



Northern Ireland
Assembly

Research and Information Service Briefing Note

Paper 000/00

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NIAR 604-11

Ray McCaffrey and Leigh Egerton

1 Introduction

This briefing note has been prepared for the Committee for the Office of the First Minister and Deputy First Minister to inform its proposals to reform and update the office of the Northern Ireland Ombudsman. The Committee asked for information on the role/remit, salaries, staffing, date of establishment and accountability arrangements of the following offices:

- Commission for Victims and Survivors
- Northern Ireland Children's Commissioner
- Older Persons Commissioner
- Northern Ireland Assembly Commissioner for Standards
- Chief Equality Commissioner
- Chief Human Rights Commissioner
- Chief Executive of the Strategic Investment Board

	Role and remit	Salary and staff	Date established/appointed	Reporting/accountability
Victims Commissioners	<p>The principal aim of the Commission is to promote the interests of victims and survivors of the conflict in Northern Ireland.</p> <p>The Commission has six statutory duties:</p> <ul style="list-style-type: none"> • To promote awareness of matters relating to the interests of victims and survivors and the need to safeguard those interests • To keep under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors • To keep under review the adequacy and effectiveness of services provided for victims and survivors • To provide advice to government on matters affecting victims and survivors • To ensure that the views of victims and survivors are sought by the Commission in carrying out its work • To make arrangements for a forum for consultation with victims and survivors 	<p>£65,000 each for the three Commissioners</p> <p>Supported by eleven staff¹.</p> <p>The Secretary to the Commission is responsible for supporting the work of the Commission and the day-to-day management of the organisation.</p> <p>The Secretary is supported by two deputies whose responsibilities cover policy and research and corporate services.</p>	<p>Established in May 2008 under the Victims and Survivors Act (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008</p>	<p>NDPB within OFMDM</p> <p>OFMDM keeps the working arrangements under review and approve the plan of work for the Commission.²</p> <p>DFP approves accounting reports.</p> <p>Annual report laid before Assembly and Secretary of State by OFMDM.³</p>

	Role and remit	Salary and staff	Date established/appointed	Reporting/accountability
Children's Commissioner	<p>The Commissioner for Children and Young People for Northern Ireland's principal aim is to safeguard and promote the rights and best interests of children and young persons.⁴</p> <p>The Commissioner for Children and Young People for Northern Ireland's principal aim is to 'safeguard and promote the rights and best interests of children and young persons'. While the detailed powers are set out in the legislation, they may be grouped under three main areas as follows:</p> <ul style="list-style-type: none"> • Promoting children's rights <ul style="list-style-type: none"> - the Commissioner will be guided by the United Nations Convention on the Rights of the Child (UNCRC), an international agreement setting out how children should be treated and the rights that they have; • Complaints and legal action <ul style="list-style-type: none"> - the Commissioner can deal with individual complaints from children and young persons, or their parents/guardians about any services that impact on those under 18 years of age (or under the age of 21 for those with a disability or leaving care); 	<p>£75-80,000 for the Commissioner</p> <p>Supported by 25 staff⁵.</p> <p>Key posts include Chief Executive, Head of Legal and Casework, Head of Policy and Research, Head of Communications and Participation</p>	<p>Established under the Commissioner for Children and Young People (Northern Ireland) Order 2003. Established 1st October 2003</p> <p>Current Commissioner appointed in December 2006</p>	<p>NDPB within OFMDFM</p> <p>DFP approve accounting reports.</p> <p>Annual report must be submitted to OFMDFM and laid before Assembly and Secretary of State by OFMDFM.⁶</p>

	Role and remit	Salary and staff	Date established/appointed	Reporting/accountability
	<ul style="list-style-type: none"> Research and enquiries - the Commissioner will base all her work on thorough research and evidence. The Commissioner has the power to undertake general enquiries into issues where she believes children and young people are being adversely affected. The Commissioner is also required to review the ways that those providing services for children and young people listen to complaints and take account of their views. 			

