediated by a member of the National Ombudsman's staff. The purpose of this meeting was explained. Both sides were willing to proceed, so the next step was to decide who should have a place at the table. The mediation meeting was held at the National Ombudsman's offices in The Hague. Those present discussed how the institution and its staff could make greater allowance for the mother's circumstances and wishes.

## **1.6 The Caribbean Netherlands**

**The residents of Bonaire, Sint Eustatius and Saba, the islands which form the Caribbean Netherlands, are able to call on the support of the National Ombudsman if they experience problems in their dealings with government authorities. We have dealt with complaints concerning central government since 2010 and those concerning the local government of the islands – the «public bodies» – since 2012. In contrast to the procedure in the European Netherlands, complaints about the public bodies can be submitted directly to the National Ombudsman as the first point of contact.**

### **Accessible and visible**

Not everyone living on Bonaire, Sint Eustatius or Saba knows about the National Ombudsman. We are therefore making extra investments in providing information about what we do and how we can help. Information about our «key areas of concern» is now available in Dutch, Papiamentu and English.

In 2018, the National Ombudsman formulated the following objectives:

1. We wish to be more visible to the people of the islands so that we can offer help when needed.
2. We wish to contribute to good governance by ensuring that both government authorities and citizens are aware of the right to complain to an independent organisation such as the National Ombudsman.

We are helping public authorities in the Caribbean Netherlands to professionalise their internal complaints assessment procedures. We do so by various means, including workshops on good governance and best practices for public sector employees. We are also working to ensure that our own staff are able to deal with complaints promptly and effectively by offering extra training in law, culture and language.

### **Working visits**

In March, August and November 2019, National Ombudsman staff visited the islands to hold consultation sessions for residents and run workshops for public sector staff who deal with complaints. Meetings with senior officials also took place. During the visits, our staff dealt with a number of complaints concerning government organisations. Wherever possible, an immediate solution was found. In the past, for example, correspondence from some authorities has been in Dutch. This is of little use to many residents of Sint Eustatius, who speak only English. The National Ombudsman has arranged for them to receive letters which they can understand.

On Bonaire, National Ombudsman staff answered questions as part of a local radio phone-in. Most questions were of a general nature: what sort of complaints can we take to the National Ombudsman? What happens next? Can you give examples of successful interventions? In 2020, the National Ombudsman and the Ombudsman for Children will once again make three working visits to the Caribbean Netherlands.

### **Professional complaints assessment**

In 2016, we started to monitor the complaints assessment procedures of public sector bodies in the Caribbean Netherlands. We wish to build a complete picture of the situation here. In 2019, the National Ombudsman

devoted particular attention to complaints assessment by the islands' joint police force, the *Korps Politie Caribisch Nederland*. This investigation involves both personal interviews and a study of past case files. It will be completed during the first half of 2020.

### **Poverty reduction**

Not all residents of the Caribbean Netherlands are able to take a full part in society. One significant cause of social exclusion is poverty, which is a serious problem in the region. The high-risk groups include seniors (in receipt of state pension), young adults, and single parents, many of whom live on or below the poverty line. In 2019 and 2020, the National Ombudsman and the Ombudsman for Children will therefore conduct a detailed examination of the problems affecting these vulnerable groups. The starting point is always the personal experiences of the people themselves. We find it very important to listen to first-hand accounts of the problems they face in their dealings with the government, and we wish to investigate what role the government itself plays in this regard. The first stage of our investigation, which was concerned with senior citizens, was completed in September 2019.<sup>37</sup> In the resultant report, the National Ombudsman concludes that an effective poverty reduction policy for this group should be pursued as a priority. People whose only income is the state pension (AOV) find it extremely difficult to make ends meet and many are living in extreme poverty. The costs of living are too high and amenities such as public transport are woefully inadequate. An integrated and properly coordinated approach is now needed to give senior citizens (financial) security.<sup>38</sup> The National Ombudsman's report attracted much media attention in both the Caribbean Netherlands and the European Netherlands where it prompted a number of parliamentary questions.<sup>39</sup>

The investigation examining poverty among young adults and single parents is to be conducted jointly by the National Ombudsman and the Ombudsman for Children. The second phase of the overall investigation, focusing on young adults, began in December 2019 and will be completed in mid-2020. The third phase, focusing on single parents, is also expected to be completed in 2020. The National Ombudsman and the Ombudsman for Children will then publish their conclusions with regard to poverty and poverty reduction in the Caribbean Netherlands.

### **Contact with government**

Mr Jones has been living on the island of St. Eustatius since 1975. Because he has not spent his entire working life here, he receives only 60% of the standard state pension (AOV). He thinks this is unfair. He therefore submits a «request for review» to the Social Affairs department of Rijkdienst Caribisch Nederland (RCN). The decision goes in his favour. In future he will receive 94% of the standard rate – but a backdated payment will only be made in respect of the years 2016 to 2018. This is because the relevant legislation restricts any retroactive payment to one year, which can be extended to two as a gesture of goodwill. Mr Jones will therefore receive an additional lump sum in respect of the period 5 March

<sup>37</sup> Report 2019/045 Oog voor ouderen in Caribisch Nederland (in Dutch)

<sup>38</sup> Nationale ombudsman «Armoedebeleid voor ouderen in Caribisch Nederland moet prioriteit krijgen» (10 September 2019) (in Dutch)

<sup>39</sup> Van Ark, T. (2019, 4 October). Antwoord op vragen van het lid Kuiken over het bericht «Honderden ouderen in Caribisch Nederland hebben nauwelijks te eten». (in Dutch)

2016 to 30 June 2018, the date of the decision. He is not satisfied. He believes that he should receive the higher pension backdated to the date at which he reached pensionable age.

The Social Affairs department is unable to help him further, and states that it has already shown the «maximum degree of flexibility permitted by law». In a letter signed on behalf of the Minister of Social Affairs and Employment, the department writes (here in translation): «I have rescinded the consequences of a decision made *res judicata* by an authority for which I was not responsible, given that said decision was taken at a time that my current statutory responsibility did not yet exist. My decision [to restore the pension] is therefore not one that I am legally obliged to make. I have nevertheless been minded to show maximum flexibility. This notwithstanding, and given the material effect of this formal decision, I am bound by the provisions of the relevant legislation, the *Wet algemene ouderdomsverzekering BES*. This Act expressly states that the period of retroactive payment of a revised retirement pension is restricted to no more than two years. That is precisely the period for which you have now received a backdated payment of your pension.»

Further to this complaint from a person whose sole income is the state pension, and in the context of our investigation of poverty and poverty reduction, the National Ombudsman wrote to the Minister and State Secretary of Social Affairs and Employment, requesting them to consider the manner in which the legislation applicable in the Caribbean Netherlands restricts the retroactive payment of the state retirement pension. The maximum period is currently restricted to just one year (although some discretion can be applied, as in this case). We asked the Minister to review the legislation and to seek an appropriate solution whereby an exception could be made in cases involving citizens who are financially vulnerable. We have since received an undertaking that the ministry will explore options which will allow the retroactive effect to be extended to a maximum of five years.

Another point of concern raised by the National Ombudsman is the fact that some streets on Bonaire have two or more buildings with the same house number. This causes confusion and inconvenience for anyone making a delivery, while the consequences could be far more serious should the emergency services have to find an address in a hurry. The National Ombudsman has received several complaints about this situation in recent years. Despite frequent requests from both local residents and the National Ombudsman, no action has been taken. The National Ombudsman therefore wrote to the Public Body of Bonaire insisting that a permanent solution be implemented. In 2020, we shall meet with officials to enquire about the measures taken.

### **Our work in figures**

In 2019, the National Ombudsman received 220 complaints from the Caribbean Netherlands, compared to 191 in the previous year. Slightly over a third of complaints concerned the Public Bodies: 61 complaints were about the Public Body of Bonaire, 12 about the Public Body of Sint Eustatius and three (3) about the Public Body of Saba. Over half of all complaints (140 out of the 220) were brought to our attention during the personal consultation sessions. It is interesting to note that residents whose only language is Papiamentu now know where to find us. This may be due to the active efforts to increase our visibility on the islands,

together with the significant media coverage of our report on poverty among senior citizens. As in the European Netherlands, we are able to resolve the majority of complaints with a simple intervention.

## 1.7 International cooperation

**The National Ombudsman maintains close contact with colleagues and counterparts in other countries. Through exchange visits, sharing knowledge and learning from each other, we are able to work even more effectively. We also support other ombudsman organisations as they help citizens whose dealings with government authorities have reached an impasse. In 2019, the National Ombudsman produced a new international plan to cover the next four years. It describes how we intend to seek cooperation and with whom.**

### **A meeting with the king**

On Wednesday 30 October, HM King Willem-Alexander met with the ombudsmen of the Kingdom of the Netherlands during a visit to the National Ombudsman's offices in The Hague. Reinier van Zutphen (the National Ombudsman), Keursly Concincion (Ombudsman for Curaçao) and Gwendolien Mossel (Ombudsman for Sint Maarten) informed his majesty about the trends and developments they have observed. Plans to appoint an ombudsman for Aruba are now at an advanced stage. The process is being overseen by Sahaira Kelly, who was also present at the meeting.

