



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Northern Ireland Judicial Appointments
Ombudsman: Briefing from the Northern
Ireland Ombudsman

22 May 2013

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Leslie Cree
Mrs Brenda Hale
Mr Stephen Moutray
Mr George Robinson

Witnesses:

Dr Tom Frawley	Northern Ireland Ombudsman
Ms Marie Anderson	Office of the Northern Ireland Ombudsman

The Chairperson: Dr Tom Frawley and Marie Anderson have joined us. Tom, I think that there are two issues that we want to discuss. The first is the Judicial Appointments Ombudsman. There is also the issue of the Minister of the Environment's proposal that local government standards might come in via the Commissioner for Complaints hat. Shall we start with what we have just heard?

Dr Tom Frawley (Northern Ireland Ombudsman): Chairman, whatever works for the Committee.

The Chairperson: Then let us stick with the Judicial Appointments Ombudsman.

Dr Frawley: I have had the benefit of hearing Mr Lavery's commentary and narrative to the proposal. There is a significant commonality in maladministration, which is the issue that one is looking at; the procedural underpinning of decisions that have been taken in the appointment processes. That is something that the ombudsman focuses on as the public services ombudsman. There is a good fit in that regard. When it comes to the processes, the expertise and the investigative resource, it is fundamentally the same thing. You have commented on the costs. At a time when the public purse is under such intense pressure, I believe that when opportunities like this present themselves, they should be taken. Therefore, that is another strong rationale for supporting, in a broader sense, the role of the public services ombudsman by giving this important core and significant responsibility to that office.

The focus of the Committee's concern, as I listened to you, was around the whole issue of disqualification. There are issues there. David Lavery highlighted his concern that, in a population of 1.7 million people, a limited number of people would be interested in doing a job like this and would be considered competent and able to do it. As I have discovered, and let me say this to confirm David's

point, and at the risk of embarrassing my deputy, there is a real benefit in having someone with a legal, professional perspective. I would not say that I have the forensic approach to analysis that my deputy brings to it or her legal knowledge. I think that a legal background is a strength in this sort of role. To exclude a very strong strand of the community — that is, the legal profession — is something that one would look at.

On the other hand, David highlighted the point of view that, even in England when you have those exclusions, there will be conflicts of interest. I see it in my day-to-day business. I live in the north-west, and the nature of the north-west is that it is more of a village than a big geographical area. I inevitably know people, so I have to exclude myself because of personal knowledge. I worked in the health service previously. A significant part of my responsibility is around health. Most of the actors have had the good sense to leave the stage, so I do not know the new faces that well. In that sense, that is not a problem, but I can see that it would be. Yet you, as a Committee, must balance that against the public perception. Most of the problem is a public perception issue around the aspect of lawyers and judges. They are the same people, so are they going to be sufficiently independent and objective? That is the balance of the perception, and other jurisdictions have chosen to have that exclusion.

From a practical perspective, it is not a problem because it is absolutely straightforward to get around such conflicts in the design of the arrangements. If I declare a conflict, Marie takes it on. Equally, if Marie declares a conflict, I can take it on. If both of us have a conflict, depending on the nature of the issue, we have very capable and competent directors who can take the delegated authority that I have and do a complaint investigation. As the paper that I have read indicates, it is possible to go beyond that. We are doing one for our Scottish colleague where he is conflicted, and we have done one in respect of a standards issue with a Welsh Minister in Cardiff. So, there is a very strong level of co-operation across these offices. Therefore, the problem can be addressed. It is not insurmountable. The judgement lies with you.

I was not party to the debate that went on at the Justice Committee, but I think that it becomes a little bit stretched to talk about political activism. You highlighted the issue of voting. Enough people do not vote as it is, so, suddenly, you would have an issue there as well. I assume that "active politically" means someone who is an active member of a political party currently, and, by "active", I mean someone who participates in the party and contributes to its policy development, and so on. That, to me, is what "active politically" means. How you judge that is another question entirely.

The Chairperson: I feel that you probably need to spell that out.

Dr Frawley: Yes, I think —

The Chairperson: If we are going down that road.

Dr Frawley: Yes. One of the challenges that can be picked up is that when you come to make the appointment — were it to be decided that this would be included — the documentation and the detail that would need to be developed for and by that panel would need to elaborate on and clarify those issues so that they are explicit for everyone. As you pointed out during your exchanges with Mr Lavery, there will be challenges as to why and how persons should be excluded.

The Chairperson: On the broader issue of the entire legal profession, do you take a view beyond the principle of not narrowing an already small pool unnecessarily?

Dr Frawley: I do not see a basis for excluding lawyers as a group. I could see an issue with people who were in judicial roles previously etc, but as David Lavery said, excluding people who were just lawyers by background and who were working in other jurisdictions as academics, for example, would cause problems.

