



Northern Ireland
Assembly

**COMMITTEE
FOR THE OFFICE OF THE
FIRST MINISTER AND DEPUTY
FIRST MINISTER**

**OFFICIAL REPORT
(Hansard)**

**Proposed Legislation for a Public Services
Ombudsman for Northern Ireland**

15 September 2010

NORTHERN IRELAND ASSEMBLY

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**Proposed Legislation for a Public Services Ombudsman for
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Members present for all or part of the proceedings:

Mr Danny Kennedy (Chairperson)
Ms Martina Anderson
Mr Allan Bresland
Mr Trevor Clarke
Mrs Dolores Kelly
Mr Jimmy Spratt

Witnesses:

Mrs Jackie Kerr) Office of the First Minister and deputy First Minister

Mr Ray McCaffrey) Research and Library Services

The Chairperson (Mr Kennedy):

Ray McCaffrey from Assembly Research and Library Services will brief us on the proposed legislation to provide for a public services ombudsman for Northern Ireland. A copy of the research paper is included in members' packs. Sian Woodward, the Clerk of Bills, is also present. You are very welcome.

Mr Ray McCaffrey (Research and Library Services):

Members have the paper in front of them. I do not intend to go through every point, but I will talk briefly about some of the key issues.

The Chairperson:

I would be grateful if you could speak up. It may be the acoustics in this room, but it would be helpful if you could speak up.

Mr McCaffrey:

The paper looks at some of the issues outlined in the draft consultation paper and, where appropriate, makes comparisons with Scotland and Wales. Scotland and Wales updated their ombudsman legislation in 2002 and 2005 respectively. The main result was the abolition of various ombudsman offices and the creation of one-stop shops in Scotland and Wales.

The proposals in the Northern Ireland consultation paper would largely bring Northern Ireland into line with the new arrangements in Scotland and Wales. The most obvious change would be the merger of the offices of the Assembly Ombudsman and the Commissioner for Complaints. The research paper outlines some of the key issues and gaps that exist between Northern Ireland and Scotland and Wales. However, the research looked at two issues of particular importance, namely the proposal to allow the ombudsman to conduct systemic reviews and the issue of following the public pound.

Systemic reviews are dealt with in section 5 of the paper. Most other ombudsmen in Europe have the power to undertake and carry out systemic reviews, whereby they do not just look at one individual complaint but can delve deeper into an issue. That does not apply to the ombudsmen in the UK. Currently the Northern Ireland Ombudsman must be in receipt of a complaint before he can act, and he cannot conduct wider reviews of particular issues.

The issue is that if he were to be granted that power it would set him apart from his counterparts elsewhere in the UK, whereas the counter-argument is that it would bring him into line with established practice in other parts of Europe and places such as New Zealand and Australia. The willingness of other ombudsmen to use that power seems to vary greatly. For example, in New Zealand the ombudsman has only carried out four such reviews in the last number of years, whereas the ombudsmen in Sweden initiate anything from 50 to 100 reviews each year, though that is spread among four different ombudsmen.

In relation to bodies that already exist in Northern Ireland, the legislation underpinning

organisations such as the Regulation and Quality Improvement Authority (RQIA), the Children's Commissioner and the Equality Commission allows them to initiate investigations of their own accord and does not limit them to acting only when they are in receipt of a complaint. Similar provisions exist in the Commissioner for Older People Bill. Furthermore, those organisations have the power to go beyond looking at individual complaints and can carry out systemic reviews. So there are organisations in Northern Ireland that have those powers.

In the research paper there is a quote that sums up the pros and cons of such an approach:

“If the ombudsman is aware of the possibility of maladministration there would appear to be little justice in denying the ombudsman the opportunity to investigate. The contrary argument is that granting ombudsmen wide powers to initiate investigations could distract them from their primary purpose of providing redress and would trespass upon existing audit schemes.”

There is the issue of potential overlap and duplication of effort if the ombudsman were to be given those powers. The Public Services Ombudsman for Wales has advised that he is in the process of finalising memorandums of understanding with, for example, the Children's Commissioner for Wales and the Older People's Commissioner for Wales. He also has a statutory duty to consult the Older People's Commissioner if it is felt that a particular case could perhaps be investigated by both bodies.

In Northern Ireland, groups such as the Children's Commissioner, the Human Rights Commission and the Equality Commission all have memorandums of understanding in place with each other and with other organisations. It could be said that memorandums of understanding are useful to curtail overlap and duplication, but the question has been raised as to what extent it could infringe on the independence of the ombudsman if he enters into agreements with bodies that he might at some stage be asked to investigate.