The ombudsmen and the king discussed various topics, including the problems that Curaçao and Aruba are facing further to the influx of Venezuelan refugees. Ms Mossel presented her report *Home repair, a revelation of a social crisis*, which describes the lack of effective reconstruction following Hurricane Irma. Many people on Sint Maarten are still without a decent roof over their heads.

### **Refugees in Europa**

In 2019, the National Ombudsman completed two studies examining the integration of refugees and asylum seekers in Europe, and the relocation of refugees from the points of entry to other member states. These investigations were conducted in association with the ombudsman organisations of Greece and the Basque Country. They deal with two of the five aspects of a larger pan-European study, the other three being registration, enforced repatriation and unaccompanied minors. The overall objective is to identify common criteria for the assessment of procedures involving refugees and asylum seekers. The integration study was led by the National Ombudsman, while that examining relocation was led by the Ombudsman of Greece. All other studies fall under the joint responsibility of the ombudsman organisations of Greece and the Basque country.

### **Projects**

On occasion, the National Ombudsman works alongside another national ombudsman organisation for a longer period, usually in the form of a multi-year project. The report year saw the conclusion of a project involving cooperation with the National Ombudsman of Greece and another with the National Ombudsman of Indonesia.

### **Greece**

In 2018, the National Ombudsman has supported the National Ombudsman of Greece in efforts to increase the effectiveness of its services. The joint project focused on communication, organisation, and the situation of asylum seekers and refugees. Greece has several refugee

camps where people have been living in dreadful conditions for many years. In 2019, staff from both organisations worked to bring about change.

### **Indonesia**

The report year saw the conclusion of the second project involving cooperation between the National Ombudsman organisation and its Indonesian counterpart. The latest project was concerned with mediation and, more specifically, the mediation skills that help staff in their contacts with citizens with complaints about public sector services. They have learned to identify the precise nature of a complaint. The aim is to reassure the citizen that his complaint has been heard and understood, and that prompt assistance will now be provided.

As part of the project, 14 members of the Indonesian ombudsman's staff attended a «train the trainer» course at the Centre for Conflict Management and the Indonesian National Mediation Center. They were then able to pass on the new knowledge to their colleagues using distance learning methods. Over the course of three years, all four hundred staff have received training in basic mediation skills. The Indonesian ombudsman's methodology, encapsulated by the term «Propartif» (progressive and participative), has now been embedded at all levels of the organisation. The Indonesian ombudsman intends to recommend the approach to all public sector bodies.

## 2. THE WORK OF THE OMBUDSMAN FOR CHILDREN

«The best for children». This is the fundamental premise of the United Nations Convention on the Rights of the Child, which celebrated its thirtieth anniversary in 2019. The Ombudsman for Children marked this milestone year with the publication of *Het beste besluit voor het kind*<sup>40</sup>, a toolkit offering a simple step-by-step approach to decision-making in the best interests of the child. The Convention on the Rights of the Child is central to everything we do. This starts with making sound decisions that are in the best interests of the child. This chapter describes some of our activities in 2019 and illustrates how our work is supported by the Convention.

We open with an explanation of our (statutory) tasks and approach. This is followed by a brief analysis of why, in a developed country such as the Netherlands, there are still children who are not receiving the help and support they need. We then consider how we can use the Convention on the Rights of the Child as our compass as we work to rectify this situation. Following an account of our activities in 2019, the chapter concludes with some facts and figures relating to complaints assessment and the organisation itself.

### 2.1 Children's rights are paramount

The Ombudsman for Children works to ensure that the rights of the child are respected and upheld by legislators, policy-makers and other professionals. We do so by involving ourselves in individual cases in which the rights of the child are under threat, through research and general investigations, and by providing information about children's rights. We offer advice, both on request and as we consider necessary, to legislators, policy-makers and professionals. We help them to act and speak with the rights of the child foremost in their minds. We admonish those who fail to respect those rights. We actively involve children and young people in everything we do, and we take their opinions, interests and worldviews into account to the greatest extent possible.

This is how we work to ensure that all children in the Netherlands grow up in a stimulating, peaceful, nurturing environment. Their sound development must be the focus of all decisions that will affect their lives. Their opinions must be listened to. All children must enjoy equality of rights, with no group subject to any discrimination or disadvantage. We therefore devote particular attention to the most vulnerable children in our country.

#### Four core articles

Our work is informed by the four «core articles» of the UN Convention on the Rights of the Child: Articles 2, 3, 6 and 12. The core articles support the interpretation of the remainder of the document. They form the «umbrella» under which all other rights reside. Where two rights are irreconcilable in a given situation, such as the right to be cared for by one's parents and the right to a safe home environment, the core articles provide the basis for a sound decision.

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<sup>40</sup> Toolkit *Het beste besluit voor het kind* (in Dutch)



Article 6, for example, states that every child has the inherent right to life, and obliges signatories to the Convention (the «States Parties») to «ensure to the maximum extent possible the survival and development of the child.» All other rights stated in the Convention exist to make this possible. Article 3 states that «the best interests of the child shall be a primary consideration in all actions and decisions which affect the child». Article 12 gives «the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.» Crucially, Article 2 requires signatories to «respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.» In short, all rights apply to all children.

Alongside the four core articles, General Comment 14 is an important pillar of our work and forms the basis of the toolkit *Het beste besluit voor het kind*. The General Comments, appended to the Convention by the UN Committee on the Rights of the Child, provide interpretation and analysis of specific articles or deal with relevant thematic issues. General Comment 14 expands upon Article 3 para. 1 and lists aspects which must always be taken into consideration when preparing or making a decision which will affect the child.

In our investigations we often use the «BIC model».<sup>41</sup> It comprises a checklist of fourteen environmental conditions which are essential to a safe, comfortable and healthy childhood. They include safety in the home and neighbourhood, contact with friends, and the love and attention of parents or other adults. We ask young people to rate the various environmental conditions within their own lives. The higher the score for the various conditions, the higher the chance of successful development and a happy, healthy life. Conversely, low scores correlate directly with the likelihood of problems.

## **2.2 Convention on the Rights of the Child as compass**

There are children who must wait months for care. We see failing youth welfare services and thousands of «stay-at-home» children who do not attend school. Although the vast majority of children in the Netherlands are happy and healthy, there remains a reasonably large group for whom life is not so rosy. There are children who suffer physical abuse at home, children who fall seriously behind at school, and children with mental or physical problems. These are the children in greatest need of help. Sadly, that help often comes too late, if at all.

Halina is one of the many children who slipped through society's «safety net». Why, despite all efforts, is it still so difficult to arrange adequate care for the most vulnerable children? Recent years have seen a process of decentralisation with various responsibilities devolved to the local level. The reasoning is that local authorities are closer to their citizens and therefore in a better position to organise prompt, appropriate and

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<sup>41</sup> See: Kalverboer & Zijlstra (2010), *Het belang van het Nederlands kind in het Nederlands recht. Voorwaarden voor ontwikkeling vanuit een pedagogisch perspectief*, Amsterdam: SWP Uitgeverij

cohesive welfare services. Yet despite the conscientious efforts of youth welfare professionals, we must conclude that many children and families do not receive the help and support they need.

#### **Still no appropriate help**

Halina is 16. She has had a difficult upbringing. Her mother has multiple personality disorder, which makes her unpredictable and given to outbursts of anger. Halina and her brother are eventually able to move in with their father. Before long, Halina also begins to develop serious psychiatric problems. A social worker is assigned to the family but she does not have the level of expertise needed to deal with Halina's condition. Left with no support at all, Halina's condition only worsens. More than once, she attempts to commit suicide. Halina is admitted to a psychiatric clinic for young people but she is discharged after just a few days, only to be readmitted a few days later. She is waiting for a place in an institution which can offer longer term, effective treatment but the waiting lists are long. She is still not receiving appropriate help.

One reason is a lack of cohesion and coordination in youth welfare services. The most vulnerable children in our society often have several problems to contend with all at once, and must therefore deal with various organisations and a multitude of (legislative) provisions. We are talking about children under the supervision of social services, those who sit at home rather than go to school, those whose parents are embroiled in an acrimonious divorce, those who face abuse, and those living in poverty. We are talking about young people who fall into delinquency, are homeless and living on the streets, and those who must leave a care home the day they turn eighteen, even when they have nowhere else to go.

Such children are often members of several high-risk groups; a child who suffers abuse may also be part of a family living in poverty. A child may have problems at school due to the «fallout» from an acrimonious divorce. The more problems a child experiences, the more vulnerable they become and the greater the likelihood that they will need help from several different sources.

Thus we see that vulnerable children often deal with a large number of different organisations and professionals. Cooperation and coordination between those organisations are far from seamless. There can be uncertainty about who pays for what, and which organisation has overall responsibility for the support process. Moreover, youth welfare workers face a plethora of restrictive rules and bureaucracy. They can spend more time providing accountability for their work than actually helping children.