Mr Cree: I want to go back to the point about the political connection. The wording is clumsy and could be interpreted as you have just done. It is something that could be tidied up.

Dr Frawley: That can be done.

The Chairperson: The other issue is that of local government standards. We are preparing for a call from the Minister of the Environment to bring it on and, perhaps, put it in our legislation.

Dr Frawley: Chairman, you defeat me always. I spend days preparing very elegant opening remarks and you immediately take me to the chase. I have completely failed to get my very carefully crafted material on the record.

The Chairperson: Sorry, let me hit reverse gear —

Dr Frawley: I will take your leadership and move to the issue of standards immediately, because it is late in the day.

The Chairperson: I am so sorry, Tom.

Dr Frawley: Not at all; I am getting used to it, Chairman. *[Laughter.]* I do not mean that in any disrespectful way.

By way of a bit of background, Northern Ireland has been criticised by the Committee on Standards in Public Life in Westminster for not having a mandatory statutory standards code in local government. Indeed, when it came to Northern Ireland to take evidence, the then head of the Civil Service, Sir Nigel Hamilton, indicated that Northern Ireland would introduce such a mandatory code. That issue has been in play ever since.

Clearly, as part of the new arrangements for local government around modernisation and the review of public administration, there will be a whole new design of local government, part of which will involve a range of new statutory functions. Committee members will be more familiar with that than I am.

Alongside that, one of the key strands is that, particularly with the introduction of new statutory responsibilities, there should also be a mandatory code that people who are elected to local government would have to live by and be accountable to. That design is under way. The Department of the Environment was looking at different models for delivering that.

Initially, England had a national standards board for local government, which became a hugely expensive bureaucracy. Indeed, it was abolished by the current Government. In Wales, standards in local government were overseen by the Public Services Ombudsman, which is the model that Northern Ireland began to do some work on. That is the provenance of this particular idea: we would model the Welsh model; it made sense and was a proportionate and affordable response. Also, the work sat very reasonably with that office, particularly given the independence of the ombudsman, and because it is, in many senses, a quasi-judicial role. So, the design that is emerging is very clearly around those arrangements, mirroring Wales, and making it a core part of the responsibility of the ombudsman's office, if this Committee is agreeable. Therefore, it would sit alongside the NIPSO responsibilities.

Looking around the table, I know that members will be aware that, in the past, I was the Assembly Commissioner for Standards, so I have some background in this role. Not unlike the Judicial Appointments Ombudsman, I have found there to be a lot of common ingredients in working inside legal frameworks and having the investigative skills needed in examining witnesses, statements, preparing analyses and reaching conclusions. So, again, I think that there is a reasonable fit, and that is the Welsh experience as well. In looking at how we would engage with it, we have been taking a lot of advice from our Welsh colleagues, who have been very supportive.

I think that one of the issues where there are real challenges in our design, and one that I want to make sure that we get right here, is the potential for extended hearings that are legally constituted and where all parties are represented, and you end up with a hugely expensive process. What the Welsh Government did, and what we have been advised would not be a sensible and proportionate response here, was to indemnify councillors, so, of course, they immediately sought legal representation, and the costs of all these things — even those for quite straightforward issues — escalate. I think that we have managed a design that will, hopefully, limit and indeed eliminate that potential. So, I see merit in doing it this way. It is unavoidable, I think, that we have a mandatory code in local government, and, for all sorts of good reasons, that mandatory code becomes absolutely essential when you see the new statutory responsibilities around planning and so on.

At a time when you are redesigning the office of the Public Service Ombudsman based on the Welsh experience, it is a good fit and, therefore, one that I would be comfortable with. In many ways, I can declare an interest, or a disinterest, in that, as you know, I will not be party to any new arrangements

because I will retire. When the legislation is passed, whoever takes on the post will be going into it with a clear understanding of its range of responsibilities and the division of those responsibilities across the spectrum of functions that we have discussed.

My only caveat is that part of the challenge is that this is not without costs. In all the things that we have looked at in the redesign of this office, this would be one that requires funding. Although, as a public servant, there is the potential for it to happen, I do not want to become a "saving" in the near future. The reality is, however, that if we are doing this, and you are designing it and looking at it in overview for DOE, I think DOE should be central to making available those resources. I find it worrying that the potential for it to be in this office equals, "Well, you go and negotiate the funds for it now." It is very important that, when we take on these responsibilities, those who ask us to fulfil that purpose should also have a critical role in agreeing and taking on the costs, and in making funds available to fulfil the roles.