	Role and remit	Salary and staff	Date established/appointed	Reporting/accountability
Older Person's Commissioner	<ul style="list-style-type: none"> • Promote an awareness of matters relating to the interests of older people and of the need to safeguard those interests ; • Keep under review the adequacy and effectiveness of the law and practice relating to the interests of older people; • Keep under review the adequacy and effectiveness of the services provided to older people by relevant authorities; • Promote the provision of opportunities for, and the elimination of discrimination against, older people; • Encourage best practice in the treatment of older people; • Promote positive attitudes towards older people and encourage participation by older people in public life; 	£60,000.7 . Staff yet to be appointed.	Established under the Commissioner for Older People Act (Northern Ireland) 2011 The first Commissioner was appointed in October 2011 and took up her post on 14 November 2011	NDPB within OFMDFM DFP approve accounting reports. Annual report must be submitted to OFMDFM and laid before Assembly and Secretary of State by OFMDFM. ⁸

	Role and remit	Salary and staff	Date established/appointed	Reporting/accountability
	<ul style="list-style-type: none"> • Advise the Assembly, the Secretary of State and a relevant authority on matters concerning the interests of older people (this could cover any issue); • Take reasonable steps to make older people aware of the existence and functions of his/her office and its location; • Take reasonable steps to encourage older people to communicate with the Commissioner and his or her staff and to seek the views of older people; and • Make themselves or their staff available, as far as is practicable, at a place convenient for older people. 			

	Role and remit	Salary and staff	Date established/appointed	Reporting/accountability
Standards Commissioner (Northern Ireland Assembly)	<p>To receive and investigate complaints and other issues concerning Members of the Assembly and to report to the Assembly on the outcome of investigations⁹.</p> <p>The Act allows for the Commissioner to have the power to call for witnesses and documents and creates offences in relation to refusing to provide or otherwise failing to give evidence.</p>	<p>£380 per day plus annual retainer of £3,800.¹⁰</p> <p>Commissioner and staff yet to be appointed.</p>	<p>Established under the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011</p>	<p>Commissioner will be an Officer of the Assembly</p> <p>Must lay before the Assembly an annual report of the commissioner's activities, including the use of financial resource.</p> <p>Should provide the Commission with information the commissioner's financial affairs.¹¹</p>
Chief Equality Commissioner	<p>To advance equality, promote equality of opportunity, encourage good relations and challenge discrimination through promotion, advice and enforcement.¹²</p>	<p>£80-85 for Chief Equality Commissioner.¹³ Supported by 125 staff.¹⁴</p> <p>Current Chief Commissioner appointed in August 2005.</p> <p>Key aspects of the organisational structure include strategic enforcement, Policy and Development, Promotion and Education, Employment Development and Corporate Services</p>	<p>Established under section 73 of the Northern Ireland Act 1998.</p>	<p>NDPB within OFMDFM</p> <p>Submit a corporate plan to OFMDFM for approval.¹⁵</p> <p>Provide an annual report to OFMDFM.¹⁶</p>

	Role and remit	Salary and staff	Date established/appointed	Reporting/accountability
Chief Human Rights Commissioner	In charge of the work of the commission which is to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice and to advise government on what steps need to be taken to fully protect human rights in Northern Ireland. ¹⁷	£77,000 for Chief Commissioner. ¹⁸ Supported by 21 staff. ¹⁹	Created under Section 68 of the Northern Ireland Act 1998. Came into existence in March 1999	The Commission provides an annual report to the Secretary of State that is then laid before parliament. ²⁰ NDPB funded by the Northern Ireland Office.
Chief Executive of the Strategic Investment Board	Oversee the strategic investment board, who are tasked with overseeing the investment strategy and the ten year plan for investment infrastructure and supporting the procurement and delivery of major infrastructure projects. ²¹	Previous Chief Executive had earned £210,000 in 2009 although this had dropped to £159,000 in 2010. The SIB currently has an interim Chief Operating Officer and CEO. Supported by 33 staff. ²²	Following the announcement of the Reform and Reinvestment Initiative in 2002, the SIB was established in 2003 under the terms of the Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003	SIB is a company limited by guarantee. It is owned by OFMDM and financed from within its departmental expenditure limit. The Board of SIB is accountable to OFMDM.

