



Northern Ireland  
Assembly

## Research and Library Service

### Briefing Note

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# The Northern Ireland Ombudsman

## 1 Background

This briefing paper looks at issues surrounding the proposed Committee Bill to legislate for a single Northern Ireland Ombudsman. These include:

- The existing legislation
- A comparison with existing legislation in Scotland and Wales
- Potential overlap and duplication of effort with existing organisations
- The proposal to give the Ombudsman the power to carry out systemic reviews
- The principle of following the 'public pound' and the potential implications of this for voluntary/community groups

The paper compares proposals contained in the draft consultation paper with existing provisions in Scotland and Wales. It then focuses on two key issues: the proposal to

grant the Ombudsman power to carry out systemic reviews and the implications of 'following the public pound' on smaller community/voluntary groups.

## 2 The existing legislation

The Northern Ireland Ombudsman encompasses two offices: the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The powers and responsibilities of the respective offices are set out in the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996. The Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997 extended the Commissioner's remit to include health care professionals such as doctors, dentists, pharmacists and optometrists. The Northern Ireland Ombudsman can investigate different bodies depending on whether he is acting as Assembly Ombudsman or the Commissioner for Complaints, but the investigative and reporting processes are largely the same.

The Assembly Ombudsman investigates complaints of alleged maladministration by Northern Ireland Government Departments, their agencies and cross-border institutions set up under the Belfast (Good Friday) Agreement. Complaints to the Assembly Ombudsman can only be made through an MLA.

The Commissioner for Complaints investigates complaints of maladministration against a range of public bodies. Members of the public may complain directly to the Commissioner.

## 3 Comparisons with Scotland and Wales

Both Scotland and Wales have restructured their Ombudsman services over the last number of years. In both cases a single Ombudsman office was created to replace various Ombudsmen which had been responsible for different public bodies.

### **Consultation and legislation in Scotland**

The creation of a single Ombudsman followed a two-stage consultation process in 2000-01. The first stage sought views on the structure and powers of the existing ombudsmen and the possibility of creating a 'one-stop-shop'. The second part of the consultation included more concrete proposals, including those relating to a single public services ombudsman.

The Scottish Public Services Ombudsman Act 2002 established the Scottish Public Services Ombudsman (SPSO) to deal with complaints that at the time were dealt with by:

- The Scottish Parliamentary Commissioner for Administration

- The Health Service Commissioner for Scotland
- The Commissioner for Local Administration in Scotland and
- The Housing Association Ombudsman for Scotland

These offices were abolished following the establishment of the SPSO.

Other key changes introduced by the 2002 Act included:

- Removing the requirement that complaints have to go through MSPs
- Enhanced accessibility to the Ombudsman including provision for a person to authorise a representative to complain on their behalf
- Complaints could be made orally in special circumstances
- The publication of all investigation reports
- Empowering the Ombudsman to publicise cases where an injustice had not been remedied

During the consultation process consideration was given to whether the new Ombudsman should have the power to enforce his or her decisions, but a clear majority were not in favour of this. One consultee commented that “(the Ombudsman’s) duty is to investigate, to reach conclusions and to make recommendations; others have executive powers and responsibilities to ensure that our recommendations are carried out. That is the correct division of functions”<sup>1</sup>.

There was unanimous support in the consultation process for the removal of the MSP filter. However, the Act allows for a person to approach their MSP in the first instance if they wish, but it is no longer mandatory.

The Act also allows for organisations within the Ombudsman’s remit to request that an investigation should be undertaken where there has been public criticism but no actual direct complaint to the Ombudsman. At the time, the Housing Association Ombudsman in Scotland stated that:

In terms of credibility, my view...is that the provision for authorities to request an investigation is unhelpful. The focus of the Ombudsman should be the individual with a grievance. I would fear that provision for authorities to ask for an investigation into its own behaviour would risk the public seeing the Ombudsman as being used by the authority in its own management of complaints<sup>2</sup>.