#### **The best for the child?**

Tom, 13, has not been to school for two years. He has a form of autism and needs extra support in the classroom. His first primary school was unable to offer such support. He was admitted to two more schools but neither was able to meet his needs. So Tom now spends his days at home. His parents are doing everything possible to help him resume his education. In their search for a solution, they have contacted or been referred to various departments and professionals, from the truancy officer to youth welfare services and the local authority. Eventually, Tom's parents find themselves at a meeting with no fewer than twenty representatives of various

organisations. All want the best for Tom. But what is best for him? Opinions around the table are varied, to say the least. What does Tom think he needs? What is important to him? No one knows. Because not one of these twenty people has even met him, let alone spoken with him.

Another explanation is that children are rarely consulted or involved in the decisions that affect their lives, such as identifying the form of support that will benefit them most. We are inclined to talk *about* children rather than *with* them. We devise policy and take decisions without actually asking children about their perception of the problems and what they think they really need. As a result, a support plan can look good on paper, but fails to have the desired effect in practice.

The failure to involve children in decisions which affect their lives not only erodes their trust in adults and their confidence in their own future, but also results in suboptimal decisions and inadequate support. How can you make a sound decision and provide proper assistance if you do not know what the child himself or herself considers important?

The key question that must be asked when arranging support for a child is: what does this child need and how are we going to provide it? In practice, this question is often omitted altogether or, at best, asked as an afterthought. As adults, we often think that we know what is best for the child. Or we may put other interests first, such as who is responsible, what form of help has already been contracted, and who is going to pay?

Although everyone does want the best for the child, it is often difficult to make decisions based on the child's own perspective and interests. We must contend with rules and regulations, financial restrictions and pressure from within and beyond the organisation. To facilitate decision-making that really does place the interests of the child to the fore, the Ombudsman for Children has produced a toolkit, *Het beste besluit voor het kind* («The best decision for the child»), the launch of which coincides with the thirtieth anniversary of the United Nations Convention on the Rights of the Child in 2019. The toolkit presents a step-by-step plan based on the guidelines of the UN Committee on the Rights of the Child and is intended for use by everyone who takes decisions with and for children. Its four practical steps form a compass for users, guiding them towards decisions that are truly in the best interests of the child.

#### **Four steps**

How does one arrive at the best decision for the child in just four steps? The first step involves examining what the best decision will be in terms of the child's development, ignoring any potential obstacles or practical difficulties. This entails a consideration of certain important aspects, such as what effect the decision will have in terms of contact with family and other significant people in the child's life. What does it mean in terms of the child's safety, the choice of school, health and personal identity? And crucially, according to the Committee, it is only possible to decide what is best for the child if you know what the child thinks and wants. His or her opinion should carry tremendous weight.

The second step involves thinking about the potential obstacles and interests other than those of the child himself. Sometimes, an organisation's ideas about what is good for the child will not coincide with those of that child. Sometimes, the parents want something different; it is

important to take their wishes and interests into account too. Sometimes, what is best for the child is extremely expensive or simply not available. Once again, you must examine the various interests as fully as possible. In step three, you weigh the interests and preferences of the child against all the various other interests to arrive at a decision. That decision will give greatest weight to what is actually best for the child. The fourth and final step involves explaining the decision and discussing it with the child. If you have not opted for the approach that most closely matches the child's wishes, you must explain this very carefully. You should also inform the child about any opportunity to appeal your decision.

The toolkit was developed with the help of professionals and young people themselves. We intend to produce further resources to support decision-making in the best interests of the child, both for professionals and the target groups. Each will be tailored to the specific needs of the various sectors, from education to police and the judiciary. The first pilot project, involving organisations in the youth welfare sector, has already begun.

What does this child need and how are we going to provide it? The answer to this question will be revealed by following the four steps. Together, we can ensure that the voice of the child is heard and that all children in the Netherlands receive whatever help and support they may need.

### **2.3 Casework**

The core activity of the Ombudsman for Children is our casework: the investigation and adjudication of complaints about situations in which the rights of the child are at risk. We receive numerous enquiries every day, both from children and from concerned adults. Staff classify the incoming calls and emails as «complaints», «requests for assistance», «requests for information» and «reports» (tips). The enquiries can relate to any public sector authority, youth welfare services, healthcare provisions, childcare or education. Anyone can contact us for help: parents, other family members, concerned adults, professionals, and of course, children themselves.

#### **Listen to the child's own wishes**

We were contacted by Jamila, 13. She has behavioural problems and has been under a supervision order for some years. A few months ago she was taken into residential care. There is shortly to be a hearing at which the court will decide whether to extend the care order. Jamila does not want any extension – she just wants to go home. The «family guardian» assigned to her case has different ideas. He wants her to be moved to another institution where she will receive help and guidance to overcome her problems. Jamila says that she is not motivated enough to accept any help. She thinks the family guardian is being unreasonable. He is not listening to her wishes.

We advised Jamila to talk with the family guardian, taking a trusted adult along to the meeting. We also told her about our phased plan for good decision-making in the best interests of the child. This sets out what the family guardian, and all other adults, should take into consideration when making decisions such as whether to extend a care order. We also showed her the accompanying questionnaire and checklist we produced specifically for young people. The

questionnaire helps them to explain exactly what they consider important. Once the decision has been made, the checklist allows them to determine whether their wishes and interests have indeed been given sufficient weight. Jamila informed us that she and her trusted adult had arranged a meeting with the family guardian as suggested, and that she would certainly complete the questionnaire by way of preparation.

There are differences between the various types of contact. «Complaints» are concerned with a possible violation of a child's rights in an individual case. Investigation is required to ascertain whether this is indeed so. «Requests for assistance» relate to issues affecting children but where there is no formal role for the Ombudsman for Children, at least not yet. For example, there may be a requirement for the complaint to be submitted directly to the organisation concerned. Only if it is not resolved by that organisation will the Ombudsman for Children become involved. In such cases, we will advise the complainant and refer him or her to the appropriate channels. «Requests for information» are queries about the Ombudsman for Children organisation and our work, or about children's rights in general. «Reports» concern a possible violation of rights affecting one or more groups of children. If there is indeed an actual problem, we will stage an intervention. This generally involves contacting the organisation concerned to explore ways of resolving the situation.

#### **An end to uncertainty**

We received a phone call from Danny, 17. It is not our first contact. Two years ago he was taken into custody because he failed to pay a court compensation order. He couldn't pay because he had no money. Not only was he sentenced to fifteen days' youth detention, he still had the debt hanging over his head because detention does not wipe the slate clean. Following our intervention, the authorities agreed a payment plan and Danny was released. Danny has now received a letter from the Public Prosecution Service (PPS) informing him that a warrant for his arrest has been issued. It seems that the payment plan had been cancelled. The PPS had previously sent a letter instructing him to contact them within two weeks if he wished to reinstate it. Danny never received this letter. He has no fixed address, no income and is not in education. He is entirely alone and is terrified of being taken back into custody. We contacted the PPS and explained his desperate situation. It was agreed that the payment plan could be reinstated. Danny now pays his monthly instalments and need no longer fear more serious repercussions.

In 2019, we conducted various investigations further to individual complaints. The results are generally published as reports. The report *Stop!*<sup>42</sup> is concerned with the manner in which police handled the arrest of a fifteen-year-old boy. *Hoeveel nachtjes nog?* («How many more nights?») <sup>43</sup> presents our recommendations for improving the position of juveniles in the criminal justice system, further to a complaint made by two teenage boys. The report *Waar geen wil is, is geen weg* («Where there's no will there's no way») <sup>44</sup> deals with the case of a young Afghan refugee who was refused a cochlear implant operation to restore her

<sup>42</sup> Report KOM001/2019 Stop! (in Dutch)

<sup>43</sup> Report KOM004/2019 Hoeveel nachtjes nog? (in Dutch)

<sup>44</sup> Report KOM011/2019 Waar geen wil is, is geen weg (in Dutch)

hearing. Our investigation examining the procedures of the Complaints Commission for Christian Education» (*Onderzoek klachtafhandeling door Klachtencommissie Christelijk Onderwijs*<sup>45</sup>) was not prompted by an individual incident but was initiated by the Ombudsman for Children following several complaints from parents. A complaint received from a seventeen-year-old resulted in a letter to the State Secretary of Justice and Security in which we make recommendations concerning the manner in which the Immigration and Naturalisation Service (IND) interacts with underage applicants.<sup>46</sup>

Our casework gives us much information about the status of children's rights in the Netherlands. By monitoring the nature of the problems referred to us, we can identify themes and topics which call for wider attention. Section 2.10 (below) includes a breakdown of the complaints, requests for assistance, requests for information and reports received in 2019.

## 2.4 Ongoing investigations and projects

Alongside our «targeted» investigations into specific complaints, the Ombudsman for Children may also opt to conduct broader investigations or projects which are concerned with one or more aspects of children's rights. In some cases we do so because we have received several broadly similar complaints or reports. In others, we simply wish to gather more information about situations or groups of children that have not received much attention in the past.

In 2019, one such investigation was concerned with the situation of children who live in a holiday park all year round (even though the chalets, caravans and mobile homes at such locations are intended for seasonal use only). The resultant report *Als het vakantiepark je (t)huis is* («When the holiday park is your home»)<sup>47</sup> calls on local authorities to monitor this group of children more closely and ensure that appropriate assistance and support is available.

