



Northern Ireland  
Assembly

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

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**OFFICIAL REPORT  
(Hansard)**

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**Legislation to Reform the Office of the  
Northern Ireland Ombudsman**

15 June 2011

**NORTHERN IRELAND ASSEMBLY**

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

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Legislation to Reform the Office of the Northern Ireland  
Ombudsman

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16 June 2011

**Members present for all or part of the proceedings:**

Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Alex Maskey  
Mr Francie Molloy  
Mrs Sandra Overend  
Mr George Robinson  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**Witnesses:**

Mr Jim Martin	)	Scottish Public Service Ombudsman
Ms Emily O'Reilly	)	Office of the Ombudsman
Mr Peter Tyndall	)	Public Service Ombudsman for Wales

**The Chairperson:**

I welcome Jim Martin, Emily O'Reilly and Peter Tyndall. I will ask each of you to give a 10-minute presentation and then make yourselves available for questions and answers. I know that Emily is under pressure to be away by 3.30 pm. Therefore, I ask members to deal with their questions for Emily first.

**Ms Emily O'Reilly (Office of the Ombudsman):**

Thank you very much, Chairman and Committee members, for the invitation to address you and for your hospitality over lunch. The Office of the Ombudsman was established under the Ombudsman Act, 1980. It began its work in October 1984. The ombudsman is appointed by the President following a resolution passed by both Houses of the Oireachtas. He or she serves for a six-year period, which is renewable. The ombudsman's salary is linked to that of a judge of the High Court.

I also hold a separate statutory post of information commissioner. The Office of the Information Commissioner was established in 1998. I am also an ex-officio member of the Standards in Public Office Commission and the Commission for Public Service Appointments. The secretariats of both commissions are provided by the Office of the Ombudsman. The staffing, finance and information technology requirements of the four functions are managed in accordance with a shared services arrangement which respects the statutory independence of each function. The director general of my office is the accounting officer.

The Office of the Ombudsman deals with complaints that relate to the administrative actions of Government Departments and offices, the Health Service Executive, local authorities and the postal service An Post. Under the Disability Act 2005, I am also empowered to examine complaints about accessibility to public bodies and the services they provide. Furthermore, both my office and the Northern Ireland Ombudsman's Office have jurisdiction over the implementation bodies that were established following the Good Friday Agreement of 1998. The arrangement has legal effect and provides for liaison and co-operation between the two offices in dealing with complaints against those bodies. The jurisdiction of my office covers actions that are taken in the state by or on behalf of those bodies and the parallel provision that relates to actions that are taken in Northern Ireland applies in the case of the Northern Ireland Ombudsman.

In 2010, 3,727 valid complaints were received by my office, which was a 30% increase on the figure for the previous year — a year in which the number of complaints received had been the highest in over 10 years. I put that increase down to the economic downturn, which has meant that more and more members of the public have had to engage with state agencies for benefits and other supports, particularly in the area of social welfare.

In recognition of the independence of the office, its staff are civil servants of the state as opposed to civil servants of the Government. There is provision for public open recruitment at senior management level and at investigator level. Civil servants generally may compete for posts in the office, but, on assignment, they become permanent staff members as opposed to being seconded from their parent organisation. Similarly, office staff may compete for posts in the wider Civil Service.

It is open to anyone to submit a complaint to my office, and many are submitted by representatives of complainants, such as public representatives, solicitors, residents' associations and so on. There is no parliamentary filter process as is the case, for instance, with the Assembly Ombudsman for Northern Ireland.

The service is free. Generally speaking, before taking a complaint, my office has to satisfy itself that it is within jurisdiction; that the action complained of has, or may have caused, adverse effect; that the complainant has already sought to resolve the matter with the public body and has exhausted any local appeals processes available. We normally ask that complainants put their complaints in writing, but that is not an absolute requirement. Complaints can be made at our office in person or through our annual outreach programme, where members of the public can meet our staff at regional centres to make a complaint. There is also a facility whereby complaints may be made online.

I am legally obliged to report annually to the Houses of the Oireachtas on the carrying out of my functions. I may also lay investigation reports or special reports before the Houses of the Oireachtas from time to time as I see fit. The Ombudsman (Amendment) Bill 2008 was before the Houses of the Oireachtas immediately prior to the fall of the previous Government, but it had not been enacted. Among other things, the Bill provided for an extension of my office's remit to some 95 additional public bodies in the non-commercial state sector and the third-level education sector, including universities and other third-level colleges. The new Government's programme for national recovery includes a commitment to extending the remit of the ombudsman, and, indeed, of FOI legislation, to all publicly funded bodies. I look forward to early progress on both fronts. It also promises a new Oireachtas Committee, which is the Committee on Investigations, Oversight and Petitions, which will provide a much-needed formal channel of consultation and collaboration between the Oireachtas and the ombudsman. Among other things, the Committee will be responsible for receiving and debating my annual and special reports and for ensuring that

my criticisms and recommendations as ombudsman are acted on. Just last week, the Government announced the membership of that and other Committees. I look forward to working with them.

The latter was one of the issues that I called for in a paper entitled ‘Developing and Optimising the Role of Ombudsman’, which I sent to all the political parties before the recent general election. I also made the case for constitutional status for the office so as to keep it safe from political attack and partisanship. Constitutional status would also further recognise the office as a viable alternative to the courts in securing access to justice and in an informal and cost-free manner. I sought more transparent procedures for appointing ombudsmen, adding that there is a strong case for having a prospective ombudsman attend some kind of confirmation hearing before the Oireachtas Committee that is charged with monitoring and supporting the work of the ombudsman.

Finally, I sought to have my office’s remit extended to the prisons and all issues relating to asylum, refugees and naturalisation. My office is one of the few ombudsman offices in Europe whose jurisdiction is restricted in that way. I have repeatedly expressed the view that those restrictions are unwarranted and should be subject to investigation by my office in accordance with the terms of the Ombudsman Act, 1980. Although they not specifically covered in the programme for national recovery, I am asking the new Government to give those important matters their early attention.

My office has the power to carry out own-initiative investigations. Normally, investigations are commenced on foot of a complaint that alleges maladministration that has or may have adversely affected a person. Own-initiative investigations enable the ombudsman to commence an investigation without having received a specific complaint. With over 3,700 complaints received in 2010, the power, of necessity, is used sparingly. Nonetheless, it is an indispensable power and has been used to great effect by my office. It has proved particularly useful in the local government sector, where a complaint received against one local authority can be used as the basis for an investigation against all local authorities. For example, in October 2008, I published an own-initiative investigation report into the operation by local authorities of waiver schemes for refuse collection charges. That investigation was prompted following a complaint to my office by a public representative on behalf of a number of low-income householders who had been refused waivers by Waterford County Council. I subsequently decided to carry out an own-initiative investigation into waste charges waiver schemes as operated in a representative sample

of 23 local authorities, following which I made a series of recommendations for improvement to the Department of the Environment, Heritage and Local Government.

I have also used my own-initiative power to investigate and make recommendations about inconsistencies in local authority charges for photocopying planning documents.

My report entitled 'Who Cares?', which was published in 2010, was an own-initiative investigation that looked at the actions of the Department of Health and Children and the Health Service Executive. It was based on 1,200 complaints that had been received by my office over 25 years which related to the failure of health boards to provide for older people in public nursing homes with the result that many had to avail themselves of expensive private nursing home care. In addition to enabling trends in maladministration across a particular sector to be addressed in a single investigation, own-initiative investigations also allow the ombudsman to bring to public attention matters of significant public interest, such as in the case of the 'Who Cares?' report. In that way, the ombudsman can facilitate improvements to the overall standard of public administration and enhance public perception of the effectiveness of the office by addressing public interest issues.