## **Consultation and legislation in Wales**

The original recommendation for streamlining ombudsman services in Wales was made by the National Assembly Advisory Group in 1998. As in Scotland, the aim was to create a single Public Services Ombudsman to replace a number of existing

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<sup>1</sup> ‘Scottish Public Sector Ombudsman Bill’ Scottish Parliament Information Centre Research Paper, 19 December 2001

<sup>2</sup> As above

Ombudsmen, including the ombudsman for Welsh Administration, Welsh Local Government and Social Housing and the office of the Health Service Commissioner for Wales. The process was similar to that undertaken in Scotland, with a two-stage consultation process. Again, there was unanimous support for the creation of a single ombudsman.

During the passage of the legislation enhanced powers of enforcement were considered for the new office, but it was decided to largely maintain the existing arrangements. Responding to a question on why the new ombudsman would not enjoy powers of enforcement, Lord Evans commented that: “the only ombudsman’s recommendations that have been legally enforceable are in Northern Ireland...your Lordships will be aware that legal enforcement of ombudsman’s recommendations would be an extremely radical move”<sup>3</sup>. This refers to the Northern Ireland Commissioner for Complaints, where complainants have the ultimate option of redress in a county court. (The recourse to a county court has rarely been used and the current Northern Ireland Ombudsman favours its removal in any future legislation. In addition, Section 7 of the Commissioner for Complaints Act 1969 also gives the NICC the power to ask the Attorney General to apply to the High Court for mandatory injunction or other relief in circumstances where he has concluded that a public body is likely to continue on a course of bad administrative conduct. This power has never been used).

Key aspects of the Welsh legislation include:

- The creation of the Public Services Ombudsman for Wales (PSOW)
- Early resolution of complaints without the need for an investigation (it was argued that the equivalent legislation in Scotland placed too much emphasis on formal investigations)
- Complaints accepted orally in special circumstances
- Increased transparency around publication of reports

### **Key differences between the Northern Ireland Ombudsman consultation paper and the Scottish and Welsh legislation**

The proposals outlined in the consultation paper aim to bring Northern Ireland into line with the updated legislation in Scotland and Wales, drawing on the key aspects from both the Scottish and Welsh legislation. Some of the key proposals and their potential implications are outlined below:

**Table 1: Comparison of proposed powers for the Northern Ireland Ombudsman with existing arrangements in Scotland and Wales**

Proposal in consultation paper	Scotland	Wales	Issues to consider
Do you agree that the	Not available	Not available	It would bring the office

<sup>3</sup> HL 16 December 2004 c1442

Ombudsman should have a power of own initiative investigation/systemic review?			into line with established practice of other Ombudsmen in Europe <sup>4</sup> . Powerful tool to tackle maladministration Would be a major deviation from established practice in the UK <b>Issue is discussed further in section 5</b>
Do you agree that the Ombudsman should provide guidance on good administrative practice which public bodies should be required/expected to take into account?	Section 16G of the 2002 Act (inserted by the Public Services Reform (Scotland) Act 2010) states that the SPSO must monitor and identify trends in complaints handling and promote best practice in relation to complaints handling	Section 31 of the Ombudsman Act allows the PSOW to issue guidance to listed authorities about good administrative practice. Listed authorities are required to have regard to this. (The PSOW has published a document entitled 'Principles of Good Administration'.)	Would significantly enhance the remit of the office
Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?	Section 16B of the 2002 Act inserted by the Public Services Reform (Scotland) Act 2010 gives the SPSO power to publish complaints handling procedures to provide support and broad direction to public service providers	Power derived from Section 31 of the Ombudsman Act. The PSOW chaired the 'Complaints Wales' working group which was tasked with developing a common complaints handling system for public service providers in Wales. It is aiming to submit recommendations to the First Minister in Wales in September 2010.	Potentially a significant broadening of the remit of the office, although NI Ombudsman has produced guidance on complaints-handling and offers training to public bodies)
Do you agree that the broad principle of following the public pound should be the basis on which bodies will be included within the Ombudsman's jurisdiction?	N/A	The PSOW has advised that the public body that contracted the service or provided the funds is responsible if a complaint of maladministration is made	Many services are delivered privately using public funds Where should the line be drawn? How would this impact on smaller voluntary/community groups? <b>Discussed further in section 6</b>
Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?	Section 5 of the 2002 Act allows for this but during the passage of the Bill there were concerns that the focus should remain on the individual		Does this shift the focus away from the Ombudsman providing a service solely for individuals, rather than public bodies?