*Date established denotes the date the legislation was enacted for the creation of the organisation, not the date the organisation became active

Footnotes

- 1 Email from the Commission received 01/11/2011
 - 2 Commission for Victims and Survivors (2011) Annual Report 2009-2010
 - 3 Commission for Victims and Survivors Act (Northern Ireland) 2008, c.6 Schedule 1
 - 4 The Commissioner for Children and Young People in Northern Ireland (2010) Annual Report and Accounts for the Year that Ended 31st March 2010" Available at: [http://www.niccy.org/uploaded_docs/2010/publications/NICCY%20Annual%20Report%209-10%20final%20\(Dec%2010\).pdf](http://www.niccy.org/uploaded_docs/2010/publications/NICCY%20Annual%20Report%209-10%20final%20(Dec%2010).pdf) Accessed: 02/11/2011
 - 5 As above.
 - 6 Commissioner for Children and Young People (Northern Ireland) Order 2003, No. 439 (N.I. 11), Schedule 2
 - 7 OFMDFM Press Release, 3 October 2011: http://www.northernireland.gov.uk/news-ofmdfm-031011-first-commissioner-for?WT.mc_id=rss-news
 - 8 Commissioner for Older People Act (Northern Ireland) 2011, c.1 Schedule 1
 - 9 Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 c.17
 - 10 Northern Ireland Assembly (2011), "The Northern Ireland Assembly Commissioner for Standards (1 Appointment)". Available at: http://www.niassembly.gov.uk/personnel/2011/pb/pb_002_11_ad.htm Accessed: 02/11/2011
 - 11 Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 c.17 Schedule 4
 - 12 Equality Commission "About Us" Available at: <http://www.equalityni.org/sections/default.asp?secid=0> Accessed: 02/11/2011
 - 13 Equality Commission 2011 Annual Report: <http://www.equalityni.org/archive/pdf/EqualityCommAR2011.pdf>
 - 14 Email from Equality Commission.
 - 15 Equality Commission (2009), Reaching out to the whole community: Corporate Plan 2009-2012 Available at: <http://www.equalityni.org/archive/pdf/ECNICorporateplan0912.pdf> Accessed: 02/11/2011
 - 16 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 No. 481 Schedule 2
 - 17 Northern Ireland Human rights Commission "About Us" http://www.nihrc.org/index.php?option=com_content&task=view&id=7&Itemid=12 Accessed: 02/11/2011
 - 18 House of Lords Written answers, 13 October 2011 Available at: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111013w0001.htm#11101332000127> Accessed: 02/11/2011
 - 19 Northern Ireland Human Rights Commission "Commission Staff" Available at: http://www.nihrc.org/index.php?option=com_content&task=view&id=21&Itemid=26 Accessed: 03/11/2011
 - 20 Northern Ireland Act (1998), c. 47 Schedule 7
 - 21 The Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003 No. 410 (N.I. 1) Part II Article 3
 - 22 Strategic Investment Board (2010), Annual report 2009-2010 Available at: http://www.sibni.org/sib_annual_review_and_financial_statements__2009-10.pdf Accessed: 02/11/2011
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Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

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Ray McCaffrey

Power of Northern Ireland Ministers or Secretary of State to order non-disclosure of documents

1 Introduction

This briefing paper has been prepared to inform the work of Committee for the Office of the First Minister and deputy First Minister in relation to updating the legislation surrounding the Northern Ireland Ombudsman. The paper was asked to address:

What powers/options, if any, are available to the Secretary of State or Head of a Northern Ireland Department where he or she considers that the disclosure of certain information or documents would be prejudicial to the safety of Northern Ireland or the UK or otherwise contrary to the public interest.

The current legislation relating to the Northern Ireland Ombudsman¹ contains provision that allows the Secretary of State to give notice to the Ombudsman that the disclosure of certain information that would be prejudicial to the public interest. Similar provisions exist in all UK and Ireland Ombudsman legislation.

The paper focuses on the Freedom of Information Act 2000 as the most relevant piece of legislation regulating the flow of information between public authorities and the public. However, the paper cannot be conclusive that other relevant provisions do not exist elsewhere in legislation.

1 Commissioner for Complaints (Northern Ireland) Order 1996 and Ombudsman (Northern Ireland) Order 1996

2 Relevant Ombudsman legislation

The Northern Ireland Ombudsman has significant power to require the production of information and documents relevant to an investigation under section 14 of the 1996 Ombudsman Order. However, section 14(5) restricts this power in respect of information relating to the Northern Ireland Executive.

The following table outlines the relevant Ombudsman legislation in the UK and Ireland regarding the power of Ministers/Secretary of State to order the non-disclosure of information.

It would appear that under the Northern Ireland legislation, the Secretary of State or a Department may be obliged to furnish the Ombudsman with documentation, but can subsequently give notice that the information should not be disclosed. The question remains whether the Ombudsman can be ordered to not publish information, or merely advised.