In addition to its complaint-handling role, from time to time my office issues guidance to, and holds training seminars for, staff of public bodies. Although they are not provided for in the Ombudsman Act, 1980, those initiatives are very much appreciated by public bodies and are an important part of the office's strategy to reduce the number of premature complaints that it receives. Among the office's guidance publications are a guide for public servants in how to deal properly, fairly, openly and impartially with clients; a guide to internal complaints systems; and guidance on redress. There is no proposal to grant a design authority role to the office.

Recent years have seen the creation of a number of specialist and private sector ombudsmen, which include the Ombudsman for Children; the Pensions Ombudsman; the Ombudsman for the Defence Forces; the Garda Síochána Ombudsman Commission; and the Financial Services Ombudsman Bureau of Ireland. Other statutory independent bodies with complaint-handling functions include the language commissioner, An Coimisinéir Teanga, and the Equality Tribunal. Other bodies exercise promotional, advocacy and enforcement roles; for example, the Equality Authority, the Irish Human Rights Commission, the National Employment Rights Authority, and the National Consumer Agency. There are also several regulators.

My office has a dedicated enquiries unit, which, among other things, advises and redirects members of the public who complain to my office about matters that are proper to other ombudsmen's offices or complaint-handling bodies. Separately, my office is working with health and social care providers, complaint handlers and regulators to develop a website to assist members of the public who wish to make a complaint about health and social care issues. During 2010 and in early 2011, my office implemented a significant structural and process transformation; perhaps, the most radical change management project since the office was established in 1984.

A number of factors were driving that move to reform. My office's strategic plan identified improved and speedier complaint handling as central to the future effectiveness of the office. It also aimed to increase the number of systemic investigations undertaken so as to heighten the public impact of the office's work. Systemic investigations focus on redress for groups of complainants and/or on the need for better administration. The plan was drafted against the backdrop of Exchequer resource constraints, the requirements of the public service agreement, the significant increase in the number of complaints to the office, and the proposed extension of the ombudsman's remit by means of the Ombudsman (Amendment) Bill 2008.

In order to deliver on those objectives, the strategic plan seeks to ensure that the office's structure, systems and processes properly support an organisation that is fit for purpose and delivers its services fairly, efficiently and effectively to its customers. With that in mind and with external professional advice and assistance, the office began an assessment of its existing organisational structure and business processes in October 2010. The new structure and process went live on 1 March 2011 and signifies a move away from what heretofore were specialised complaint-handling units that were dedicated to particular sectors, Government Departments, and so on. In its place, we have put a more fluid model where those divisions have been removed and the organisation simplified to optimise complaint throughput, increase flexibility and allow rapid deployment of staff resources to areas of rising demand.

Early results are very encouraging. Case closures are up by more than 30% on previous years. The percentage of cases that have been closed within three months has risen from 50% to 60%.

**The Chairperson:**

Thank you very much, Emily, for that comprehensive presentation.

**Mr Jim Martin (Scottish Public Services Ombudsman):**

I want to echo Emily's thanks for the invitation to come to the Committee and for your hospitality over lunch. It is much appreciated. I have watched the Committee's progress with some interest. It is quite clear that you are engaged in a valuable piece of work. If you do not mind, I may have a piece of advice for you later. It is important that the positions of all ombudsmen's offices are allowed to evolve as well as to have what I call a "statutory bump" into a different position every now and again.

It is very important that the legislature takes ownership of how the ombudsman's office works in any jurisdiction. It is important that we not only reflect the will of the community, but that we are seen to do so. That is the job of elected Members, and not of ombudsmen. It is also a role for you to provide appropriate safeguards, not only for complainants but for public bodies and for the role of Parliament. A piece of advice that I offer you is that "One size does not fit all". It is very important that, as we have done in Scotland, you emerge at the end of this with the best possible system for Northern Ireland.

We have been through five years of significant review. In 2006-07, the previous Government set up a review under Professor Lorne Crerar of the scrutiny agenda in Scotland, which included complaints. When his report stated that the scrutiny landscape was crowded, a group was set up under Douglas Sinclair, a former secretary of the Convention of Scottish Local Authorities, to look at complaint handling in general in Scotland. Five years on from that, we have not yet fully implemented the matters addressed by Crerar and Sinclair.

For the Scottish Public Services Ombudsman there are two main areas of change. One is about our jurisdiction and its range, the second is to fundamentally alter our role. With respect to jurisdiction, last October, I took ownership of all prison complaints in Scotland, with the exception of health complaints from prisoners, which will come to me through the National Health Service — I think — in the middle of next year. In the next few weeks, I will take over all complaints to do with the provision of water, both to households and businesses in Scotland. That will set a new area for us: looking at commercial complaints about Scottish Water.



I was the first Police Complaints Commissioner for Scotland, and I am in discussions with the Government about their proposition that the office be abandoned and its function brought within the remit of the Scottish Public Services Ombudsman. That has yet to be debated in Parliament. However, as people look at scrutiny in Scotland, it is clear that we are moving to an uncluttered landscape. That has real implications for the jurisdiction of my office.

The second major change for my office is in its role. My office was created by the Scottish Public Services Ombudsman Act 2002, which in many ways is a reflection of the Act that applies in Northern Ireland to the Parliamentary and Health Service Ombudsman and which also brought together three ombudsman offices in Scotland: health, parliamentary and housing. The Public Services Reform (Scotland) Act 2010 gives us a new role, and that is to set up a “design authority”. I think that it is a terrible term, because no one understands what it means, least of all those who drafted the Bill. I do not think they knew what it meant. We changed that term to the complaints standards authority, a small department within my office, the role of which is to ensure that in each sector of the public service in Scotland there is a standardised procedure for dealing with complaints.

In Scotland, we have 32 local authorities, each of which is able to determine its own complaints-handling structure. The scrutiny review and the review under Douglas Sinclair came to the view that Scotland is probably too small a country to have too much variation and that its citizens have a right to expect equality of treatment. This “design authority” or complaint standards authority is underpinned by complaint-handling principles which, the Act says, have to be devised and designed by the ombudsman and approved by Parliament. That has happened. It is then for me to apply the new legislation. An ombudsman must always be careful, I think, to understand the difference between being an ombudsman and being a regulator.

It is not my intention to be a regulator, so the approach that I have taken, although it is out of fashion now in a lot of areas, is to be high-level light touch. My approach is based on partnership with each sector of the public service. I have engaged with, for example, local authorities, universities and others, and I set out the principles and the model complaint handling guidelines. I tell them to go away and come back with their own proposals that they are prepared to work to. If those proposals meet my principles and the spirit of the legislation, we will go forward with their plan rather than mine. We have yet to see whether that approach works.

I am wary of taking the role of regulator because, in the legislation that requires me to set up the complaint standards authority, I also have a sanction that I can bring against any body under my jurisdiction that does not apply complaint handling principles that I have set. The aim of that design authority role is to have far more efficient complaint-handling services, to give the citizen better access and to make sure that we have transparent and even-handed complaint-handling procedures in each of our sectors.

Those are the two areas on which I thought that it might be of interest for the Committee to hear from me because I am aware that you have had a large number of papers and a lot of research done. It may be better if I end my remarks here and wait for questions from the Committee.

**The Chairperson:**

OK. Thank you very much, Jim. It was very interesting.

**Mr Peter Tyndall (Public Services Ombudsman for Wales):**

I echo the thanks for the opportunity to be here today and also for the warmth of the welcome that we received. I speak as Public Services Ombudsman for Wales, but with regard to my role as chair of the British and Irish Ombudsman Association at the moment. I separately submitted a response to the consultation. I have also been involved with the Law Commission on the proposals to reform the law governing ombudsmen in England and Wales. I greatly welcome the fact that this Committee and the Assembly are bringing forward legislation. It speaks very much of the importance that the ombudsman, ultimately, is the Assembly's ombudsman, and to bring forward legislation in this way reflects that essential principle.