Further to a large number of complaints and reports about school transport, we produced the report *Als de weg naar passend onderwijs niet passend is* («When the way to suitable education is not suitable»)<sup>48</sup>. The report *Krijg jij al zakgeld?* («Are you getting pocket money yet?»)<sup>49</sup> is a follow-up to our 2017 investigation further to several complaints and reports from young people in residential care who were not receiving pocket money with which to buy extras and clothes.

The report *Ik ben meer dan mijn problemen* («I am more than my problems»)<sup>50</sup> is an in-depth analysis of data gathered during the Children's Rights Tour 2018 about children with problems at home. Because the number of interviews and group sessions we can conduct on a tour is restricted, we also used an online survey to ascertain the preferences and priorities of as many young people as possible. The survey was completed by over 1,700 children. More than 200 respondents reported

<sup>45</sup> Report KOM012/2019 *Onderzoek klachtafhandeling door Klachtencommissie Christelijk Onderwijs* (in Dutch)

<sup>46</sup> Letter KOM002/2019 *Werkwijze IND bij minderjarigen* (in Dutch)

<sup>47</sup> Report KOM005/2019 *Als het vakantiepark je (t)huis is* (in Dutch)

<sup>48</sup> Report KOM009/2019 *Als de weg naar passend onderwijs niet passend is* (in Dutch)

<sup>49</sup> Report KOM006/2019 *Krijg jij al zakgeld?* (in Dutch)

<sup>50</sup> Report KOM012/2019 *Ik ben meer dan mijn problemen* (in Dutch)



that they experience poverty, arguments or violence at home. Some are experiencing the adverse effects of an acrimonious divorce.

In addition to large-scale investigations, we increasingly adopt alternative approaches intended to encourage government and other organisations to improve some aspect of life for children in the Netherlands. They include the «letter of concern», in which we make recommendations based on exploratory research. In one such letter, we asked the Minister of Health, Welfare and Sport (VWS) to develop an overall «joined up» vision for youth services in the Netherlands.<sup>51</sup> In another, we shared our findings on problems experienced by children in foster care due to the lack of a foster care contract with the Minister of VWS, the State Secretary for Legal Protection, local authorities and certified agencies.<sup>52</sup>

All investigations and reports by the Ombudsman for Children are intended to raise awareness of the problems experienced by children and to encourage the government and other relevant organisations to take affirmative action which will improve the lives of all young people.

## 2.5 Advice on policy and legislation

The Ombudsman for Children is keen to ensure that attention is devoted to the rights of the child during the development of policy and legislation, and in any subsequent evaluation. We regularly advise on proposed legislative amendments, both on request and as we consider necessary, and will draw attention to any potential adverse impact on the rights and interests of the child.

At the request of the House of Representatives, we produce position papers to support round-table discussions and policy evaluations. In 2019, we issued a position paper<sup>53</sup> to respond to the report *Onvoldoende beschermd* («Inadequately protected») by the House Commission of Inquiry into Violence in Youth Residential Care.

At our own initiative, we produced a new standpoint<sup>54</sup> on the care for Dutch children in Syrian camps and their repatriation. In a joint letter sent on behalf of the National Ombudsman, the Ombudsman for Children and all local ombudsman services, we called on the Minister President to take charge of efforts to resolve the homelessness and housing problem in the Netherlands.<sup>55</sup>

In 2019, we listed our main concerns about children's rights in the Netherlands, including the Caribbean Netherlands, in a report to the United Nations Committee on the Rights of the Child.<sup>56</sup> Every country that has ratified the Convention on the Rights of the Child is required to provide accountability for the status of children's rights within its sovereign territory at an open session of the Committee. Prior to this session, various organisations, including the Ombudsman for Children,

<sup>51</sup> Zorgenbrief Jeugdhulp (26 March 2019; in Dutch)

<sup>52</sup> Zorgenbrief ontbreken pleegzorgcontract (6 September 2019; in Dutch)

<sup>53</sup> Position paper «Onvoldoende beschermd», Commissie Onderzoek naar Geweld in de Jeugdzorg (in Dutch)

<sup>54</sup> Position paper Zorg voor Nederlandse kinderen in Syrische kampen (8 January 2019; in Dutch)

<sup>55</sup> Brief Aanpak van de huisvesting- en daklozenproblematiek in Nederland (4 December 2019; in Dutch)

<sup>56</sup> Report KOM008/2019 Rapportage VN-Kinderrechtencomité (in Dutch, official UN translation to follow)

submit a written report and «list of issues». Based on the contents of these reports, the Committee formulates questions to be put to the country's government. The Dutch government will answer questions at the open session of April 2021.

## **2.6 Information about children's rights**

Another of the Ombudsman for Children's tasks is to provide information about children's rights and related issues. We do so by means of working visits, speeches, round table discussions and classroom lessons in schools. Not only do such occasions allow us to provide information, they also allow us to gather much useful information.

The toolkit *Het beste besluit voor het kind* has been introduced to inform everyone who works with children about how sound decisions should be made in keeping with the Convention on the Rights of the Child. Some of our information is based on a questionnaire and checklist designed specifically for young people themselves, so that they too understand the importance of making good decisions in all matters that are likely to affect their lives.

Our website ([www.kinderrechten.nl](http://www.kinderrechten.nl)) was redesigned and updated in 2019. Visitors can now find information about children's rights more easily. There is a separate section for professionals and a contact form for anyone with specific questions.

Much of our information provision relies on direct contact with children, parents, professionals and others who get in touch with us. Media interviews and a strong social media presence are also important.

## **2.7 Youth participation**

The «right to participate» is regarded as one of the most important rights of the child. Young people must have a say in decisions which affect their lives, and their opinions must be taken fully into account. This is true at both the individual and group level. We not only call on other organisations to respect this important principle but also strive to embed it into our own work. Young people were closely involved in the research carried out in 2019 by means of personal interviews and online questionnaires. When investigating a complaint, we will ask the young people concerned for their opinions wherever possible.

The report *Pleegkinderen aan het woord* («Foster children speak out»)<sup>57</sup> is a good example of participation at work. In 2017, the government introduced an Action Plan intended to improve the quality of foster care in the Netherlands. In our view, the opinions of the children actually in foster care had not been taken adequately into account. We therefore decided to ask them for their views, to tell us about the issues they have experienced and to suggest ways in which those issues can be resolved.

At the official presentation of the toolkit *Het beste besluit van het kind*, we invited some young people to address the gathering of policy-makers and professionals and to explain how they wish to be involved in decisions which affect their lives. Children and young people were, of course,

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<sup>57</sup> Report KOM007/2019 *Pleegkinderen aan het woord* (in Dutch)



involved in the development of the toolkit and will continue to be consulted on any future updates or refinements.

In the years ahead we shall intensify our efforts to ensure that children and young people are fully involved in our work. The Children's Rights Tour 2020, the third such event, will provide an excellent opportunity in this regard.

## **2.8 Local and international cooperation**

The Ombudsman for Children has colleagues and counterparts at both local and international level. The ombudsman organisations of Amsterdam, The Hague and Rotterdam have an official who is specifically charged with youth issues. As in previous years, 2019 saw regular meetings of the Local Ombudsman for Children Consultation Platform (LOKIOM), in which the national Ombudsman for Children also takes part. The ombudsmen also submitted a joint letter to the Minister President calling for affirmative action to solve the homelessness and housing problems.

We also seek close cooperation with international colleagues. At a meeting with the Flemish Office of the Children's Rights Commissioner in Brussels, we discussed the situation of children in Syrian camps. During the annual conference of the European Network of Ombudspersons for Children (ENOC), we led a discussion about children's rights in the digital world.

## **2.9 The Caribbean Netherlands**

The Ombudsman for Children champions the rights of all children and young people in the Netherlands, including those living on the islands of Bonaire, Saba and Sint Eustatius. Like the National Ombudsman, the Ombudsman for Children can adjudicate on complaints about the three «public bodies» and all other public sector authorities active here. The Ombudsman for Children is also competent to deal with complaints concerning organisations which operate under private law, such as schools, although in such instances the complaint should first be made to the organisation itself. If this is not possible, or the complaint cannot be resolved by the organisation, the complainant can then refer the matter to the Ombudsman for Children.

We want more children and adults in the Caribbean Netherlands to be aware of our existence and what we do. We therefore make regular visits to the islands in association with the National Ombudsman. If we are to provide an appropriate level of service to the children of Bonaire, Saba and Sint Eustatius, it is important that we are thoroughly familiar with the organisations working here and how their complaints procedures work. It must be clear how people can contact the Ombudsman for Children and *vice versa*. We made several visits to the islands in 2019 where we invited children, parents, officials and professionals to tell us what they consider important and what they actually need. On each visit we are made aware of cases which call for further attention. Many involve complex problems, such as that of a child with a disability for whom no appropriate schooling is available. We also deal with relatively minor problems which nevertheless have a major impact on the children concerned. Such problems can generally be quickly resolved with a simple intervention.

While visiting a secondary school on Saba, we asked students what they would do for the young people of the island if they could be Ombudsman for Children for a day. Several replied that they would have the basket on the nearby basketball court repaired. This had been a popular meeting place for students until the hoop fell off, making play impossible. Later the same day we had a meeting with the Public Body of Saba, which is responsible for all public spaces on the island. We passed on the students' comments. No one realised that the basket was missing, although they did know that the basketball court was a popular recreational facility. They promised to make the repairs as soon as possible.

