

The Enforceability of an Order by the Ombudsman in Terms of Municipal Law

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The Municipal Ombudsman is often regarded as an important safeguard in local government - yet the practical limitations of the office are frequently misunderstood.

In accordance with Section 13A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and duly appointed in terms of Section 5 thereof, the Ombudsman is mandated, as set out in Section 6(a), to investigate any alleged act, omission, or attempted conduct by an employee serving within a municipality or municipal entity.

Section 5 of the Municipal Systems Act empowers a municipality to establish an Office of the Ombudsman as part of its internal governance structures.

Section 6(a) sets out the Ombudsman's core mandate, which is to investigate complaints relating to acts, omissions, or attempted conduct by employees of a municipality or municipal entity.

Section 13A provides the framework within which the Ombudsman operates, including the scope of investigatory powers and the procedure for reporting findings.

The Ombudsman framework does not apply uniformly to all municipalities. Not all municipalities have established an Office of the Ombudsman; the decision to do so is discretionary. The powers and processes may therefore vary between municipalities that have chosen to create such an office.

Ratepayers and contractors should be aware that prescribed time limits may apply to lodging complaints with the Ombudsman, and the Ombudsman may also be subject to reporting timeframes under the applicable municipal by-laws. It is advisable to lodge complaints promptly to avoid any procedural bars.

Importantly, the Ombudsman's findings are recommendatory rather than binding. The Ombudsman typically serves as a final option for resolving disputes internally and is a discretionary mechanism for internal conflict resolution.

The Ombudsman does not issue binding rulings, enforce policies, or officially resolve matters, but possesses the authority to make recommendations. In practice, this means that whilst the Ombudsman's recommendations carry moral and administrative weight, there is no statutory mechanism to compel compliance. Thus, if the City of Johannesburg bills you incorrectly for a municipal service (e.g., water) and you escalate the matter to the City's Ombudsman, the Ombudsman will investigate and, if your dispute is valid, the Ombudsman may recommend that the City carry out a rebill on your account.

If the City ignores the recommendation, the Ombudsman's recourse is limited to issuing further recommendations. An order made by an Ombudsman is not legally binding in the same way as a court order.

If you are lucky and the Ombudsman deigns to look into your dispute, or manages to get a response from the department to which your query relates, you may get a report from the office of the Ombudsman.

The Office of the Ombudsman will (or should) compile a comprehensive written report presenting its conclusions and recommendations. This document will determine whether the complaint is warranted, supported by credible evidence, carries substantive merit, is deemed frivolous or vexatious, or falls outside the scope of the Ombudsman's authority. If the complaint is upheld, the Ombudsman will engage with the City Manager or a designated municipal representative to pursue a resolution. Possible avenues for redress may include negotiation, mediation, or suggested remedial measures such as issuing an apology, implementing corrective actions, or referring the matter for further inquiry.

If the issue or dispute remains unresolved despite your best efforts, it may be time to consider approaching an attorney. While the City occasionally has a change of heart and voluntarily corrects account discrepancies, voluntary corrections of this nature are not common in practice.

ALTERNATIVE LEGAL REMEDIES

Where the Ombudsman process has been exhausted without a satisfactory resolution, ratepayers and contractors are not without recourse. The following alternative avenues may be pursued:

- Judicial review under the Promotion of Administrative Justice Act 3 of 2000 (PAJA), which entitles any person adversely affected by administrative action to seek judicial review of that action.
- A complaint to the South African Human Rights Commission, where the dispute engages a constitutional right.
- An approach to the relevant provincial department of local government, which exercises oversight over municipalities.
- Formal legal proceedings, including recovery of amounts owing or an interdict to compel compliance.

CONCLUSION

The Office of the Municipal Ombudsman serves a valuable function as an accessible, cost-effective mechanism for resolving disputes between ratepayers and municipalities. However, the recommendatory nature of its findings means that compliance ultimately depends on the willingness of the municipality to act. Ratepayers and contractors who have exhausted the Ombudsman process without achieving a resolution should seek legal advice promptly. An attorney experienced in municipal law and administrative justice can advise on the most appropriate course of action, whether that involves judicial review, formal legal proceedings, or engagement with an oversight body.



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