Many features of the legislation reflect the Welsh legislation, which, in turn, was derived from the Scottish legislation. To some extent, each has built on the experience of the other. The legislation that governs my office dates from 2005, and the office has been in place since 2006. It brought together former separate offices for local government; the Health Service, which was undertaken by the UK Parliamentary Ombudsman in her role as Health Service Commissioner at the time; for the bodies and services provided by the Welsh Assembly Government and for housing associations. The remit was not dissimilar to the existing remit of the Northern Ireland Ombudsman.

My appointment is a fixed term for seven years. It is by nomination of the Assembly following a recruitment process run by the Assembly Commission, so the appointment process is with the Assembly rather than the Administration. My salary is linked to the judicial scale, which I think is another of the proposals that you have been considering.

My jurisdiction covers virtually all of the services that are devolved to Wales: health, and services that are provided by local government, including housing, planning, social care, environmental protection, leisure, highways and so on. I also consider complaints about members of local authorities, communities, town councils, and of police and fire authorities in Wales if they have broken their codes of conduct. As you can imagine, that activity sometimes generates a disproportionate amount of heat for a surprisingly small quantity of light. It can be a lively part of my office, and I would be very happy to contribute my thoughts. There is a separate consultation going on regarding how that issue might be dealt with, because there are pitfalls. Nonetheless, however, it is a worthwhile part of my activities.

My office is an integrated service. It is one office, and members of the public can complain directly to me. I have also been resourced to signpost complainants to other public bodies, so I run a separate service called Complaints Wales, which helps anybody who wants to make a complaint about any public service, even if it is not within my jurisdiction or is a premature complaint. That is an additional service to members of the public who sometimes get lost in the complexities of the public sector. For instance, some people do not know that their electricity supplier is not part of the public sector anymore, and rather than telling them that it is not our responsibility we help them to make their complaints.

I have discretion about whether to accept complaints. The legislation says that complaints must be in writing, but I have discretion about whether to accept them in a form other than in writing. Increasingly, we are accepting complaints by phone, e-mail, via the website and so on. People tell us that they want to communicate with the office by telephone as first preference, with e-mail a close second. I suspect that that will change over time. I support the notion that there should not be a requirement for a complaint to be in writing, because writing is becoming a less-common skill as people are becoming more used to using electronic means of communication.

Before I accept a complaint, I have discretion on whether to investigate directly. I almost never investigate complaints that have not exhausted the process. In very rare circumstances,

such as when someone is urgently awaiting access to a drug for cancer care, it would not be appropriate to say that a person must complain through the formal process. The same would apply in cases where relationships have broken down, but generally I ask people to go through the full complaints process with the body with which they have a difficulty.

I have jurisdiction to consider the clinical judgement of doctors within the NHS in Wales as well as the professional judgement of social care workers. Most complaints engaging social care or the Health Service, or many of them, have an element of professional discretion. I use professional advice, clinical advice or advice from experienced social care workers in forming opinions. However, in reality, people expect to be able to complain about those aspects of the service and, given the two are essentially integrated here, it would be sensible to have the same discretion in both fields and would give complainants a degree of reassurance that they can get an independent view on issues that are really important to them. Often, the decisions being taken by social care professionals are of fundamental importance to families.

I can widen the scope of an investigation to cover systemic issues. If it is obvious that the cause of a particular injustice did not just arise in the circumstances of the individual complaint but had a wider application — perhaps it is easier if I give an example. A gentleman came to us recently with prostate cancer. He had a treatable cancer and needed to be recalled regularly for monitoring to ensure that if the cancer started to spread it could be addressed with more aggressive treatment. Had that happened, his prognosis today would be good; sadly, it is very poor, because he was not recalled.

When we started to investigate that complaint, we discovered that the systems for recalling patients did not work, that there was no communication between the clinicians running the outpatients clinic and the medical records staff and that the computer system that they were using did not automatically recall people.

The thing that struck us immediately was that it was certain to be happening to other people if it was happening to this gentleman, so we widened the investigation at that point to identify all patients at that clinic. We identified two other patients in that situation. Then, it became obvious that the same appointments facilities was being used across that health board, so other clinics were also suffering from the same failings.

We were then able to engage with the regulator, Healthcare Inspectorate Wales, to broaden the scope of that and ensure that they followed it up. Systemic investigation is really important. When you are investigating, you will find that some problems are caused by somebody making a mistake on the day. However, many failings that you see are actually inherent in systems, processes or guidance. Clearly, if you cannot investigate those, you are unable to deal with issues that affect individuals. I do not have own-initiative investigation powers of the kind that Emily has. If there are to be changes to the legislation in Wales, I would be seeking those powers for my office, which would be used sparingly for the reasons that Emily described.

I have the opportunity to work with regulators. I do so sparingly because they are in my jurisdiction. I work with professional regulators, such as the General Medical Council and the Nursing and Midwifery Council, and those that deal with the Health Service, social care, housing, planning and so on, to ensure that recommendations are followed. I have the power to resolve cases without going to a full investigation. If somebody complains that his or her housing-association-property boiler is broken and the association will not send somebody round to fix it, it is much better for someone from my office to ring the provider and say, “Get somebody out there”, than to launch an investigation. Quite often, phone calls from my office can be pretty persuasive. I am sure that in your role as Members, you can also be persuasive in such situations.

You have suggested that the ombudsman should be able to issue reports similar to those that I can issue. I can issue two types of report. One is a public report, which is issued when there is wider public interest in the subject. In 2010, I issued 13 such reports, six of which dealt with health cases. Health tends to predominate in public reports. I also issue other reports that can take the form of a letter. They are available to the public and the press. However, they are not specifically publicised. To ensure that learning from my reports stretches beyond those in the public domain, I produce digests. Summaries are included in all of my reports and in digests, which have a wide circulation throughout the public sector. For instance, Committees that scrutinise the Health Service at Assembly level can take advantage of digests of health cases that I have produced.

I do not close cases until I have evidence of compliance. Again, that fits in with some of your proposals. I should say that my role in investigating complaints about councillors is different. I reach a conclusion as to whether evidence suggests that the code has been breached and investigate that. However, it is not for me to determine an outcome. That is a matter for the

council's standards committee or a tribunal, which considers my report on the subject. As I said, I would be happy to feed into any suggestions that a similar system be developed in Northern Ireland.

I have the capacity to issue guidance. I do so sparingly. Examples of guidance would be the same as those of other colleagues. I will not labour them here. I do not have a design authority role. However, in conjunction with the Welsh Assembly Government, I have developed a common complaints process for the public sector in Wales. Although it is more prescriptive than the approach that Jim has used, it was developed in collaboration with public sector bodies, such as local government and so on. The intention is that there is a model that people will be asked to adopt. Our experience with guidance is that although many people say that they comply with it, they, in fact, come up with different things that are unrecognisable. Similarly, we have not found that the variation that we see adds value. Things are different because they are different; not because each body has adapted the guidance to their particular local circumstances.

I do not have a direct relationship with an Assembly Committee. However, I hope to have one after discussions that are under way following the election. The proposal to have a relationship with a Committee, similar to that described by Emily, is extremely important so that the work of the office is available for scrutiny and that the office can be held to account.

As you know, we have a Children's Commissioner for Wales and an Older People's Commissioner for Wales. I have memorandums of understanding (MOUs) with both of those offices. Broadly speaking, they conduct wide-ranging inquiries into, for example, the education of children leaving care. I also conduct investigations that are driven by individual complaints. The two roles are complementary. The memorandums of understanding are designed to ensure that we work in support of each other rather than at cross purposes. I hope that some of what I have said has been helpful.