## **2.10 Our work in figures**

The Ombudsman for Children can be contacted by phone, email or regular mail by anyone with questions about children's rights and the UN Convention on the Rights of the Child. Anyone who believes that a right has been violated can and should contact us.

### **Contacts**

In 2019, the Ombudsman for Children received a total of 2,106 questions, requests for assistance, reports and complaints (2018: 1,998). As in previous years, youth welfare services, education and access rights (following divorce) headed the list of topics.

In first place was youth welfare services, with 743 contacts (2018: 575). Most queries and complaints were in connection with guardianship and supervision orders. Children were most likely to contact us about problems with the «family guardian», the professional appointed to monitor the home situation.

Education was in second place with 393 contacts (2018: 453). Many were about situations in which it has not been possible to arrange appropriate schooling for a child, and children unable to attend school for various reasons. Other common issues include bullying, admission, exclusion and school transport.

In third place with 318 contacts (2018: 287) are issues concerning access arrangements following a divorce. Parents may complain because they do not agree with the court's decision, although we also heard from children who experience adverse impact from their parents' acrimonious divorce and those who do feel that their wishes and interests have not been adequately taken into consideration.

Other topics attracting a relatively large number of enquiries and complaints included family law (102 contacts), poverty (97 contacts) and immigration law (71 contacts). Further down the list we find complaints or reports concerning police action, the judicial system, health care, bullying, discrimination, online safety, (social) media and childcare services.

Everyone with a question or complaint is able to contact the Ombudsman for Children: parents, foster parents, grandparents, siblings, professionals and, of course, children themselves. In 2019, the majority of enquiries were from parents (1,250 compared to 1,105 in 2018), followed by professionals (166 in 2019; 170 in 2018), grandparents (125 in 2019; 105 in 2018) and children (108 in 2019, 136 in 2018). In the years ahead, the Ombudsman for Children will intensify efforts to reach children and

young people to ensure that all know where they can come with their questions and complaints.

In 2019, approximately half of all enquiries (1,005) were made by email. The free telephone helpline was used by 1,064 callers. A small number of people made contact by regular mail or during one of our working visits.

**Organisation**

The Ombudsman for Children is supported by a team of 16 staff which comprises a team leader, caseworkers, policy advisors, investigators (researchers) and two communications consultants. Absenteeism due to illness (sick leave) during the report year was 7.1%.

### 3. THE WORK OF THE OMBUDSMAN FOR VETERANS

The Veterans Act came into effect in June 2014, whereupon the National Ombudsman took on the additional role of Ombudsman for Veterans with its specific tasks and responsibilities. In this capacity, he deals with complaints from (former) members of the armed services. The Ombudsman for Veterans is required to inform the government and parliament of his findings. The Veterans Act formally establishes the following:

- Responsibility for veterans. Because it is the government which makes decisions to deploy servicemen and women, it has a special responsibility for their care and that of dependent relatives. Veterans who suffer physical or psychological injury further to their service must be able to count on good care and support, for as long as necessary.
- Recognition and appreciation for veterans. Veterans are entitled to recognition and appreciation for their service in conflict situations and peacekeeping missions. That service requires them to accept exceptional risks. They deserve the recognition and appreciation of Dutch society because they are deployed in the service of the Netherlands. The Veterans Act expressly states that government policy must «actively promote» the recognition and appreciation of veterans.
- Duty of care. The Veterans Act is partly preventative in nature. It stipulates, for example, that military personnel must be given adequate information about potential health problems and the care services available *prior* to being deployed on active service.
- Right of complaint. The Ombudsman for Veterans is independent and is not affiliated with the Ministry of Defence. We actively monitor government authorities» interaction with veterans to ensure fair and proper treatment. Similarly, we monitor organisations which operate under private law, such as those which provide care and welfare services to veterans. The tasks and competences of the Ombudsman for Veterans are established by Articles 7b, 11a, 11b and 11c of the Veteranenwet (Veterans Act). The appointment of an Ombudsman for Veterans ensures that all veterans, who form a specific group within our society and have a unique legal status, know precisely whom to approach with any complaint. Access to an independent Ombudsman for Veterans lowers the threshold for making a complaint.

#### 3.1 Veterans in the Netherlands

There are thousands of veterans who have served in conflict situations, peacekeeping missions and crisis control operations in other countries. Dutch troops have served in Lebanon, (1979–1985), and more recently in Bosnia, Kosovo, Iraq, Afghanistan and Mali. The total number of Dutch veterans remains reasonably stable due to the influx of the «younger generations» and in 2017 was estimated to be 111,700.<sup>58</sup>

Article 1(c) of the Veterans Act (here in translation) defines a veteran as «a serving or former member, whether volunteer or conscripted, of the combined Armed Forces of the Netherlands, the Royal Netherlands East Indies Army or the Dutch merchant marine, who has served the Kingdom of the Netherlands in a conflict situation or has taken part in a peacekeeping mission to enforce the international rule of law, insofar as said mission was authorised by decree of Our Minister.»

<sup>58</sup> Ministry of Defence, Veteranennota 2017–2018, p. 12

### **First five years of the Veterans Act**

The enactment of the Veterans Act coincided with the 10th Dutch Veterans Day in June 2014. The Act creates new tasks and responsibilities for the National Ombudsman, who also assumes the role of Ombudsman for Veterans. On Thursday 20 June 2019, we marked the fifth anniversary of the appointment of the Ombudsman for Veterans with a symposium about the Veterans Act followed by an informal gathering of government officials, volunteers and veterans.

### **3.2 Overview of enquiries received in 2019**

In 2019, the Ombudsman for Veterans received 279 requests for assistance from veterans or their relatives. This represents a continuation of the upwards trend seen in previous years (152 requests in 2017, rising to 208 requests in 2018). Many complaints could be resolved by means of an intervention or mediation. In 83 of the 279 cases, the Ombudsman for Veterans opted to deal with a complaint about a government organisation by means of direct intervention.

In 71 cases, complaints were referred to an organisation with a specific responsibility, such as the Veterans Institute of the Ministry of Defence. The Ombudsman for Veterans generally offers the complainant advice before making such referrals. In 23 cases, the complaint was already subject to legal proceedings. The Ombudsman for Veterans must therefore exercise caution. Ten complaints were referred back to the (government) organisation concerned for internal adjudication. This is because the organisation must be given the opportunity to resolve the complaint before the Ombudsman for Veterans can take it into consideration. However, the Ombudsman for Veterans continues to monitor the complaints assessment procedure to ensure that the complainant's interests are properly served. At 1 January 2020, 21 of the complaints received in 2019 remained open.

### **Expired driving licence**

In mid-2019, the Ombudsman for Veterans was contacted by a volunteer who requested assistance on behalf of Ruud, a 75-year-old Lebanon veteran. Ruud was due to begin medical treatment and needed to travel back and forth to the hospital. The only way of doing so was by car, but his driving licence had expired. The stress of not having a valid licence or any alternative means of transport, combined with his medical condition, had taken its toll on Ruud. He had submitted a renewal application and all the necessary documents in plenty of time, but had heard nothing from the licensing authority, the CBR. When he phoned the CBR he was told that they were very busy and he would have to wait his turn. The Ombudsman for Veterans took immediate action. We contacted the CBR the very same day. Our intervention resulted in someone from the CBR calling Ruud within a week. It was agreed that his application would be given priority treatment and, once all procedures had been completed, his driving licence would be forwarded by express delivery at no extra cost. Ruud now has his licence and can drive to the hospital every day for his treatment.

### 3.3 Investigations

In 2019, the Ombudsman for Veterans conducted three full-scale investigations. The resultant reports, including the ombudsman's findings and recommendations, were submitted to the relevant ministers. They have also been published and can be found on the website of the National Ombudsman.

#### **Special duty of care also applies to reservists<sup>59</sup>**

The complainant is a reservist who was posted on a temporary engagement to Afghanistan in September 2011. At the camp, he was exposed to (potential) rocket attacks and suicide bombings. He was also subjected to bullying by one of the regular soldiers.

On his return to the Netherlands, the complainant's mental health declined rapidly. He suffered from flashbacks, insomnia, and destructive thoughts. It became ever more difficult to function normally. The Integrity Department of the Ministry of Defence decided not to follow up his allegations of bullying. His various other grievances were deemed inadmissible. He therefore contacted the Ombudsman for Veterans.

Even after we had referred the complaint to the Ministry of Defence, no action was taken. There was no investigation and no ruling, which is in direct contravention of the formal complaints assessment procedure established in 2016.

Having considered all aspects, the Ombudsman for Veterans concludes that the complainant did not receive appropriate aftercare on his return to the Netherlands. No attempt had been made to establish whether or not he was able to function normally, even though reports of potential problems had been made from the field of operations. He received no counselling or supervision at any time following his repatriation from Afghanistan.

This investigation and the resultant report by the Ombudsman for Veterans prompted a full review of the policy on the mobilisation of reservists. A number of changes have been made. A selection procedure has been introduced prior to any posting on active service. Reservists who volunteer to take part are assessed for suitability. The reservists who are selected for the posting then receive support from a Social Medical Team (SMT), who will discuss situations such as those described in the report. Reservists are told how to recognise potential problems at an early stage.