<sup>4</sup> The Ombudsmen in Europe and their legal bases [http://www.omineurope.info/uk/index\\_e.html](http://www.omineurope.info/uk/index_e.html) retrieved 2 September 2010

			(Commissioner for Complaints legislation provides for health and social services bodies to refer a complaint but does not specify under what circumstances)
Do you agree that the Ombudsman should be authorised to take any action to resolve a complaint in addition to, or instead of conducting an investigation?	Prior to the establishment of the PSOS, emphasis was placed on informal resolution of complaints. The initial draft of the Bill was criticised because it was perceived to restrict the Ombudsman to carry out formal investigations without leaving room for informal resolution. This was subsequently amended.	Section 3 of the 2005 Act allows for early resolution of complaints without the need to proceed to investigation	Proposal would bring Northern Ireland more into line with existing arrangements in Wales
Proposals around publication of reports	Section 15 of the 2002 Act specifies the steps that must be taken by a public body to publicise reports	Sections 17 to 23 of the 2005 Act specify the steps that must be taken by a public body to publicise reports and informing the PSOW of the steps it will take regarding the report. There is also provision for non-publication of reports where no injustice has been found, where the complaint has been upheld but the relevant body agrees to implement the findings within an agreed timescale or where the PSOW feels there is no public interest in publicising the report.	Wider public disclosure of the Ombudsman's investigations is currently limited to summaries in his annual report. Provisions similar to that in Wales and Scotland are likely to increase the transparency and accountability of the office.

#### 4 Minimising duplication of effort and overlap with other organisations

It has been suggested that there are “legitimate concerns that too much scrutiny can render government inefficient, lead to greater duplication of work and generally obstruct the process of government”<sup>5</sup>. The Northern Ireland Ombudsman already exists alongside a range of organisations that have oversight and regulatory roles. The proposals contained in the consultation paper will not, if implemented, significantly alter this. It could be argued however, that it would be timely to review the operation of the

<sup>5</sup> Kirkham, Thompson and Buck, 'Putting the Ombudsman into Constitutional Context' *Parliamentary Affairs* (2009) 62: 600-617

Ombudsman's office within this framework, with an emphasis on value for money, efficiency and effectiveness.

The Northern Ireland Ombudsman has advised that the office has in place mechanisms for minimising duplication of effort and overlap with other organisations, such as the Regulation and Quality Improvement Authority (RQIA) and the Northern Ireland Children's Commissioner (NICCY). For example, when a complaint is received it goes through a process of validation and if appropriate the complainant is signposted to another organisation to deal with their complaint. Therefore, when the Ombudsman receives a complaint regarding a non-devolved institution that has an office in Northern Ireland, such as HMRC, the complainant is directed to the appropriate organisation such as the Parliamentary Ombudsman or the Equality Commission.

The Northern Ireland Ombudsman has to date been reluctant to enter into Memorandums of Understanding (MOUs) with organisations under his remit due to the risk that this could potentially impact on the independence of his office. However, the Ombudsman is currently exploring the option of an information sharing protocol with the RQIA and the General Medical Council for issues regarding complaints about healthcare professionals.

### **Approaches of other organisations with oversight/regulatory roles**

There are a number of other organisations in Northern Ireland with investigatory/regulatory roles. Some of these have agreed MOUs between themselves and with other organisations. Examples are highlighted below:

**Table 1: Organisations with oversight/regulatory powers that have memorandums of understanding in place**

<b>Organisation</b>	<b>Powers of investigation</b>	<b>MOUs/Protocols</b>
RQIA	Yes	Criminal Justice Inspection NI National Clinical Assessment Service Postgraduate Medical Education and Training Board Education and Training Inspectorate Northern Ireland Social Care Council Social Care Institute for Excellence
Equality Commission	Yes	NICCY Community Relations Council Northern Ireland Human Rights Commission
Northern Ireland Human Rights Commission	Yes	Equality Commission Police Ombudsman NICCY Prisoner Ombudsman Northern Ireland Court Service

## **Wales**

Section 25 of the Ombudsman Act outlines how the Ombudsman may consult and co-operate with other Ombudsmen. Specifically, section 25A of the Act (inserted by the Commissioner for Older People (Wales) Act 2006) states that the Ombudsman must inform and consult the Commissioner in circumstances where it appears that both the Commissioner and Ombudsman would be entitled to investigate a case. The Act allows for co-operation between the two offices in relation to a case.