**The Chairperson:**

Thank you very much, Peter. I thank all three of you for attending and for giving us your presentations.

The issue of systemic reviews was dealt with in your presentations to some degree. Emily, I know that you have much more power than the other authorities in that respect, and you dealt

with that in your presentation. Peter also touched on it and said that he would like more power. What are your thoughts on how defined and streamlined such reviews should be? I assume that it might not be helpful for such reviews to get into wide-ranging issues. I would like to hear more of your thoughts on systemic reviews.

**Ms O'Reilly:**

As my colleagues have said, a systemic review can be a very important part of the armoury of a public service ombudsman. If you see the overarching aim, goal or remit of ombudsmen as being to improve public administration for the sake of the people in their particular jurisdiction it would be wrong not to allow them that particular power. That way, instead of simply dealing with individual complaints, they would be able to get to the root cause of a particular piece of maladministration and deal with it at a systemic level.

It is helpful to Administrations for ombudsmen to do that, because we have a bird's-eye view of what is going on in the organisation. People who are feeling the impact of particular laws or regulations come to us and describe their effects.

I will talk about the particular investigation that I did into nursing home charges. That was the second investigation of that kind that had been carried out by my office, another one having been done approximately 10 years ago. We pointed out irregularities and illegalities in the system in a comprehensive and painstaking way. I will not go into the entire story that arose from the first investigation, but suffice to say that had the ombudsman's investigation and recommendations been taken seriously by the Administration at the time, it would have saved the country approximately €500 million to date, because when the illegality of certain charges that were being raised for nursing home residents eventually made its way to the courts, all the way to the Supreme Court, the Government and the taxpayer had to give redress to the people who had been affected. At an early stage, my office had been able to point out to the Administration that they were making a mistake and that what they were doing was irregular and possibly illegal. That was ignored, arguably for political reasons, because it was such a big issue and people were afraid to go there because of the potential difficulties it might cause. Eventually, it went to the courts, and the Administration could not ignore the courts.

In one sense, the ombudsman can act like a canary in a coalmine; it can see particular things and draw the attention of the Administration to problems that exist. If you limit ombudsmen to

single complaints and do not allow them a wider reach across a systemic problem or something that they see as wider than the individual complaint, you are really hampering the potential beneficial effect on public administration and, as we saw in the Republic in relation to nursing home charges, the ability to save the Administration and taxpayer a lot of money as well.

**Mr Martin:**

Own-initiative reviews are different from systemic reviews. Own-initiative reviews are where an ombudsman determines that he wants to investigate something, and a systemic review can be something that emerges from individual complaints and leads you into looking at the whole system. When Members of the Scottish Parliament looked at the powers, their worry was having an ombudsman who might go fishing and decide that he wanted to look at something, and that it would be difficult to hold him to account given his power and independence. There are ways round that, which have to do with the accountability of the ombudsman to Parliament, how that accountability is recognised and how an ombudsman is held to account for his or her actions in determining to do something.

Peter and Emily have had systemic reviews, and so have I. For example, a little girl who suffered from a peanut allergy died recently. One thing that became very clear was that, across Scotland, there was not a policy on the prescription of EpiPens. That is quite a simple thing. I was able to go to the National Health Service in Scotland and the Health Minister and say that that must be addressed quickly because my research told me that there was no policy. We now have a policy. That is the difference between a systemic review, which arises out of complaints, and an own-initiative review.

I favour an own-initiative review power, provided that my successor — I trust myself, but I do not necessarily trust my successor — can be held to account for his or her decision to embark on that review. That is a very important check and balance on the power of the ombudsman.

**Mr Tyndall:**

Historically, many of the earlier ombudsmen bodies in Scandinavia, and so on, had own-initiative review as a built-in part of their jurisdiction. That was the norm. However, in those environments, there was probably rather less regulation than we are used to. For instance, there could have been an issue about whether to have a separate prison complaints body or a body with oversight of prisons in those jurisdictions. Often, the ombudsman's office had that jurisdiction,



so that office would have to have an own-initiative investigation power to make sure that there was scrutiny.

We operate in a different environment. My sense is that you would very rarely want to be engaged in own-initiative investigations, but that there are times when you know that people are constrained in coming forward. There are other times when you realise that you need to have an investigation because there are things that urgently need looking despite not having received a complaint directly on the topic. I agree with Jim's point: we are all very conscious of how scarce resources are at the moment, so engaging in a way that takes on a lot of own-initiative investigations is never going to be practical. I do not think that it would be desirable, but there are occasions when, as a power to be used sparingly, it would be very helpful.

**The Chairperson:**

OK. I do not whether we got total agreement, but I think that there is a combined approach. Do any of you find a significant overlap in any of the investigative powers between yourselves and other bodies? I think that Emily listed quite a number of other investigative bodies.

**Ms O'Reilly:**

Not in relation to the other ombudsmen, who are quite discrete. They are sectoral ombudsmen. The children's ombudsman deals with complaints when there has been an incidence of maladministration the impact of which has been felt by the child rather than the adult. We rarely get into a tangle on those issues because, very often, the separation of the remit is very clear. Obviously, we do not deal with complaints against the Garda; the Garda Ombudsman deals with those. The same is true with the Pensions Ombudsman, the Financial Services Ombudsman and so on.

The one area in which there could be the potential for a little bit of confusion among the public is health. If you have a complaint about health, who do you go to? I deal with health complaints. However, unlike my colleagues, I do not have clinical judgement as part of my remit. There is also the Medical Council, and the Health Information and Quality Authority, which deals with standards and regulations and so on. People are very confused by that. In order to sort out that confusion, my office has begun an initiative with all of those organisations, as well as with lobby groups for patients, and so on. We have come together and are creating a website called, I think, [healthcomplaints.ie](http://healthcomplaints.ie), so that if you have a health complaint, you can go to it and get

guidance. We are co-operating in that way because we are conscious of the potential for overlap and room for confusion.

However, I can honestly say that there is seldom or ever any confusion about the roles or any overlap with other regulators and ombudsmen. When people come to us and their complaint is not within our remit, we advise them where they can go to have their complaint looked at. We are always on the lookout for that. However, we barely have MOUs with any of the other ombudsmen, simply because they are not needed. Our remits are clear.

**Mr Tyndall:**

I mentioned the commissioners. When their offices were created, there was scope for an overlap because they have powers of investigation. We moved quickly to put the MOUs in place. You can form an agreement with individuals, and we did so, but it is sometimes helpful to capture that agreement so that successors are also bound into the process. That is why we formalised it. Commissioners may well undertake reviews — and they do — into areas where we would deal with complaints, but we are always dealing with complaints from individuals, whereas they are looking at much broader issues.

For example, the Older People’s Commissioner for Wales recently produced a review of dignity in care. As it happened, I had issued a series of reports on failures in the care of older people. The two reinforce each other. The agreement we have is that the commissioners, in publishing wider reports, can use examples from my work to give the human dimension.

**The Chairperson:**

What you are saying is that your work is about individual-specific complaints, whereas the work of the other bodies is more strategic?

**Mr Tyndall:**

Yes.

**Mr Martin:**

I have a number of MOUs and they are gathering dust in a drawer. In practical terms, they are not something I look at on a daily basis. They are there in case we ever get to a point where there is discussion or dispute about how things were handled. My backstop is always: “What does the

Scottish Public Services Ombudsman Act 2002 say that my powers are?" I act on those powers and expect bodies to comply. I have very good relationships with bodies such as the General Medical Council and the Scottish Housing Regulator. However, I do not think any of us see those relationships being affected that much by the fact that we have an MOU.