#### **Complaint about the complaints procedure<sup>60</sup>**

The complainant in this case is a committee member of the *Contactvereniging Postactieven Duitsland*, an association of Dutch veterans living in (or with connections to) Germany. In the past, he had a permanent access pass to Ramstein Air Base, where the association held a number of social events. In 2017, the Netherlands' Senior National Representative (SNR), a Colonel X, revoked all such passes and announced that no new passes would be issued.

<sup>59</sup> Report 2019/003 Reservistenbeleid onderzocht en aangepast mede dankzij onderzoek Veteranenombudsman (n Dutch)

<sup>60</sup> Report 2019/004 Een onderzoek naar een klacht over de klachtbehandeling door het Ministerie van Defensie (in Dutch)

The complainant considered this unjust and submitted a complaint to the Ministry of Defence, objecting both to the withdrawal of the passes and the conduct of Colonel X. On 1 December 2017, the ministry declared the complaint about the cancellation of the passes to be ungrounded. It further ruled the complaint against Colonel X to be inadmissible because he was no longer the SNR, having relinquished that post on 1 September 2017, and was about to retire altogether. He reached pensionable retirement age on 1 December 2017, the date of the ruling. The complainant was dissatisfied and referred the matter to the Ombudsman for Veterans.

The Ombudsman for Veterans found that the complaint about Colonel X's conduct should have been processed in the usual manner. Even where there is no longer an employment relationship at the time of assessing the complaint, this does not absolve the ministry from its responsibility.

The Ombudsman for Veterans advised the Ministry of Defence that there is a statutory obligation to deal with complaints about personnel, even if they are no longer serving, if the actions or omissions which form the substance of the complaint fall under the responsibility of the ministry. This was the case here.

### **Military Invalidity Pension<sup>61</sup>**

In recent years, the Ombudsman for Veterans has received numerous complaints and reports about the excessive time taken to process applications for Military Invalidity Pension (MIP) and subsequent requests for reassessment where a person's condition changes over time. The final notification of decision not only establishes an applicant's legal entitlements but often marks the end of a particularly stressful period of uncertainty. It brings closure. The Ombudsman for Veterans has published reports on the cases of two veterans (one of whom served in Bosnia and the other in Afghanistan) for whom the protracted process, with years of repeated medical assessments and no indication of when a decision might follow, took a very heavy toll. The Ombudsman for Veterans has also dealt with cases in which veterans have experienced uncertainty for as long as nine years, during which time they were regularly recalled for yet more medical examinations. It was not until the Ombudsman for Veterans intervened that officials finally reached a decision.

Public sector pensions are administered by the ABP pension fund. In 2018, the Ombudsman for Veterans raised questions about this organisation's decision to defer re-assessments by one year. At the time, the Minister blamed a shortage of qualified medical officers. In view of the constant stream of complaints and reports, in May 2019 the Ombudsman for Veterans instigated an investigation to identify bottlenecks in the procedures.

The resultant report, submitted to the Minister of Defence, recommends that assessments should be deferred altogether until such times as the full extent of the applicant's disability is apparent. The veteran would then have to visit a medical officer only once. If he experiences financial hardship in the meantime, he should be eligible for some provisional allowance or benefit payment. The ombudsman further recommends a more extensive role for «care coordinators». They can provide effective

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<sup>61</sup> Nationale ombudsman. (2019, 14 October). Veteranenombudsman: lange wachten aanvragen Militair Invaliditeitspensioen moet snel afgelopen zijn (in Dutch)



support to veterans by actively monitoring the procedures and deadlines, and by providing information about the various other provisions that exist. The Ombudsman for Veterans suggests that it is not necessary for a claimant to be assessed by a medical officer for each separate provision. If, for example, he has recently been examined further to an MIP application, the results of this examination together with the information collected by the care coordinator should be enough to support the decisions of other executive agencies.

#### **Payment plan brings peace of mind**

In early 2019, Arnoud contacted the Ombudsman for Veterans. He owes € 150,000 to the Central Judicial Collection Agency (CJIB). He does not contest the amount and is willing to pay, but he cannot raise such a huge sum right at this very moment. Unfortunately, that is precisely what the CJIB is now demanding because, due to various circumstances, he had failed to keep up the instalments on an earlier payment plan. When we met him, the due date had already passed and a warrant for his arrest had been issued. The Ombudsman for Veterans took on his case and contacted the CJIB. We managed to arrange another payment plan which allows him to pay off his debt in manageable instalments, starting next year. This gives him time to put his life back on track. He no longer faces the stress of an arrest warrant hanging over his head.

#### **Ongoing investigation: review of Ministry of Defence complaints assessment procedures**

In December 2016, the Ombudsman for Veterans undertook an initial investigation of the complaints assessment procedures of the Ministry of Defence. We had received several reports about veterans having to wait a very long time for their complaints to be processed. It was clear that these were not isolated incidents but indications of an ongoing problem.

Veterans' complaints are often complex. Many relate to (the lack of) aftercare and shortcomings in the reintegration process. Many such complaints were not being addressed adequately by the ministry. Some complaints were treated as regular enquiries, while others received no response or acknowledgement at all. Not all complaints were properly registered as such. Where action was taken, it often failed to address the actual substance of the complaint. The complaints assessment procedure was taking far too long. The Ombudsman for Veterans concluded that the current complaints procedures fell far short of the required standard and made a number of recommendations to the Minister of Defence.

In 2017, several reports appeared in the Dutch media claiming that the Ministry of Defence was not taking complaints of inappropriate behaviour by military personnel seriously. There had, for example, been complaints about initiation ceremonies («hazing») which had gone much too far. In a «letter of concern», the Ombudsman for Veterans called on the ministry to show more consideration for the victims of integrity violations, reiterating the importance of a conscientious, thorough and transparent complaints assessment procedure.

The 2018 report *Terugblik* («Review») presents the findings of the Ombudsman for Veterans' investigation to determine whether the recommendations made in 2016 had been implemented. We also examined whether the new Ministry of Defence Regulation on Complaints Procedures, introduced in 2016 as an amalgamation of various



pre-existing procedures, was effective. The report stresses that professional complaints assessment goes beyond doing the bare minimum prescribed by the regulation. While the process and responsibilities are now described in detail, this does not guarantee that practical implementation will be flawless. Complaints – and complainants – must be treated in an open and positive way. A complaints assessor does not act solely in the interests of the organisation but must also take the interests of the complainant into account.

The investigation revealed that there is still considerable room for improvement. Too often, complaints are still being viewed from the ministry's own perspective and assessors take an overly formal, rigid approach. The time taken to deal with a complaint remains too long. Veterans are still being required to submit all complaints in writing. There is no opportunity to do so in person or by phone.

In July 2018, the *Terugblik* report was discussed with the Minister of Defence and the State Secretary. The Minister informed the Ombudsman for Veterans and parliament that he would order an internal evaluation of the complaints procedures. This evaluation had not been completed by the end of 2018 but was eventually published in November 2019. It reveals that complaints assessment remains a point of concern and attention for the ministry. In 2019, the Ombudsman for Veterans provided support in the form of several workshops on professional complaints assessment for ministry staff. The Ombudsman for Veterans will continue to monitor the situation and intends to publish regular status updates in 2020.

#### **A token of gratitude**

Mr de Vries and his wife were on holiday in Noord-Holland. As they drove back to their hotel after a visit to the beach, Mrs de Vries complained that she was feeling unwell. Mr de Vries was able to pull over. He realised that his wife was drifting into unconsciousness. Her face was pale and clammy. He lifted her out of the car and laid her on the grass. As Mr de Vries was calling an ambulance, Eva came forward. She immediately began CPR (cardiopulmonary resuscitation) and used the emergency defibrillator which had been fetched from the nearby supermarket. Eva's rapid and expert action almost certainly saved Mrs de Vries' life. Mr de Vries learned that Eva was a member of the Royal Dutch Navy stationed in the town. He wanted to thank her for what she had done. He decided to write a letter to the naval base, suggesting that Eva should be given some form of official recognition. To his surprise, the commanding officer informed him that this would not be possible because Eva is a member of the medical staff. She is trained to perform CPR and is indeed expected to do so when necessary. It's all part of the job. Mr de Vries thought this reply was a little «offhand» and resolved not to give up. He was determined to show his gratitude for what Eva – in her off-duty time – had done for his wife. Mr de Vries wrote to the Ombudsman for Veterans. We contacted the naval authorities to ask what, if anything, would be possible. We were told that Eva's personnel file now contained a commendation and Mr de Vries' original letter. In addition, Mr de Vries was offered the opportunity to contact Eva again and convey his thanks directly. The Ombudsman for Veterans considered this a satisfactory outcome. No further action was necessary and the file was closed.

### **3.4 Results of past investigations**

The Ombudsman for Veterans expects his reports and recommendations to be taken seriously. In 2019 we were gratified to note that improvements had indeed been made further to the following investigations.