The next issue is that of following the public pound. We were asked to consider the potential impact on small voluntary and community groups if the ombudsman was able to follow the public pound when investigating complaints of maladministration. This is an era when private companies are increasingly contracted to carry out public services. A report published today by the Comptroller and Auditor General states that in 2006-07 the voluntary and community sector in Northern Ireland received £259 million from Government and in 2008 employed a paid workforce of almost 27,000.

The review of the Northern Ireland Ombudsman's office carried out by Deloitte in 2004

recommended that the ombudsman should have jurisdiction over all organisations substantially funded by public moneys, unless they are explicitly excluded, although the report did not identify what was meant by “substantial”. The draft consultation paper goes somewhat further and asks for all bodies in receipt of public funds to be placed within the ombudsman’s remit. It could be argued, and it has been suggested by the ombudsman in Wales, that it is a case of where the line is drawn. The approach in Wales is that if a complaint is made against a private company carrying out an activity on behalf of a public body, then it is the responsibility of the public body to answer the complaint. The ombudsman in Wales advised that he would not pursue voluntary or community groups. If this was extended to include all small voluntary and community groups, would it place an undue burden on the ability of those groups to operate effectively?

The Chairperson:

Thank you very much; that has been very helpful.

The comparison is that there are ombudsmen, ombudspersons — whatever the term is — who have more wide-ranging powers, but the ones in Wales or Scotland do not have such powers. Is that correct?

Mr McCafferty:

Yes.

The Chairperson:

And England?

Mr McCafferty:

Yes.

The Chairperson:

What about the Irish Republic?

Mr McCafferty:

The Office of the Ombudsman in Ireland has suggested that there is nothing explicit in legislation that allows him to carry out systemic reviews, but it is something that he does. That has grown up through custom and practice. As the consultation paper says, a review of the provision of

healthcare was undertaken by the previous ombudsman. However, the office has advised that it is something that has grown up through custom and practice, and the ability to undertake those reviews could be called into question at some point in the near future.

The Chairperson:

Did the review that gathered dust under the direct rule Administration indicate that that power should be given to the Northern Ireland Ombudsman?

Mr McCafferty:

The Deloitte review?

The Chairperson:

Yes.

Mr McCafferty:

Yes, it included a recommendation to that end.

The Chairperson:

And that has never been acted on, which is the basis of some of the representations that we have heard from the ombudsman and his office on the issue?

Mr McCafferty:

Yes.

The Chairperson:

Thank you for your presentation.

I welcome Jackie Kerr, who is no stranger to this Committee and is back to brief us on this. Again, the session is being recorded by Hansard.

Ms Kerr:

The ombudsman's office, which comprises the Northern Ireland Ombudsman and the Commissioner for Complaints, is a non-ministerial Department and receives its funds from the Executive. OFMDFM has policy responsibility for the ombudsman, which involves the

appointment of the ombudsman, the annual salaries order for the ombudsman and dealing with correspondence, freedom of information and any requests that come in. The Department also has responsibility for the 2004 Deloitte report that you have been discussing.

Ministers have received the draft consultation document and are grateful for the opportunity to consider that and comment on it. The Committee has received correspondence saying that Ministers are content with the draft document and content that it is issued for consultation.

The Chairperson:

The issue comes back to the 2004 report that was conducted by Deloitte and never acted on by the direct rule Administration. You seem to be saying that your Department would be content for us to proceed on that basis.

Ms Kerr:

Yes.

Ms M Anderson:

Would OFMDFM's current policy responsibility for oversight of the ombudsman change if it was put on a legislative basis?

Ms Kerr:

There is the potential to change that relationship through the legislation, and perhaps to establish the ombudsman's office on the same basis as the Northern Ireland Audit Office, where the relationship is with the Assembly. However, that issue is to be considered as a part of the process and to be legislated for.

Ms M Anderson:

As a part of the consultation?

Mrs Kerr:

Yes.

Mrs D Kelly:

The Public Accounts Committee has been doing sterling work of late and is to be commended for

that, through the Northern Ireland Audit Office. Following through on Martina's thinking, we should take advantage of opportunities to improve the legislation and allow that greater scrutiny. That is what I am saying. Surely it only serves the public interest to allow the ombudsman to evolve into a much better scrutiny mechanism which is independent of Government in terms a challenge function. I am just clarifying that, as a point for myself. It would allow for a level of scrutiny that is absent elsewhere.

Mr Spratt:

We have a plethora of commissioners, and there are overlaps between them. Are there any views in OFMDFM as to how we might control the overlaps?