**Mr Humphrey:**

Thank you all for your presentations today. I want to take up some of the points you have made.

Jim, I am much taken by your phrase "uncluttered landscape". From my perspective, and that of my Committee colleagues, it is music to our ears. You said that Scotland is too small a country for the administration and red tape that goes on. Given that Northern Ireland has only 1.7 million inhabitants, I very much hear what you say. Peter is quite right: resources are scarce and we must ensure that people's rights are protected and that there is transparency and advocacy. However, there must be a balance. Peter said that his work complements that of the Children's Commissioner for Wales and the Older People's Commissioner for Wales. It is very important that there is no overlap, duplication or waste of resource.

Given all of that, do you think that the people of Northern Ireland would be better served if a single ombudsman's office were established that had powers to investigate complaints about Departments and, indeed, public bodies?

**Mr Martin:**

I would like to comment on the "uncluttered landscape" and see what my colleagues think. It is for you to determine what is best for the people of Northern Ireland. I can only reflect on the experience that we have had in Scotland during the past five or six years. One problem that we have is that since we started looking at the cluttered landscape in 2005 and 2006, we spent an awful lot of time talking about it, and an even longer period of time trying to implement those discussions, to the point that it could actually be 2012 before we begin to implement the outcome of discussions that began in 2006-07.

One thing I would urge you not to do is to fall into the trap that we did in Scotland of allowing your energies to be diverted into discussions on what a perfect structure might be rather than look at powers that you currently have. One impact of that is that my remit is ever-widening. There is always a temptation to say that if we put everything under one roof, we will achieve economies of

scale; we will be able to provide a more efficient and effective service; and, in these days of increasing interdependence on shared services, that we will be able to get joined-up outcomes. All of those things can be true. However, you have to be careful that the complexities that you have here and those that we have in Scotland are recognised, and that what the community sees as the correct route is recognised. Sometimes, something that looks very good on paper is not very good for the individual citizen. Therefore, I caution you against going into any long exercise to look at cluttered landscapes and suggest that you work with what you have. You have a very effective Office of the Ombudsman for Northern Ireland. It is one that we look to for advice. I urge you to be very careful that you do not do too much too quickly with the office that takes it too far off course.

**Ms O'Reilly:**

In the Republic of Ireland, the original ombudsman's office became quite successful and was viewed well by the Administration generally and by the general public. In a way, it almost became a victim of its own success. The term "ombudsman" became popular and populace, in a sense. When groups of people and individuals had particular needs that they wanted to see addressed or championed, the response from the Administration tended to be, "Well, why do we not have an ombudsman for this and an ombudsman for that?" That has stopped now because of the economic recession. In fact, since the McCarthy report of 2009, there has been talk of bringing offices together.

Every jurisdiction struggles with whether to have sectoral ombudsmen or to pile all of those functions into one office. What do we do? The simple answer is to do whatever works and is easiest and most effective for the individual, the member of the public who wants his or her complaint to be dealt with. Sometimes, the argument against having too many individual sectoral ombudsmen is that there is inconsistency in how different offices do their business, their authority, their effectiveness, and so on, which causes confusion for public bodies; whereas a bigger office that deals on the same basis with the same methodologies, and so on, right across the particular office is a better system. Generally, there is a feeling that when it splits too much, the public is short-changed.

**Mr Tyndall:**

There are distinctive roles for regulators, advocates and ombudsmen. As Jim said, each country's Assembly needs to find its own arrangements and what fits it best. When roles start to be

confused, none of their purposes are best served.

For instance, to my mind, commissioners are primarily advocacy rather than investigatory bodies. If you want someone to investigate complaints and to be part of your justice system, to hold government and public service providers to account on behalf of the individual citizen, then you need an ombudsman. Once that decision is made, you can start to think about how many ombudsmen you need. That is for you to decide. What you are hearing from this side is that fewer is probably the better way to go.

**Ms Ruane:**

Go raibh maith agaibh, agus tá fáilte romhaibh chuig an Choiste seo. On behalf of our party, you are very welcome to the Committee. I have had a chance to talk to some of you. We are at a very interesting time in the North and I think that we can learn and share a lot with you. This is also very timely because we have been discussing prisons. This morning, we have been talking about a young lad who died in prison. He was locked up for 22 hours a day even though he had drug dependency and alcohol problems. Following on from the stuff in Rathgar, I know some of what is happening to older people in the South of Ireland. I come from a rights background, and I like to see people have access to taking on public bodies because there is far too much imbalance in power.

I want to say a couple of things. First, I thought your signposting issue was very interesting. I understand that you are all doing very good work, but to act as devil's advocate, if I went out and asked the public, most people would probably not even know that you exist. I think that is an issue that we need to look at. Signposting is good, because one of the complaints that we get as politicians is that there is no point in complaining because you are just thrown from Billy to Jack to Mary. People just give up in despair in the end.

Secondly, I think that we in the North have to make it as simple and easy as possible for people to complain, otherwise they will not do so. I take the point you made about accessibility. The biggest impediment to people complaining is that they have to write it down. Sometimes, they do not know how to write down their complaints. They know how it affects them, but they have to get somebody else to write it. That is an important point.

Emily, you mentioned the economic downturn and said that you suspect that is why your

complaints are increasing. I would also say that it is probably because you have good PR, and I think that is an important part of the job. Maybe there are lessons you can share with us.

Finally, two of you mentioned commercial roles. I think that commercial bodies, whether they are banks, big business or private landlords, get away with a lot that they should not be getting away with. Some of you have, or are looking to get, commercial roles and others did not mention it. Where do we draw the line there?

**Ms O'Reilly:**

I agree with you about signposting. We all tend to think that we are the centre of the universe because we know all about our jobs and we expect that everyone else does as well. We talk about them when we are at work and sometimes when we are at home, and we expect that this great knowledge about ourselves goes further. I often find that that is not the case. I sometimes deal with politicians who are unsure about my remit, and sometimes I deal with members of the public that I meet socially who will ask exactly what I do because they have never used an ombudsman and they do not know what one does. That brings you back down to earth.

One way in which we need to get our message out is for the public bodies that are under our remit to make it clear that, if people are not happy or satisfied with the way in which they have been dealt with, there is an avenue of complaint. In the annual report that I launched just last week, I had a naming and shaming page of significant Government Departments that did not put a signpost to the Office of the Ombudsman on their websites or literature in case of complaints. So, it is a two-way thing. I see the ombudsman's role as being not quite a partnership with the public administration, but not as enemies; not with daggers drawn, and not at opposite ends of anything. I think we should be partners in the sense that we need to keep in mind the focus that everything we do is in the public interest. Therefore, there is an onus on the public administrators to advertise us as well.

Part of the reason why we received so many complaints last year was that there were two particularly high-profile cases that I dealt with. One was called 'Lost at Sea', which eventually became lost at Committee. To my shame, it was the only complaint in the history of the Office of the Ombudsman that was not accepted. It became a big political mess for reasons that I will not go into, and then went before a Committee, which split down party lines. That must be avoided at all costs. However, there was a lot of argy-bargy and publicity during that time and I suppose

it got people thinking about the ombudsman. The other case was the ‘Who Cares?’ report, in which I had quite a confrontation with the Health Service Executive (HSE) and the Minister for Health and Children at the time, Mary Harney. That was high profile as well. I do not advocate that as a means of doing PR, but there is an onus on the office to advertise itself and so on. There is also an onus on the public administration to make sure that people are aware that they have an avenue of complaint and potential redress in the Office of the Ombudsman.