The Public Services Ombudsman for Wales also advised that he was in the process of formalising MOUs with both the Older People's Commissioner and Young People's Commissioner outlining their particular jurisdictions. He stated that while these organisations can undertake generic investigations, individual complaints are signposted to his office. The Ombudsman shares information with other relevant organisations while ensuring that confidentiality is maintained. He said that it was a slight legislative anomaly that the Older People's Commissioner and Young People's Commissioner did not currently fall under his remit and that this was probably due to the fact that they were government appointments rather than offices of the Assembly. He stated that he would like to see a committee for Assembly appointments established as it was not satisfactory that his reports currently go before a plenary of the Assembly.

## **Scotland**

The 2002 Ombudsman Act contains provisions similar to those in Wales regarding co-operation and consultation with other Ombudsmen. Furthermore, the SPSO has agreed MOUs with a number of other organisations (an example is attached at Annex 1).

# **5 Systemic reviews**

## **Power to carry out systemic investigations**

The ability to carry out systemic investigations has been cited as a significant power available to Ombudsmen in addressing maladministration:

Probably the best evidence of ombudsmen contributing to the provision of accountability occurs when an ombudsman conducts a systemic or joint investigation. With such investigations the ombudsman either brings together a number of similar complaints into a larger investigation, or identifies a systemic problem during the course of an investigation, and consequently chooses to deepen the investigation. The culmination of such an investigation is typically the production of a 'special report' which brings together a number

of findings and makes recommendations that often go wider than the provision of redress for the individual complainants concerned<sup>6</sup>.

Most Ombudsman offices in Europe<sup>7</sup> have the power to carry out systemic investigations, but this is not a power enjoyed by the UK Ombudsmen. The legislation relating to the Ombudsman in Ireland allows her to initiate an investigation, but there is no specific provision authorising her to carry out a systemic review. Rather, this appears to have been established through custom and practice.

A stakeholder consultation exercise carried out as part of the Deloitte review of the Northern Ireland Ombudsman's office in 2003 found "general support for the Ombudsman having a power to initiate systemic investigations but only if there is sufficient evidence arising from casework and provided there is no duplication with other organisations, such as the Comptroller and Auditor General"<sup>8</sup>. The review subsequently recommended that "the Ombudsman should have authority to undertake systemic reviews flowing from individual complaints and following consultation and agreement with the Comptroller and Auditor General"<sup>9</sup>. It has been argued that:

While (this) would be an advance on the position of all of the UK Ombudsmen, it would fall short of the situation enjoyed by all of the Ombudsmen in Ireland, Australia and New Zealand. In those three countries the Ombudsmen are not restricted to a reactive approach waiting for a complaint before they can take action, but rather they have an 'own motion' power enabling them to be proactive and investigate an issue<sup>10</sup>.

Research has also shown that nearly all European Ombudsmen have the power to initiate investigations. The proposal for the Northern Ireland Ombudsman to have this power would place him ahead of his UK counterparts, but would bring him into line with established practice in other jurisdictions. Another viewpoint highlights the pros and cons of such an approach:

If the ombudsman is aware of the possibility of maladministration there would appear to be little justice in denying the ombudsman the opportunity to investigate. The contrary argument is that granting ombudsmen wide powers to initiate investigations could distract them from their primary purpose of providing redress and would trespass upon existing audit schemes. A further danger is that, if they possessed such powers, ombudsmen would be more exposed to media or political pressure aimed at encouraging them to

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<sup>6</sup> Kirkham, Thompson and Buck, 'Putting the Ombudsman into Constitutional Context' *Parliamentary Affairs* (2009) 62: 600-617