#### **Recovery of Second World War aircraft**

In 2016, we contacted the Minister of the Interior and Kingdom Relations (BZK) to express concern about the inconsistency of decisions in response to requests to recover aircraft which had crashed on Dutch soil during the Second World War (Letter 2016/084). Such decisions are taken by the local authority in whose area the wreckage is to be found. This means that some aircraft are indeed recovered at the request of their crew's relatives and descendants, while others are not. Several stakeholders suggested that a national coordination point would be useful. Their views had been sought by the Ombudsman for Veterans as part of the investigation of a complaint received from the Short Stirling W7630 Recovery Foundation, which was dissatisfied because the Municipality of Echt-Susteren had refused permission for the recovery of this wartime bomber, thought to contain the remains of some of its British aircrew. The Foundation's dissatisfaction was shared by direct descendants of the personnel posted as «missing in action» when the plane crashed in September 1942. The Royal Netherlands Air Force, in the person of the Staff Officer for Aircraft Recovery, advised that the wreckage should be recovered. According to the municipality, however, there was no danger of explosion and therefore no need to disturb the site.

In July 2018, the Minister of the Interior and Kingdom Relations announced that thirty wartime aircraft were to be recovered over the coming ten years and that the ministry will provide appropriate support to the local authorities concerned. This is in line with the Ombudsman for Veterans» recommendations. The recovery of Short Stirling W7630 began in September 2019.

#### **Discharged for drugs use**

In recent years, the Ombudsman for Veterans has received several reports of young veterans who experience psychological problems following active service and turn to recreational drugs as an «escape». Some of those discharged from the service for drugs use were known to the Military Mental Health Service at the time. In 2016, the Ombudsman for Veterans emphasized that drugs use does constitute reasonable grounds for dismissal. However, the personal circumstances of veterans should be taken into consideration. Those who are found to be using recreational drugs should not automatically be given a «dishonourable» discharge. In response, the Ministry of Defence states that traumatic experiences during a mission may be a reason to deviate from its standard zero-tolerance policy. It will examine whether the person in question would benefit from treatment, the facilities and provisions he or she can be offered, and whether there is just cause to alter the usual grounds for dismissal.

In December 2018, the Ministry of Defence announced that the standard policy of automatic discharge for drugs use would be reviewed in 2019. The Ombudsman for Veterans will continue to follow developments.

### **Reintegration of injured service personnel**

The Ministry of Defence provides support to seriously injured veterans in the form of intensive rehabilitation and (re-) training programmes. These reintegration programmes are often more than two years in duration, whereupon the Ministry of Defence is required to continue paying (a larger proportion of) the veteran's salary. The usual entitlement to invalidity benefit is reduced by the Employee Insurance Administration Agency (UWV) because the ministry is deemed to have not done enough to promote the veteran's reintegration.

In recent years, both the National Ombudsman and the Ombudsman for Veterans have received multiple complaints about an apparent lack of concern for service personnel and veterans who are unable to work due to illness or injury. They often feel that they have been abandoned and left to their own devices. This has a major impact on their personal lives. In April 2018, the ombudsman therefore launched its own investigation. In addition to meetings with both the Ministry of Defence and UWV, we organised a round table discussion attended by senior government officials and experts. We concluded that main problems within the Ministry of Defence's reintegration chain are caused by incomplete information and expertise, the late transfer of tasks and responsibilities, and poor registration procedures.

Overall, the Ombudsman for Veterans takes a positive view of the improvement measures announced by the ministry, the implementation of which would enhance knowledge, increase support and improve the coordination of the reintegration chain. It falls to the ministry to ensure that they are indeed implemented in an effective manner. The Ombudsman for Veterans has urged the Ministry of Defence to examine opportunities provided by current legislation, notably the Veterans Act and *Wet Poortwachter* (Eligibility for Permanent Invalidity Benefit (Restrictions) Act), and to improve the reintegration process in a way that takes the personal circumstances of veterans fully into account.

In July 2019, the Ombudsman for Veterans received a progress report from the Minister of Defence, setting out how the recommendations in our report have been followed up. We shall conduct a further review in 2020 to determine whether expertise, support and oversight have indeed been improved.

#### **Unpleasant surprise**

Lebanon veteran Mark sent us an email in which he says that he has just received a bill for over € 12,000 from his lawyer, who had assisted Mark in claiming compensation under the *Regeling Volledige Schadevergoeding Defensie* (Ministry of Defence Full Compensation Regulation). Article 5 of the accompanying implementing rules expressly state that legal costs are to be reimbursed up to a maximum of € 7,500. Mark's lawyer had promised that his fees would not exceed this amount. That was the last Mark heard about the matter of fees until he received the final invoice. The Ombudsman for Veterans advised Mark to complain directly to the law firm concerned and to include the Ombudsman for Veterans in the cc field. The legal profession is bound by a code of conduct which requires full transparency about fees. The law firm replied immediately stating that there had been an «administrative error». It issued a credit note for the excess amount.

### **3.5 Who seeks the help of the Ombudsman for Veterans?**

To gain a better understanding of the groups who call upon the assistance of the Ombudsman for Veterans, we register a number of characteristics of each complaint or enquiry. They include the mission(s) in which the veteran took part, the branch of the services in which he or she served, and age group.

The largest group of veterans who contacted the Ombudsman for Veterans in 2018 comprised those who had served in the former Yugoslavia (50), with veterans of the Afghanistan missions in second place (41). The increase in enquiries from Afghanistan veterans is notable: there were only 11 in 2017. There was a decrease in enquiries from those who had served in the Netherlands (East) Indies. Given the age of veterans who served in the Second World War and pre-independence Indonesia, it is likely that the number of complaints from these groups will continue to decline in the years ahead. Of all complaints and queries, 106 were received from a relative or someone acting on behalf of a veteran rather than the veteran himself.

The vast majority of veterans (138) who sought the assistance of the Ombudsman for Veterans in 2019 had served with the Royal Netherlands Army. This was also the case in 2017 and 2016. It is a logical consequence of the land forces' prominent role in the Dutch missions to Lebanon, the former Yugoslavia and Afghanistan.

Not all case files record the complainant's age. However, 107 files do include this information whereupon we see that the largest group represented is that of veterans aged 41 to 60.

### **3.6 Nature of complaints**

Some complaints include multiple elements, and some relate to more than one government organisation. The dossiers for 2019 include a total of 348 «complaint elements» (2018: 279). Our analysis of the nature of complaints is based on the following categories:

- Income provisions (e.g. pensions)
- Healthcare provisions
- Recognition
- Aftercare
- Debt/financial problems
- Processing delays/waiting times
- Other.

The majority of complaints (128) related to income provisions (2018: 80). There was a slight decrease in the number of veterans (or relatives) who complained about lack of recognition (50, compared to 60 in 2018). The number of complaints relating to debt or financial problems remained stable (12) while those concerning processing delays and waiting times showed a marked increase, from 18 in 2018 to 40 in 2019.

#### *Organisations*

The majority of complaints received, 184 of the total of 279, concerned the Ministry of Defence or the ABP (Pension Fund for Public Sector Employees) as the administrative agency responsible for the payment of Military Invalidity Pension and other provisions for service personnel.

Other organisations against which complaints were made included local authorities (5), social benefits agencies (7) and government ministries other than Defence (5). Some complaints (20) concerned an organisation which operates under private law but has some specific responsibility towards veterans, such as the Veterans Institute (7) and De Basis, a foundation providing mental health care services for uniformed personnel (7).

### **3.7 Forthcoming activities**

#### **Complaints assessment by Ministry of Defence**

One of the key focus areas for the Ombudsman for Veterans in 2019 was the manner in which the Ministry of Defence assesses complaints. The report *Review* (May 2018) notes very little improvement in recent years. Recommendations were made and the Ombudsman for Veterans announced that regular monitoring would continue. The ministry has undertaken an internal evaluation of its complaints procedures. After almost a year's delay, the results were submitted to the House of Representatives in November 2019. At the time of writing this annual report, the latest review by the Ombudsman for Veterans is nearing completion. It is based on the principles set out in the «Vision of Professional Complaints Assessment», which can also be used by the National Ombudsman in a broader context.

#### **Ministry of Defence compensation arrangements**

The Ombudsman for Veterans is to conduct an investigation examining the implementation of the Ministry of Defence compensation arrangements for veterans and the time taken to process claims. Despite the introduction of the *Volledige Schadevergoeding Veteranen* (Full Compensation for Veterans Regulation) it can still take many years for a settlement to be reached, if indeed one is reached at all. The ministry and the various bodies which represent veterans' interests, such as unions, professional federations and the legal profession, are often inclined to blame each other for delays. There are other issues that require examination: when is a case submitted directly to the State Advocate as opposed to the ministry's Claims department? Is it possible to make a separate liability claim if you have already begun the «full compensation» procedure? In what circumstances can an advance payment be made in anticipation of the final settlement? In short, much remains unclear.

#### **Veterans in detention: access to care**

The Ombudsman for Veterans has been made aware of various problems affecting veterans in detention and their access to care services. Does the penal system (military or civilian) devote enough attention to the rights and interests of veterans? The Ombudsman for Veterans is to conduct an investigation in association with the National Ombudsman.