**Mr Tyndall:**

We try to take the complaint in whichever form it comes to us — by phone, in writing; it does not matter. We pass it to the body concerned and get it to treat it as though the complaint had been made directly to it. We have found that if people have to keep restating their complaint, they will give up very quickly. That was the point. We wanted to make sure that we were transferring the complaint, not the complainant. That seems to work.

**Mr Martin:**

One of the principal underpinnings of the complaint standards authority will be to try to remove complainant fatigue. It becomes really difficult for a lot of people to have the patience to get to me. We try to make it as easy as possible for everyone to be guaranteed quick access. We use signposting as well. One difficulty in promoting the office of the ombudsman is that people believe that that is the place you complain to in the first instance. I find that a significant number of housing complaints, sometimes 40% or 50%, come to us prematurely. To the complainant, it seems to be another bounce-off point, because they went to someone and were sent somewhere else, and all the rest of it. We have to be very careful that we do not promote the ombudsman as being a substitute for subsidiarity and complaint handling and making sure that decisions are taken at the most appropriate local level. It is a balance that we all have to strike.

Peter’s point is a very good one: an awful lot of people, certainly in Scotland, do not know who provides their public services or to whom they should complain. For example, people complain to me about a health board or a GP practice in Scotland. A GP practice is contracted to a health board, so the complaint is against the practice, not the board. That is a fine technicality. If someone close to you is going through something very difficult with very urgent need, you are unlikely to take account of that technicality. We have to get better at explaining to people where to go. That is something that all the legislatures need to take into account.

**The Chairperson:**

Peter, you said that you are very flexible in how you receive complaints. Are the other two equally as flexible?

**Mr Martin:**

Yes. Once we have received a complaint from someone, we will write back to them, outline the heads of complaint that we are about to investigate and ask whether they agree. People sometimes say something over the telephone and remember that they said something different or did not quite get in all the nuances. They also may have heard something differently; so, we have to be certain that we are all looking at the same thing.

**The Chairperson:**

So, you almost write back as a feedback to ask whether something is accurate?

**Mr Martin:**

We outline the complaint that we are investigating on their behalf.

**Ms O'Reilly:**

We start from the fact that, for many people, coming to our office is the last chance saloon for them. Therefore, they have to be enabled as fully and easily as possible to access the office. We take complaints in whatever way people want to deliver them. They can walk into our office in Dublin. We carry out regional visits throughout the year. We advertise those visits in the local media, and people can come to the local hotel and talk to investigators. People can e-mail us. We have a complaint form, but it is not compulsory for people to put their complaint in writing.

We also do a lot of work with elected representatives. A few years ago, I surveyed elected representatives — TDs, Senators and so on — and asked them about their knowledge of the office, their usage of it and their experience of it. Based on that, I put together a digest of complaints that had come to us from members of the public via elected representatives. I hosted a seminar with the former Ceann Comhairle in Leinster House, and I developed a telephone line, which was like a hotline or direct line, for elected representatives to talk to us about complaints that they had.

Also, when people's complaints go into the system and are being investigated, they can be



given the direct line number of an investigator. So, we do as much as we can to make our office as accessible and open as possible.

**The Chairperson:**

I can see less work for MLAs coming out of this.

**Mr A Maskey:**

Thank you for your presentation. I apologise for not making it to the lunch; I was on other Committee business, but it seems that I missed a good opportunity for networking.

You have referred to a couple of things that are of great interest. From all three presentations, I hear that you are looking for the ability to widen the scope for investigations or inquiries as matters arise, possibly during the course of your investigation into an individual complaint. As in all walks of life, we very often keep doing things until someone draws our attention to them, or something happens that makes you ask why you are doing things in a certain way. Very often, you find that there is a systemic problem, so that the individual being blamed is really a symptom of that.

I am interested in whether you have any greater understanding of the 30% spike in complaints, which Emily mentioned and put down to the recession. I am not sure whether you said 30%, but I thought that you had.

There is a key issue on which I am looking to you for a steer. When you have a complaint referred to you, which happens to all regulatory bodies or ombudsmen, the frustration for most people is that you might do a report and make recommendations but, sometimes, and that that is the end of the story. Emily, you gave a worst-case scenario for the negative consequences of a Government Department not dealing with the recommendations to which you had drawn their attention. We all do things, sometimes habitually, without realising that they are a problem. However, once that problem is brought to our attention, the accountability for not acting is much greater. Therefore, is there an argument for overturning the role?

For instance, when you have recommendations and conclusions in a report on a particular investigation and hand them to the relevant authority; if that organisation, Department or agency does not want to embrace your recommendations it needs to have a rationale for not doing so. In

other words, if you say to a body that there has been a complaint, that you have investigated it and that you are presenting the authority with recommendations for change to prevent the same thing happening again, unless that organisation has a very strong rationale and justification for not embracing those recommendations it should have to come back to you with a report telling you that they accept the recommendations and outlining how and when they will implement them. If not, they need to say that they do not accept the recommendations and argue the toss.

I think that reports go on people's desks and, invariably, in public life, people do not act as they should. They are slower to embrace the need for change, which is human nature. I am glad that we are in a dispensation in which there is a much greater ethos of public accountability developing. That is a good thing, but it means that we all have to respond much more quickly and effectively. I am just looking at the authority of the reports from ombudsmen that go to organisations.

**Ms O'Reilly:**

The word "authority" is the key one. Obviously we make recommendations, but no public body is legally obliged to implement them. The "lost at sea" case that I mentioned is the only case in 27 years in which my recommendations were not accepted, and there was a political overlay in relation to that.

Our recommendations do not have to be accepted. Therefore, in order to get them accepted, they have to be rational, fair and seen to have been arrived at independently and impartially. Unless a public body is being particularly obdurate, it will accept our recommendations. There will be lots of toing and froing, arguing the toss, and so on. However, eventually, in virtually 100% of cases, bodies will accept our recommendations.

Then we follow that up. Bodies have to show us, over a period of weeks and months, that they have implemented our recommendations. As Peter said, he will not sign off on an investigation until the recommendations have been accepted and implemented. We, certainly, do a follow-up. In my experience, public bodies take the office very seriously. One thing that they do not want to happen is to appear in our annual report. They do not want to get a black mark against them. They see it as a badge of honour if they have not been slapped on the wrist by the ombudsman.

The ultimate weapon in the armoury of the classic public service ombudsman is to make a report to Parliament. That has been done only twice in the history of my office. The second time, the report fell down; it did not happen. The first time, it was accepted. I do not think that we can emphasise enough the important role that Parliament and parliamentary Committees play to assist us in our work. We need Committees to get what we do; understand it, question it and, ultimately, support it unless it is completely irrational. Therefore, my colleagues and Tom Frawley are probably the same; we do not just make recommendations and then go away. We always see that they are followed up. If that does not happen, our complainants will come back to us.

**Mr A Maskey:**

My recent experience of public bodies is that they accept all the recommendations in the world that you give them because those recommendations are rational, simple and usually modest. However, bodies fall down massively in implementing recommendations.

**Mr Tyndall:**

I would like to follow up on that briefly. Recently, I issued a report into the death of a terminally ill individual who had received dreadful treatment. The health board agreed to my recommendations and said that it would ensure that the same thing did not happen to anyone again. My difficulty with that was that it was the fourth report that I had issued about that hospital. On each of the previous three occasions, I was told that the health board would ensure that nothing similar ever happened again.

In such circumstances, I will take the case to the Government and the regulators and will also call in the chairpersons of health boards to tell them that they represent the people of their areas and that they are lay members. I will explain that I do not know what they think their managers are telling them but that they need to hold those managers to account. There are two issues. I have never had a recommendation not be accepted, and, in the graduated reporting process, my reports have to be made public if the recommendation is not accepted.