<sup>7</sup> The Ombudsmen in Europe and their legal bases [http://www.ominerurope.info/uk/index\\_e.html](http://www.ominerurope.info/uk/index_e.html) retrieved 2 September 2010

<sup>8</sup> 'Review of the Offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints – Final Report, March 2004

<sup>9</sup> As above

<sup>10</sup> Brian Thompson 'An Innovator in Need of Reform' in *40 Years of the Office of the Northern Ireland Ombudsman: Reflections in Time*, Office of the Northern Ireland Ombudsman 2010

intervene in the administration of government...interestingly the Northern Ireland Police Ombudsman possesses these powers<sup>11</sup>.

### **Consultation before carrying out a systemic review**

As noted above, the Deloitte review recommended that the Ombudsman should have the power to carry out systemic reviews following consultation with the Comptroller and Auditor General. This had followed concerns raised by some stakeholders during the review process that granting the Ombudsman this power could lead to duplication with the Comptroller and Auditor General. The Ombudsman has said that he would support a requirement on him to consult<sup>12</sup>, although it has been argued that:

While...there should indeed be co-operation with the C&AG, it is inappropriate for this officer to have a veto over the work of the Ombudsman. First, it is wrong in principle for anyone, other than a court, to interfere with the Ombudsman's discretion. Secondly, while the Ombudsman and the C&AG have a shared interest in improving administration, the Ombudsman's investigations whether prompted by complaint or own motion, are about injustice caused by maladministration, which is not within the C&AG's remit<sup>13</sup>.

Nevertheless, there seems to be a rationale for increased cooperation between ombudsmen and auditors:

Each receives complaints from the public which are more properly within the remit of the other and such complaints are transferred accordingly. In some Australian states this cooperation has been formalised with the establishment of regular meetings among a number of accountability/integrity agencies. This form of cooperation involves checking work programmes in order to avoid an agency being subject to duplicate investigations<sup>14</sup>.

The office of the Ombudsman in Ireland advised that she does liaise closely with the Comptroller and Auditor General and has regard to the Auditor's programme of activities. Nevertheless, it was made clear that a balance needed to be struck between engaging in consultation and maintaining the independence of the office.

## **6 Following the public pound**

Increasingly, private organisations are contracted to deliver public services with the result that the line between the private and public sector has become blurred.

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<sup>11</sup> Richard Kirkham, 'The Ombudsmen of Northern Ireland, Scotland and Wales', *Journal of Social Welfare and Family Law* (2005) 27:79-90

<sup>12</sup> NIA OR 21 April 2010 [http://www.niassembly.gov.uk/record/committees2009/OFMDFM/100421\\_Ombudsman.htm](http://www.niassembly.gov.uk/record/committees2009/OFMDFM/100421_Ombudsman.htm)

<sup>13</sup> As above

<sup>14</sup> Thompson, Buck and Kirkham 'Public Services Ombudsmen and Administrative Justice: Models, Roles, Methods and Relationships' ESRC website

The Deloitte review was “invited to consider whether the Ombudsman’s jurisdiction, like that of the Comptroller and Auditor General, should follow public funds through to the relevant administration”<sup>15</sup>. The subsequent report then recommended that “the Ombudsman should have jurisdiction over all organisations substantially funded from public monies unless they are explicitly excluded and OFMDFM should perform the gatekeeper role”<sup>16</sup>. As part of the review, a mapping exercise was conducted of the bodies that were within and outside the scope of the Ombudsman. It highlighted a number of bodies which appeared to meet the criteria of being substantially funded from public money but were (and remain) outside the Ombudsman’s remit. The bodies listed were:

- The Assembly Commission
- Northern Ireland Audit Office
- Schools
- Universities
- Colleges of Further Education
- General Teaching Council for Northern Ireland
- Northern Ireland Higher Education Council
- Northern Ireland Council for Integrated Education
- Integrated Education Fund
- Drainage Council
- Historic Buildings Council
- Historic Monuments Council
- Armagh Observatory and Planetarium