Table 1: Ombudsman legislation relating to non-disclosure of information

<p>Northern Ireland</p> <p>Section 19 (3)and(4) of the Ombudsman (Northern Ireland) Order 1996</p> <p>(3) The Secretary of State or the head of a department may give notice in writing to the Ombudsman with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of Northern Ireland or the United Kingdom or otherwise contrary to the public interest.</p> <p>(4) Where a notice is given under paragraph (3) nothing in this Order shall authorise or require the Ombudsman or any officer of the Ombudsman to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.</p> <p>Similar provision exists in the Commissioner for Complaints (Northern Ireland) Order 1996</p>
<p>Scotland</p> <p>Section 19 of the Scottish Public Services Ombudsman Act 2002</p> <p>(6) A member of the Scottish Executive may give notice in writing to the Ombudsman with respect to</p> <p>(a) any document or information specified in the notice, or</p> <p>(b) any class of document or information so specified, that, in the opinion of the member of the Scottish Executive, the disclosure of the document or information, or of documents or information of that class, would be contrary to the public interest.</p> <p>(7) Where such a notice is given nothing in this Act is to be construed as authorising or requiring the Ombudsman or any of the Ombudsman's advisers to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified</p>
<p>Wales</p> <p>Section 27 of the Public Services Ombudsman (Wales) Act 2005</p> <p>(1)A Minister of the Crown may give notice to the Ombudsman with respect to</p> <p>(a)any document or information specified in the notice, or</p> <p>(b)any class of document or information so specified, that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest</p> <p>(2)If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice</p>

England

Parliamentary Commissioner Act 1967

3)A Minister of the Crown may give notice in writing to the Commissioner, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest; and where such a notice is given nothing in this Act shall be construed as authorising or requiring the Commissioner or any officer of the Commissioner to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

Ireland

Section 9 of the ombudsman Act 1980

2) (a) A Minister of the Government may give notice in writing to the Ombudsman, with respect to any document, information or thing specified in the notice, or any class of document, information or thing so specified, that, in the opinion of the Minister of the Government, the disclosure (other than to the Ombudsman or officers of the Ombudsman) of that document, information or thing or of documents, or information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest.

(b) The Revenue Commissioners may give notice in writing to the Ombudsman, with respect to any document, information or thing in their power or control specified in the notice, or any class of such document, information or thing so specified, that in the opinion of the Revenue Commissioners the disclosure (other than to the Ombudsman or officers of the Ombudsman) of that document, information or thing or of documents, information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest.

(c) Where a notice is given under this subsection, nothing in this Act shall be construed as authorising or requiring the Ombudsman or any officer of the Ombudsman to communicate to any person or for any purpose any document, information or thing specified in the notice or any document, information or thing of a class so specified.

Use of Ministerial power on non-disclosure

The Parliamentary and Health Services Ombudsman (England) has reported two occasions on which Ministers have intervened to give notice regarding non-disclosure of information. The following is an extract from her report Access to Official Information: Monitoring of the Non-statutory Codes of Practice 1994-2005²:

Section 11(3) cases

Under section 11(3) of the Parliamentary Commissioner Act 1967 it is possible for a Minister of the Crown to give notice that, in respect of any document or information, in the opinion of the Minister ‘...disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the state or otherwise contrary to the public interest.’ Throughout the duration of the Ombudsman’s office there was no evidence to suggest that this power had ever been used before: in 2003 it occurred twice, both times in (non-statutory) Code cases. In both instances, the issuing of the notice resulted in the Ombudsman deciding to discontinue her investigation.

(In the first case the Cabinet Secretary certified that the information sought about the development of policy leading up to the Human Rights Act 1998 related to the proceedings of a Cabinet Committee and could not, therefore, be provided to the Ombudsman).

The second...in which the bodies complained about were the Lord Chancellor’s Department and the Cabinet Office, has a more complicated history. In this case, which also related to the private interests of Ministers, a similar notice was issued. As before, the Ombudsman discontinued her investigation. However, in this case the complainant, a journalist, took the step of seeking a judicial review of the Government’s decision to issue the section 11(3) notice. Shortly before the hearing was due to take place the Government withdrew the notice, enabling the Ombudsman to re-open the investigation. Once again, however, the departments concerned, in particular the Cabinet Office, handled matters very poorly, resulting in a failure to respond to the Office’s recommendations despite repeated promptings. The Ombudsman therefore had to issue a report without the benefit of any substantive comments from the departments.