**The Chairperson:**

Your recommendations have been accepted, but have they been implemented?

**Mr Tyndall:**

Most have been implemented. I was making that important distinction. Although, generally, they have been implemented, there needs to be much more engagement with regulators and, as Emily said, with the Assembly, to ensure that they are followed up. You will find out if your recommendations are not implemented, because you will get another complaint. You may not find out quickly, but you will find out. When you know, you have got to upgrade.

**The Chairperson:**

Perhaps, another process has to be put in place to ensure that recommendations are implemented. That might be a separate issue.

**Mr A Maskey:**

In my book, the case that you have just given by way of illustration is an example of criminal neglect by some public servant or manager.

**Mr Martin:**

I would like to make two points. When I produce a decision that contains a recommendation for anybody under my jurisdiction, it has to cross my desk. I have 50 staff, but they are not simply allowed to put out a recommendation. Therefore, all bodies under my jurisdiction are aware that I know of, and have approved of, that recommendation personally. It is not just an administrative thing.

The second point is that we put at the end of each recommendation the date by which we expect it to be implemented. We will then look for evidence to be provided that implementation has been carried out within that timescale. We recently started visiting bodies under jurisdiction without warning, asking them to show us what they have done. Those bodies know that we are going to do that.

**The Chairperson:**

Do you have the power to do that, Jim?

**Mr Martin:**

No, this says I have got the power not to do that. *[Laughter.]*

I take issue with you in that the ombudsman has to be the final point of decision-making. If you do not get to that point, there would be a never-ending appeal process. If a body does not accept my recommendation, I would ask for its rationale so that we could discuss it before I issue a report. I will not have a post-report discussion with anyone. Once my report goes out, that is my decision; those are my recommendations and they will be implemented.

Some of our complainants, and you will have them as well, do not accept decisions and want to go to another body to appeal, and then to another body and another body. There has to be an end point. If you imbue your ombudsman with the status and power to make recommendations that the Assembly says are rational, and if Parliament are seen to support their ombudsman, that will give strength to ensuring that the recommendations are implemented. If you cut your ombudsman adrift — and say that that person over there is making decisions — it will be easier for bodies under jurisdiction not to carry out recommendations. That is where the accountability and partnership with Parliament must work.

**The Chairperson:**

Emily, thank you very much for your attendance. It is very much appreciated. We wish you a safe journey home.

**Ms O'Reilly:**

Thank you very much.

**The Chairperson:**

We will move on.

**Mr Spratt:**

I was chairing my Committee today, which met outside the Building, so I am sorry that I could not join you for lunch.

I will take up where Alex Maskey left off. It is an important area. I am not always sure that recommendations are properly implemented even when people say that they have accepted and will implement them. Those of us who may bring a complaint on behalf of somebody else are not sure that those things have happened until we go back after another complaint, which might be 12 or 24 months down the line.

Jim, you spoke about evidence of implementation: how important would it be now, given the process that we are undertaking with respect to legislation, and what have you, to tie down a process and make sure that recommendations by the ombudsman have to be implemented and reported on? Perhaps a report that those things have been implemented would go back to a Department and very clear evidence given in support.

**Mr Martin:**

You should trust the ombudsman to do and report —

**Mr Spratt:**

I am not mistrusting anyone; I am just wondering how we can tie it down.

**Mr Martin:**

My annual report for this year will, for the first time, I think, detail the recommendations that were made; those that have been implemented on time; those that are outstanding; and who still has to implement them. If I felt that a local authority, health board and any other board under my jurisdiction were not implementing recommendations, or were implying that they had when they had not, I would have no hesitation in issuing a special report to Parliament and bringing that local authority or health board or whatever to their attention. I think that that is where Parliament's ombudsman becomes true.

I do not think that Parliament should take the matter to Departments or whatever, because I do not think that Parliament should become involved in the administration of recommendations. I think that Parliament should be involved in the principle of why a body under jurisdiction has not carried out a recommendation. In my case, if a body believes that I have come to a recommendation that is inappropriate for it to put in place, or that my judgement is wrong, the remedy is judicial review. It is not non-compliance; it is judicial review. We should hold to that.

**Mr Tyndall:**

We do not close a case until we have heard the evidence. If the requirement were that the staff had to be trained, I would want details of the dates on which the training took place, who carried it out, and so on. The problem, as you will know, is that some issues are about culture within services. Those are the hardest ones on which to get change. People can carry out an action plan,

but it may not prove effective in dealing with things. Jim is right about access to the Assembly being critical. It is also about the subject Committee having sight. If it is a health issue, it is important that the Health Committee has an oversight of the recommendations that have been made and what impact the implementation of those recommendations has had.

**The Chairperson:**

So, there should be a reporting structure back to Committees?

**Mr Tyndall:**

The annual reports, or special reports, need to go not just to the Committee that has oversight of the ombudsman's office but to where they can do some good.

**Mr Lyttle:**

Thank you very much for your presentation and for being here today. It was enjoyable to spend lunch together as well. There seems to be a key theme emerging in respect of engagement with elected representatives, as regards awareness raising and making sure that elected representatives are aware of your functions so that they can help channel that information to the public, and also reporting to the Committees and oversight of implementation. It might be interesting to consider whether some formal structures need to be put in place to help with that process. I am fascinated to see just how essential that engagement with elected representatives could be to really taking on the role and improving how the public benefit from it.

We are at an interesting time for the Assembly in Northern Ireland. We are at a tipping point where the public expect to see and understand more about the point of us being here. This could be a useful way for us to engage properly. People, through no fault of the ombudsman offices, may not be fully aware of their potential. I will not embarrass him too much as he is here today, but I think that I right in saying that the Northern Ireland Ombudsman's Office has done recent surveys and information events at the Assembly. It may be that we need to develop that even further to ensure that we contribute to each crucial stage of the process.

In Northern Ireland, a complaint is referred through an MLA. Is that a useful stage of the process to ensure that there is a degree of order to how members of the public are informed about the process and to ensure that it has a last-resort nature to it, as has been mentioned? To whom should ombudsman offices report and by whom should they be scrutinised if it came to that report

structure facility? I would be keen to hear from you on both of those aspects.

**Mr Tyndall:**

As regards access to ombudsman offices, neither Wales nor Scotland has a filter arrangement. People can come to us directly. Often, they are supported by their Assembly Member. The twin-track approach is the best one. I think that it exists in any event with complaints about health. From our perspective, there are no difficulties. Assembly Members can still be involved, but the direct approach makes it quicker. With a lot of complaints, particularly health complaints, the fresher the case is when it reaches our office, the easier it is to investigate and come to a sound conclusion. The more stages — and I think that Jim alluded to this — put in, the more likely it is that somebody will give up before a resolution and the more likely that, when we conduct an investigation, the events and incidents will not be fresh in the minds of the people to whom we are asking questions. The simpler the process is the better. Direct access is —

**The Chairperson:**

There is an issue over who is least approachable, the ombudsman or the MLA.

**Mr Lyttle:**

Or who is most unknown.

**The Chairperson:**

Some people take some comfort in going through an MLA because they feel that they can put their case over better, whereas others feel that going directly to make their complaint inhibits them. There is a combination, and we do not want to rule out either option, certainly at this stage.

**Mr Martin:**

I do not have a filter, but MPs, MSPs and councillors will come to me with complaints on behalf of people in their areas, and we take them all. Putting an extra tier into the system in Scotland would worry me, because it would be ineffective and would take us backwards. I am trying to cut the number of levels in local authorities from three and four to two, with the next level being the ombudsman, so that a person can get quick justice.