The review did not define ‘substantially funded’. However, in 2005 Audit Scotland published a report on Scottish Councils’ funding of arms-length bodies. Although the report was aimed at Scottish local authorities, it may provide a useful starting point for consideration of ‘following the public pound’ in the context of the Northern Ireland Ombudsman. The report contained a ‘Code of Guidance on Funding External Bodies and Following the Public Pound’ which stated:

It is important to ensure clear public accountability for public funds at the same time as supporting initiatives for securing quality local authority services in the most effective, efficient and economic manner...The guidance should apply to any new substantial funding relationships...What is substantial will vary according to circumstances. When interpreting ‘substantial’, councils should have regard to the significance of the funding in relation to their own

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<sup>15</sup> Review of the Offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints – Final Report, March 2004

<sup>16</sup> As above

budgets and to the budget of the external body. We do not, for example, intend this guidance to apply to the many small revenue grants which councils make to community groups annually<sup>17</sup>.

Since the Deloitte review, Housing Associations have been added to the remit of the Commissioner for Complaints under the Housing (Northern Ireland) Order 2003. This reflected the “change in emphasis in the work of the Housing Executive in Northern Ireland. Rather than being a direct provider of housing, the Housing Executive (was) becoming a funding body and policy maker”<sup>18</sup>.

An example of an organisation in receipt of public money but currently outside the remit of the Ombudsman is the Northern Ireland Hospice, which is contracted by the Department of Health, Social Services and Personal Safety to provide beds for people in need of palliative care. However, in extending the remit of the Ombudsman to include bodies in receipt of public funds, consideration needs to be given to where the line will be drawn regarding the inclusion and exclusion of organisations subject to investigation. Allowing the Ombudsman to investigate complaints of maladministration against any organisation in receipt of public funds could, in theory, extend his remit to include voluntary and community organisations. It could be argued that this would place an undue burden on relatively small organisations.

Currently, under the Northern Ireland Ombudsman Order 1996 an organisation may only be included in the list of relevant authorities if it is a government department or an authority whose functions are exercised on behalf of the Crown. The Commissioner for Complaints may investigate a department or a body which either exercises functions conferred on it by statutory provision or has its expenses substantially defrayed out of monies appropriated by Measure.

The office of the Public Services Ombudsman in Wales has advised that in its view if a complaint is made against a private company carrying out an activity on behalf of a public body, then it is the responsibility of the public body to answer the complaint. It also advised that it does not seek to pursue voluntary or community groups.

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<sup>17</sup> Audit Scotland 'Following the Public Pound' 2004

[http://www.audit-scotland.gov.uk/docs/local/2003/nr\\_040311\\_following\\_public\\_pound.pdf](http://www.audit-scotland.gov.uk/docs/local/2003/nr_040311_following_public_pound.pdf)

<sup>18</sup> Mary Seneviratne, 'Ombudsmen: Public Services and Administrative Justice' Butterworths, 2002

# Annex 1

## **PROTOCOL**

**between**

**the Scottish Public Services Ombudsman,**

**the Chief Investigating Officer**

**and**

**the Standards Commission for Scotland**

### **Introduction**

1. The Scottish Public Services Ombudsman ("the Ombudsman") has the functions set out in the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act").
2. The Chief Investigating Officer ("the CIO") has the functions set out in the Ethical Standards in Public Life etc. (Scotland) Act 2000 "the 2000 Act").
3. The Standards Commission for Scotland has the functions set out in the 2000 Act.
4. The Ombudsman, the CIO and the Standards Commission recognise that their respective functions and responsibilities are related and wish to set out, in this Protocol, arrangements for co-operating and working together to best advantage.

### **Purpose of the Protocol**

5. The Ombudsman, the CIO and the Standards Commission agree that the purpose of the Protocol is to articulate shared aims and objectives which are –
  - to set out arrangements for co-operation to ensure that the Ombudsman's Office, the Office of the CIO and the Standards Commission can fulfil their respective statutory responsibilities as fully, effectively and efficiently as possible.
  - to liaise together and facilitate working arrangements in dealing with complaints where there is – or may be – overlapping jurisdiction.
  - to help complainants where complaints could be made to the three organisations.

- to work together in apprising the public and affected authorities of the respective responsibilities of the three organisations.
- to review periodically the terms and scope of the Protocol.