Mrs Kerr:

Another issue that can be addressed through the consultation process is the relationship between the various ombudsmen. There is the potential to establish a single ombudsman office, embracing the role of the Prisoner Ombudsman as well. Ombudsmen are slightly different from commissioners, who represent the rights and interests of groups. Ombudsmen address issues of maladministration. Those are two slightly different roles. However, there are a number of ombudsman offices, and there is the potential to look into that issue as part of this exercise. That is one of the issues that have emerged following the 2004 review. The ombudsman himself has flagged up a number of issues that need to be addressed which were not relevant at the time of the 2004 review. Devolution, and the most recent devolution of justice and policing powers, have obviously had a very relevant impact on the scope of the legislation.

The Chairperson:

So there would be a tidying up to take account of that?

Mrs Kerr:

Yes.

Mr Spratt:

Affordability is also a factor. There are big issues there in terms of overlap. The ombudsman made that clear in his evidence. There is also an issue with some of the commissioners and what have you. We have busloads of freeloaders who are quango queens and kings who are involved in many of those organisations.

Mrs D Kelly:

Surely it is not right to call such people “freeloaders”. Did I hear you right?

Mr Spratt:

I am referring to some of the commissioners. There is a big cost to it. Overall, we have to ensure that there is no duplication.

The Chairperson:

You mean Quangoland?

Mr Spratt:

Quangoland is involved in some of those things as well. If there are opportunities to deal with some of that, we have to look at the overall costs. I am sure that the Department is keen to look at them as well. After all, it is the taxpayer out there who is going to have to pay for it.

Mrs Kerr:

Value-for-money considerations are pertinent at any time, but they are particularly acute in the current economic climate. If there is opportunity in this exercise to deliver value for money, it can be addressed in the legislation. *[Interruption]*.

The Chairperson:

Please turn off mobile phones.

Ms M Anderson:

The ombudsman has confused the debate. Jackie has made a differential between the work of ombudsmen, which involves maladministration, and that of commissioners, who deal with rights and equality issues. The ombudsman’s commentary has fed into that confusion. He is almost leading the debate, whereas the Committee must maintain its focus on the differential between the work of ombudsmen and that of commissioners. Today, we are dealing with both — we are addressing the work of the Commissioner for Older People — but there has been a bit of a blurring and a merging of the two, whereas each performs a separate role with separate functions.

The Chairperson:

My sense is that the ombudsman's evidence brought a useful wake-up call to the Department on the issue, and we are probably well served by that. I do not criticise the ombudsman for that; it highlights gaps in the legislation and, perhaps, duplication in the roles. I am content to know that those matters can be addressed.

Ms M Anderson:

That should not be the context of the debate. We need to ensure that, as members, we understand the differences between the functions of the ombudsmen and the commissioners.

The Committee Clerk:

Members have a paper, which is tabled for the next session, on the Commissioner for Older People. You asked the officials to look at overlaps and gaps, and the next set of witnesses will be talking about the prevention of duplication. It goes into the ombudsman, the commissioner and all of the different offices. That may cover your concerns.

Mrs D Kelly:

I support Martina. People have to be mindful of the distinct roles of the commissioner and the ombudsman. To pick up on Mr Spratt's comments on quangos, not two years ago, the Assembly took the opportunity to review all arm's-length bodies and came up with the models that currently exist. Many political parties supported the retention of one or more of those arm's-length organisations.

The Chairperson:

There are political points that I could make, but I am not going to. Jackie, what is the next stage as far as the Department is concerned? How do you see it proceeding?

Mrs Kerr:

The Department does not have the resources to take forward the work on the 2004 review or the legislative process, and that has been a major factor in the lack of progress on the issue. We are continuing to operate the Department's policy oversight role in relation to the ombudsman's office. That is the intention in the immediate term.

The Chairperson:

Are you content to allow the Committee to consult on it?

Mrs Kerr:

Yes, Ministers are content both with the Committee's intention to move forward with legislation on the issue and with the draft consultation document and its publication.

The Chairperson:

The Department will not seek to frustrate that work?

Mrs Kerr:

No.

Mrs D Kelly:

Where does that fit in the legislative programme for the remainder of the Assembly mandate? Is it currently on schedule and on the legislative timetable?

The Chairperson:

A change of this nature, for us to carry it forward?

Mrs D Kelly:

No, I mean the Committee's taking forward the ombudsman amendment.

The Chairperson:

There was an acceptance that it would have to run into the next mandate, but at least preparatory work can usefully be done.

OK, thank you, Jackie.