The second thing that I ask you to note, and this is important, is that there is now a very significant time pressure on this issue, and you will see that it needs to happen sooner rather than later. If, as I understand is intended, the shadow councils are created next year, it seems to me imperative that those who are considering being elected, and those who are subsequently elected, clearly understand these ground rules, the codes under which they will have to operate, the rules that will apply and how they will be engaged, etc. It is not something that you can take some time over. In our conditional discussions with DOE, we clearly said that there is a need for money to be available upfront, purely for educational purposes. I see a need for someone, maybe me or Marie, to traverse these geographies and speak directly to people about this new mandatory code. We should probably start with the existing councils and tell them what lies ahead. There are people here, such as Mr Robinson, Mr Moutray and Mr Cree, who are much better qualified to talk about local government than I am, but, as I understand it, the reality is that some people will have to make a career decision in the near future about whether they want to be part of these new arrangements. I think that this sort of insight is important in informing that decision one way or the other. So, this is something that needs to be developed, prepared, got ready and put on the road sooner rather than later. First, and crucially, a decision is important, and then there are the resources required to do that.

This is a guesstimate, Chairman, I would not in any way be a prisoner of it, because it has not been done forensically, but, using some of the learning from Wales, we would say that to get all that under way and to resource it with the people and materials that will need to be developed, the cost for six months would be around £92,000. Against what will be spent in the implementation of the new local government arrangements, that is not a significant sum of money; against the very tight and finite budget that I have, it is a huge sum of money. It is very important that we put that to you.

I have one final point, because I know this is equally important for the Committee. In a PricewaterhouseCoopers economic appraisal on the original model for this arrangement that was done for DOE, it intended that you would put infrastructure into every one of the new councils at a cost of £50,000 each and, beyond that, the oversight of the arrangements would have a further £250,000. Again, our colleagues who have some experience of local government might confirm that. If you total that, Chairman, you will see that there would be a budget per annum of £800,000 to undertake this, when it is totally implemented. The new arrangements that are being proposed by DOE, however, will put the whole core of this activity — the actual management delivery of the standards agenda — through the office of the reconstituted Public Services Ombudsman. We are estimating that at around £373,000. That is a huge saving out of this model. I have no misgiving about that.

The other thing that I think is important, and I think would be important for this Committee, because I know that you are very conscious of the very significant additional responsibility that would be involved in this, is that any new arrangement like this needs to be reviewed. That needs to be built in as a formal commitment and not merely with an attitude of, "We'll have a look at it in a couple of years." The attitude should be, "We will examine whether it is working in at least three to four years, and if it needs to be changed, we will change it." On that basis, Chairman, I am content and am happy to take your questions.

The Chairperson: Thank you, Tom. Your main points are that a mandatory code is inevitable as well as desirable; the Welsh model is sensible and affordable; there should be no indemnity for councillors; you think there should be a six-month awareness or educational campaign —

Dr Frawley: At least six months, Chair.

The Chairperson: That campaign will cost £92,000. You also say that it could be run on an annual cost of £373,000.

Dr Frawley: Yes, when it is up and running.

The Chairperson: You think it should be under NIPSO.

Dr Frawley: I think it makes sense for it to be. One of the things that struck me in the very open and transparent way in which the costs of the legal appointments ombudsman were highlighted was the fact that, once you start putting in such overheads as rent, accommodation, heat, light and power, etc, you enhance the costs significantly. I believe that no new office should be created in our jurisdiction until it can be ascertained whether it can go into some existing system. I am saying that, in this redesign, there is a sensible, coherent and already established model à la Wales that would cope with this proposal.

Mr Cree: It is nice to be mentioned in dispatches by Dr Frawley, but, for the sake of clarity and the record: I retired from the council two years ago.

Dr Frawley: I am sorry about that.

Mr Cree: It is OK. I think this afternoon has been helpful and useful; thank you very much.

Mr Moutray: I do not need to declare an interest as a sitting councillor; Tom has done that for me. Tom, I appreciate the presentation. Have you any figures around how often the office in Wales is used for local government?

Ms Marie Anderson (Office of the Northern Ireland Ombudsman): It represents about 15% of the caseload of the Public Services Ombudsman, which ranges from 1,000 to about 1,300 cases a year, but it more than doubles at election time.

Dr Frawley: The other issue in Wales, and which, I think, was a huge issue in England, is that they chose to have parish councils. In the nature of that type of very close community interaction, you get lots of complaints. So, I think it does not necessarily mirror the model.

Ms M Anderson: For clarity: the position in Wales is that the ombudsman investigates and makes recommendations, depending on the nature of the breach of the code, to either a standards committee, which can deal with minor breaches, or an adjudicating panel, which deals with more serious cases. The proposal that the Minister of the Environment is supporting is that investigation and adjudication will be undertaken by the Commissioner for Complaints. That represents another saving to the public purse, but it also represents a more complex model than that originally envisaged. That would mean a degree of structural realignment around decision, investigator and decision-maker in the office. That represents part of the initial set-up costs.

The Chairperson: Marie, Tom, thank you very much indeed. That has been most helpful.

Dr Frawley: Thank you very much, Chairman and members.

Mr G Robinson: Chair, that was another concise presentation.

The Chairperson: It was another concise and informative presentation.