### **Statutory Responsibilities and Jurisdictions**

#### **Ombudsman**

6. The functions of the Ombudsman include investigating and reporting on complaints of maladministration involving injustice or hardship in respect of any of the authorities listed in the 2000 Act (as amended).

#### **The CIO**

7. The functions of the CIO include investigating and reporting to the Standards Commission on cases in which a councillor or a member of a devolved public body (as listed in schedule 3 to the 2000 Act (as amended)) may have contravened the Councillors' or, as the case may be, the Members' Code of Conduct.

#### **The Standards Commission**

8. The functions of the Standards Commission include adjudicating on reports of alleged misconduct submitted by the CIO following his investigation of a complaint properly made in relation to councillors of local authorities and members of public bodies.

### **Consultation and Co-operation**

9. The Ombudsman, the CIO and the Standards Commission agree that where the functions of one organisation affect the functions of the other, they will consult and co-operate together in order to fulfil their respective statutory responsibilities as fully, effectively and efficiently as possible.
10. Before issuing any general guidance, publicity or information to the public or affected authorities about any aspect of their responsibilities, each organisation will consider the extent to which it might be useful or helpful (i) to refer in such guidance, publicity or information to the responsibilities and remit of the other organisation or (ii) to issue such guidance, publicity or information jointly.
11. Where a member of the public makes a general enquiry (not a specific complaint) to one organisation which is more appropriate for the other organisation, then that person may be advised to put the enquiry to another organisation. The other organisation should be advised of the referral.

### **Liaison on Complaints**

12. The Ombudsman and the CIO recognise that certain complaints may be submitted (or may be capable of being submitted) to both organisations. In these circumstances, it would be useful for both organisations to liaise together while having regard to the provisions relating to confidentiality and disclosure of information set out in sections 19 and 20 of the 2002 Act and section 12 of the 2000 Act. Subject to these provisions, the Ombudsman's Office and the Office of the CIO will liaise regarding complaints as set out in paragraphs 13 to 18 below.

#### **Complaint within one organisation's jurisdiction only**

13. In such a case, the organisation will deal with the complaint follow its own procedures, without reference to the other.

#### **Complaint made to both organisations**

14. In such a case, each organisation will consider whether it would be appropriate - having regard to their respective statutory responsibilities for investigating the complaint - to discuss the complaint with the other, with a view to sharing information that would be of assistance to the respective investigations.

#### **Complaint made to one organisation, that could also be made to the other**

15. In such a case, the organisation that receives the complaint will consider whether it would be useful to the complainant for the complaint also to be referred to the other organisation. If so, the organisation will either (a) recommend to the complainant that the complaint could be referred to the other organisation and provide contact information for that purpose or (b) with the complainant's written consent, refer the complaint to the other organisation.

#### **Complaints made wrongly to either organisation**

16. In such a case, the organisation that receives the complaint will either (a) recommend to the complainant that he or she should refer the complaint to the other organisation or (b) with the complainant's written consent, refer the complaint to the other organisation.

#### **Complaint where jurisdiction is unclear**

17. In such a case, the organisation that receives the complaint will liaise with the other organisation to clarify responsibility for dealing with the complaint.

**Operational Contact on Individual Cases**

18. Contact on conducting individual cases will be made by staff authorised to act on behalf of the Ombudsman and the Standards Commission. In the case of the Standards Commission that person will be its CIO.

**Commencement of the Protocol**

19. The Protocol will take immediate effect (and supersedes the Protocol entered into on 29 April 2003).

**Review of the Protocol**

20. The Ombudsman, the CIO and the Standards Commission agree to review the Protocol from time to time and, in any event, every fourth year.

Signed:

Date:

*James B. Martin*  
7 May 2010  
**Jim Martin**  
Scottish Public Services Ombudsman

Signed:

Date:

*Ian Gordon*  
27 April 2010  
**Ian Gordon**  
Convener  
The Standards Commission for  
Scotland

Signed:

Date:

*D. Stuart Allan*  
28 April 2010  
**D Stuart Allan**  
Chief Investigating Officer