One issue for all of us who are involved in devolved administrations is that, although we have tackled the democratic deficit, we still have an administrative surplus in some areas. If we can



cut that down for the citizen — the complainer in the complaints field — their faith and confidence in the public services will rise. If someone said that they were going to implement a filter in Scotland, I would be opposed to it.

**The Chairperson:**

We are in the opposite position: we have a filter but are looking to move away from having one.

How do you deal with the list of bodies that you can investigate? I am wondering whether it is better to have a list of bodies that you can investigate or a list of bodies that you cannot investigate. Such a system would have negative connotations.

**Mr Martin:**

We have received a number of new bodies in a very short period of time. One of the good things about our system is that every decision on a body will have been discussed in Parliament. So, the Government's proposition to put the Police Complaints Commissioner for Scotland under the auspices of the ombudsman will be debated in Parliament. A motion has already been tabled by the Conservatives who say that they are unhappy with that, and it has been put on the agenda of at least one Committee for discussion.

Therefore, a positive decision to put something in is a good thing, because it means that elected members have weighed the pros and cons and taken a conscious decision. The negative debate does not feel right to me somehow. Maybe it is because I am used to having a list and having additions made to it by agreement. Somehow, it would not feel right.

**Mr Tyndall:**

I followed your logic and your discussions on following the public pound with a great deal of interest. The more that I thought about it, the more I thought that it was the right thing to do but was not easy.

The UK Parliament's equality legislation shows an approach that is quite interesting in that there is a list and a description of the types of bodies that are permitted. Essentially, it says all public bodies are in the jurisdiction and provides a list. However, you can be within jurisdiction if you are not on the list but fit the description of the type of body permitted. That is quite an interesting way of getting over the changes that happen over time. So, something could come

into the jurisdiction and you could formally confirm it. That is an approach that seems good.

The issue about the public pound really interests me, because if you choose a 50% approach, and I can understand why you would do so, there could be issues with bodies that have sections that provide a public service. Even though only part of a body provides that service, you will still want that public service to be in the jurisdiction of the ombudsman. That is easy in cases where the service is contracted out. For example, a bin collection managed by a private company is still done on behalf of a public body and is still therefore within jurisdiction. However, there are instances in which part of the work of voluntary bodies and independent third-sector organisations is purely public service and is entirely publicly funded, but other parts of their work have nothing to do with public service.

So, the principle is right, and I will be very interested to see how you work it through. I am not sure that a crude 50% is right. You gave the example of Edinburgh University.

**The Chairperson:**

I was hoping that you would come here and tell us, Peter. *[Laughter.]*

**Mr Tyndall:**

I will drop you a line.

**Mr Martin:**

A number of universities in my jurisdiction have got less than 50% funding from the public purse, but they are all in my jurisdiction.

**Mr Tyndall:**

I would have thought that saying something such as “providing a public service that is funded by the state” is probably the thing to do. The issue that we had was with hospices in that although an element of their work is funded and is, clearly, part of the Health Service, they are not in jurisdiction. What has happened now is that the Health Service in Wales will contract with them for the service rather than give them a grant, which would bring them into my jurisdiction. However, that is a kludge, if you like. To find a way of expressing that in legislation would be much more helpful.

**The Chairperson:**

Jim, is a complaint from a third party permissible in Scotland?

**Mr Martin:**

Do you mean when someone complains on behalf of someone else?

**The Chairperson:**

Yes.

**Mr Martin:**

Yes. We will take those complaints. However, we will always ensure that the person on whose behalf the complaint has been made has given their consent, if they can, for that to happen. The classic case, which I am sure that we have all seen, is when someone believes that the person next door to them is suffering from antisocial behaviour. One case that I can remember is when someone was consistently parking their car in front of someone else's driveway. The person's neighbour felt that they should complain. Of course, the person concerned was perfectly happy with the arrangement. Therefore, you have to be careful. We definitely require consent in third-party complaints. That includes complaints from an MSP.

**The Chairperson:**

Are you in the same position, Peter?

**Mr Tyndall:**

Yes. Often, complaints that we receive are on behalf of deceased relatives, when somebody feels that their parent, typically, was not treated well in hospital. We will accept those complaints, obviously, without the individual's consent, where the person has clear locus standi to act on their behalf.

**Mr G Robinson:**

How many staff do you employ? Do you have full responsibility for employing those staff?

**Mr Martin:**

Yes. I have 47 full-time equivalent staff, which equates to around 51 or 52 people. We will get another two or three staff during the next few months. They are all employed by me. The Act

gives me the right to employ people as I see fit. I am also the organisation's accountable officer. I know that things are different here.

When I established the office of the Police Complaints Commissioner for Scotland, the most common question that we were asked on the telephone was, "Are you or have you ever been a police officer?" My people were able to say no. That went a long way. Often, we are asked if we work for the National Health Service or whether we are civil servants. The answer in those cases is no.

**Mr Tyndall:**

My staff are employed directly by my office. They are not civil servants.

**Mr G Robinson:**

I have one other question. Perhaps you answered it at the beginning. What is the length of your term?

**Mr Martin:**

My initial term was for two years, because Parliament wanted to look at all of their office holders and determine what they thought should happen. Parliament have determined that in normal circumstances, an ombudsman will be appointed in Scotland for eight years. Therefore, I have been given an extension of six years. The thinking behind that is that it takes you roughly through two Parliaments. Furthermore, the last thing that an ombudsman needs is to be looking over his shoulder when it comes to reappointment time. I believe that John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, said that in debate. We certainly do not want someone to believe that a decision that they take may affect whether or not they can be reappointed.

**The Chairperson:**

There is a fine line there; a fine line both ways.

**Mr Tyndall:**

My appointment is for a single term of seven years.

**The Chairperson:**

Peter, with regard to the Welsh ombudsman, no provision is made for a person who has been commented upon negatively in a report to put their side of the story. Can you explain that any further?

**Mr Tyndall:**

All reports that we produce are anonymous. Individuals are not named in reports. Although it is fine to say that; if it is a GP practice, anonymity cannot be protected. We issue drafts of all reports, both to the complainant and to the person about whom the complaint was made. We take account of their comments in finalising the report. Therefore, there is an opportunity for somebody to say that it is not a fair representation. Issuing a draft report also ensures that there is much greater prospect of recommendations being implemented because you have an opportunity to deal with questions that you may have misinterpreted or about which you were not aware of all of the facts.

**The Chairperson:**

OK. Finally, perhaps one of the most important aspects for the Committee is the power to scrutinise the ombudsman's work. Where do you feel that it should lie?

**Mr Martin:**

That is quite clear. In my most recent annual report, I asked for a Committee of Parliament to scrutinise my annual report and work. At present, I am audited. The corporate body of the Scottish Parliament has some checks and balances in how I spend money. I am nominated by Parliament for Royal Appointment. Therefore, it is important that a Committee of elected Members has the ability to question me on my report. I believe fundamentally that if a single person is an office holder, such as an ombudsman, you require that person to be held to account publicly. That is why I agree with Emily's point. When an ombudsman has been reappointed or has been selected by a Committee, it should go to a public hearing so that it can be seen to be an open and transparent appointment. I believe strongly that elected Members have a role to play.

**Mr Tyndall:**

We all envy the link between the UK Parliamentary and Health Service Ombudsman and the Public Administration Select Committee. That provides a forum for the ombudsman's work. It does so in two ways; to hold the ombudsman to account and also to take on issues that arise from

that work and use them in the work of the Parliament. Like Jim, I have made requests that there should be a Committee for that purpose. I am hopeful that that will be resolved as the new Committee structure is established during the next few weeks.

**The Chairperson:**

OK. Jim and Peter, thank you very much for your attendance, help and support. It has been an interesting afternoon. Thank you and safe journey home.