#### **Military Invalidity Pension**

The Ombudsman for Veterans made recommendations further to the investigation into the administration of the Military Invalidity Pension. The Minister of Defence is expected to provide a response before the end of March 2020.

#### **Permanent funding for veterans» centres**

There are over twenty «drop-in» centres for veterans and their relatives throughout the Netherlands. They have a social function, allowing veterans to meet others with similar experiences. They provide occupa-

tional therapy, can refer users to other sources of assistance, and they support local communities in activities such as remembrance parades and school projects. Funding arrangements vary from one centre to another but generally rely on local grants and public donations.

In many cases, the centres are barely able to cover their operating expenses. There is no opportunity to plan for the future, which inevitably creates uncertainty. The Ombudsman for Veterans has therefore called upon the government to provide a secure, guaranteed source of funding. This will not only ensure the continuity of the veterans» centres but will save money in other areas such as social care. In June 2018, a parliamentary motion was tabled (by members Hanke Bruins Slot and John Kerstens) in support of the Ombudsman for Veterans» proposal. In September 2019, a brainstorming meeting was held with representatives of the Ministry of Defence and the Association of Netherlands Municipalities (VNG). At the time of writing, it is not known what concrete proposals resulted from this meeting. The Ombudsman for Veterans will continue to monitor developments in 2020.

### **3.8 International cooperation**

The Ombudsman for Veterans is a member of the International Conference of Ombuds Institutions for the Armed Forces (ICOAF), a worldwide network founded in 2009. The ICOAF convenes annually to share knowledge and experience in the specific area of complaints assessment, as well as broader research into the human rights and welfare of civilians and military personnel alike. Some fifty countries attend the annual conference, together with representatives of international organisations such as the EU, NATO, OSCE and the UN.

The National Ombudsman/Ombudsman for Veterans has made an active contribution to all ICOAF annual conferences since 2013. In 2016, the Ombudsman for Veterans co-hosted the 8th conference, held in Amsterdam, in association with the Ministry of Defence. In October 2019, the 10th ICOAF conference took place in Sarajevo, where the Ombudsman for Veterans chaired part of the proceedings.

At the invitation of the Geneva Centre for Security Sector, the Ombudsman for Veterans addressed meetings of the United Nations in May (Geneva) and July (New York). He spoke about the importance of an institution such as the ombudsman in the context of UN Sustainable Development Goal 16: *«[to] promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels»*.

## 4. OUR PEOPLE

The National Ombudsman, Ombudsman for Children and Ombudsman for Veterans attach great importance to the ongoing development of all staff, who should maintain the closest possible contact with the public and government organisations. Only then can complaints be dealt with in a professional manner and the government helped to learn from our findings.

This chapter is concerned with human resources: how many people work for the National Ombudsman organisation and what are their key characteristics? How does the National Ombudsman approach matters such as personal development and absenteeism? We also describe our efforts to remain in contact with other relevant organisations.

### Workforce

In 2019, the National Ombudsman, Ombudsman for Children and Ombudsman for Veterans were supported by 176 staff (161 FTE).

### Gender and age diversity

The National Ombudsman organisation has traditionally employed a relatively high percentage of female staff. In 2019, the gender split was 68.8% female to 31.2% male. The age profile is as follows:

	20–24	25–34	35–44	45–54	55–59	60+
2018	4	26	43	56	18	21
2019	1	29	47	54	26	19

A significant proportion of personnel are educated to degree level or equivalent. This is reflected in the salary structure shown below. (The table excludes the three senior office-holders.) The largest group is that of staff in Scale 11 (Researcher/Investigator).

		5	6	7	8	9	10	11	12	13	14	15	16	17
2018	Female	3	7	1	10	5	9	49	20	8	5	0	1	0
	Male	0	4	0	3	0	7	20	6	6	3	0	0	1
2019	Female	2	7	2	6	4	18	47	22	7	5	0	1	0
	Male	0	4	0	3	1	12	18	8	5	4	0	0	0

### Internships

Five students completed an internship with the National Ombudsman organisation in 2019. Most were studying law at university or a university of applied sciences.

### Staff development

The National Ombudsman allows personnel every opportunity to pursue personal and professional development. A number of training and refresher courses are made available. In 2019, they included courses in written language (at Level B1) and effective writing, conversation skills, professional complaints assessment (workshops for staff, given by staff), conflict management, increasing mental resilience, general effectiveness and new working practices (e.g. working from home and «hotdesking»). Staff were also able to take courses in (visual) awareness and coaching skills. Several employees opted to enrol for external training courses.



### **Health and vitality**

In 2019, absenteeism through illness (sick leave) fell to 5.7% (2018: 6.5%). Vitality remains extremely important to the National Ombudsman organisation. We wish to have healthy, vital employees who are able to work safely at all times. A formal Health & Safety policy is therefore in place. We also organise management workshops on topics related to health and safety. All staff enjoy the opportunity to take part in sports and exercise activities, either during the lunch break or after office hours.

### **Staff in the field**

Every day, we receive complaints about the performance of various government organisations. It is important that staff are familiar with these organisations, what they do and how they work. It is also essential that the staff who deal with complaints are aware of the citizen's perspective and frame of reference.

To this end:

- Staff conduct regular working visits to a wide range of government and societal organisations. They provide workshops, lectures and courses on citizenship and the public's relationship with government to various target groups, educational institutes and public sector organisations.
- Staff can be posted «on attachment» to other organisations, often at their own request. In 2019, a number of National Ombudsman employees spent time with another organisation.
- Conversely, staff from other organisations are frequently seconded to the National Ombudsman. This is a valuable learning experience for all concerned.

### **External appointments**

The three senior office-holders have declared a number of external interests and appointments. This list reflects the situation at 31 December 2019. All current appointments and interests are also published on the website.

#### *National Ombudsman/Ombudsman for Veterans: Reinier van Zutphen*

- Lecturer, Studiecentrum Rechtspleging (since 1 April 2005; paid position: fee per course)
- Honorary Member, Nederlandse Vereniging voor Rechtspraak (since 2012, unpaid)
- Chair (formerly member) Supervisory Board, Juridisch Loket (since 5 July 2012, paid position)
- Ambassador, Foundation for Refugee Students UAF (since 1 November 2013, unpaid)
- Chair (formerly member) Supervisory Board and key expert, Center for International Legal Cooperation (since 20 December 2013; chairmanship unpaid, participation in missions paid at daily rate plus expenses)
- Committee member, Kirchheiner Foundation for Ombudsman and Democracy, Leiden University (since 1 April 2015, unpaid)
- Member, Advisory Board, Netherlands Institute for Human Rights (since 1 April 2015, unpaid).
- President, Vereniging voor Klachtrecht (since 13 April 2016, unpaid)
- Committee member, International Ombudsman Institute, European region (since 8 September 2016, unpaid)
- Member, Advisory Committee for a book about the student resistance in Rotterdam (temporary, unpaid)



- Chair, Supervisory Board, Stichting Advisering Bestuursrechtspraak (StAB), The Hague (paid position plus expenses allowance)
- Member, Advisory Board of Gak Institute (since 1 July 2018, paid position)

*Deputy Ombudsman: Joyce Sylvester*

- Trustee/Committee member, Slot Zuylen Foundation (since September 2019, unpaid)
- Member, Supervisory Board of VSB Asset Management (since 1 January 2018, paid position)
- Chair, Supervisory Board PCOU/St. Willibrord Utrecht (since 1 August 2018, paid position)
- Patron, Gooi Choir Festival (since 2012, unpaid)
- Ambassador, d'ONS Foundation (since 2006, unpaid)

*Ombudsman for Children: Margrite Kalverboer*

- Professor of Child Orthopedagogics, Children's Rights and Aliens» Rights, Faculty of Behavioural and Social Sciences, University of Groningen (unpaid).

**Complaints about the National Ombudsman organisation**

The staff of the National Ombudsman, Ombudsman for Children and Ombudsman for Veterans do everything possible to help citizens who experience difficulties in their dealings with government organisations.

Nevertheless, there are occasions on which the people who contact us are dissatisfied with the service we provide. In 2018, the National Ombudsman received 128 complaints about the organisation's own performance.

Of these, 22 complaints related to a decision or opinion. They were therefore not concerned with the way in which a member of staff had acted, but with the outcome of the process. This type of complaint is treated as a «request for review».

There were 63 complaints which could be dealt with informally, usually by the line manager of the staff member concerned, who then contacted the complainant to make appropriate agreements.

In 43 cases, the National Ombudsman opted to issue a formal written ruling. Just under a quarter (9) of these complaints were deemed grounded and a further 4 partially grounded. In most cases, they were made by citizens who believed that their original complaint had taken too long to process. It remains important that complainants receive regular updates. A case may take longer than expected but the complainant should always be aware of its current status.

We also received complaints from people who had declined to explain their original complaint, whether in person or by phone, even though the National Ombudsman required additional information to ensure a thorough assessment. In such cases, the process is terminated and the file closed. One complaint related to the layout of the online contact form, which required the user to enter all the details of his complaint before being told whether the National Ombudsman is competent to deal with it. This problem has now been resolved.

**The National Ombudsman,  
Ombudsman for Children  
and Ombudsman for  
Veterans Annual Report  
2019**

**ORGANISE OVERSIGHT!**

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