3 Freedom of Information

The Freedom of Information Act 2000 provides access to information held by public authorities. It does this in two ways:

- public authorities are obliged to publish certain information about their activities and
- members of the public are entitled to request information from public authorities

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland’s own Freedom of Information (Scotland) Act 2002³.

Exemptions

There are a number of exemptions under the FOI Act. These are listed in sections 21 to 44 of the Act. Some of the key exemptions are:

- Section 28 - relations between the UK government, the Scottish Executive, the Welsh Assembly and the Northern Ireland Executive
- Section 35 – government policy
- Section 36 – prejudice to the effective conduct of public affairs

The Office of the Information Commissioner provides the following guidance in relation to exemptions under sections 35 and 36:

The section 35 exemption can only be claimed by government departments or by the Welsh Assembly Government. It is a class-based exemption, for information relating to:

- the formulation or development of government policy
- communications between ministers

3

http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/act.aspx

- advice from the law officers
- the operation of any ministerial private office

Section 35 is qualified by the public interest test.

For policy-related information held by other public authorities, or other information that falls outside this exemption but needs to be withheld for similar reasons, the section 36 exemption applies.

The section 36 exemption applies only to information that falls outside the scope of section 35. It applies where complying with the request would prejudice or would be likely to prejudice “the effective conduct of public affairs”. This includes, but is not limited to, situations where disclosure would inhibit free and frank advice and discussion⁴.

Furthermore, Section 44 of the Act exempts information from disclosure if other legislation would prevent its release. Unlike other exemptions in the FOI Act, Section 44 can be applied in circumstances where there is an overriding public interest in making information available. The FOI Act didn’t automatically repeal all other laws that prohibit public bodies from releasing information. However, it was anticipated that over time there would be fewer areas where FOI could not extend to.

- Guidance on the FOI Act further states:
- Information is exempt under section 36 if a qualified person reasonably considers that its disclosure would or would be likely to prejudice (among other things) the work of the Executive Committee of the Northern Ireland Assembly. A ‘qualified person’ means the Northern Ireland Minister in charge of the department in respect of information held by a Northern Ireland department, the Presiding Officer in respect of information held by the Northern Ireland Assembly, the Comptroller and Auditor General in respect of information held by the Northern Ireland Audit Office, and the public authority or any officer or employee thereof authorised by the First Minister and Deputy First Minister acting jointly in respect of information held by any Northern Ireland public authority other than the Northern Ireland Audit Office⁵.

The Ministerial veto:

- In the ordinary course of a request under the Act and subject to rights of appeal to the Information Tribunal and the courts, the Information Commissioner is the final arbiter as to whether or not information is to be disclosed
- Section 53 of the Act creates a controversial exception, which has been referred to as an ‘executive override’ and amounts in effect to a ministerial veto on disclosure. A decision notice or enforcement notice ceases to have effect if, no later than 20 working days after the effective date, an ‘accountable person’ in relation to the public authority certifies in writing that he has, on reasonable grounds, formed the opinion that there was no failure to comply with section 1(1) of the Act. In Northern Ireland, the accountable person is the First Minister and deputy First Minister acting jointly.

4 Conclusion

It would appear that under the Northern Ireland Ombudsman legislation, the Secretary of State or a Department may be obliged to furnish the Ombudsman with documentation, but can subsequently give notice that the information should not be disclosed. The question remains whether the Ombudsman can be ordered to not publish information, or merely advised.

⁴ http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/refusing_a_request.aspx

⁵ MacDonald, Crail and Jones, *The Law of Freedom of Information*, 2nd edition, Oxford, 2009

As regards powers to withhold disclosure of information, the Freedom of Information Act 2000 is the principal piece of legislation which governs access to information and provides public authorities with grounds for withholding information requested from them.

Whilst the Ombudsman is subject to the Fol Act, the ombudsman legislation itself contains provisions relating to access to information and the interplay between these provisions, Fol and other legislation providing access to information is complex. The office of the Ombudsman itself has produced a policy document which outlines obligations under various 'access to information' legislation⁶ and includes a Memorandum of Understanding with the Information Commissioner's Office.

Unlike the Northern Ireland Ombudsman legislation, both the Scottish and Welsh Ombudsman legislation was updated following the introduction of FOI Acts. Whilst the issue of how the 'Executive restriction squared' with the then Freedom of Information (Scotland) Bill was noted during the Committee stage of the ombudsman legislation in the Scottish Parliament, no substantial debate on the issue took place. Similarly, it appears that no consideration was given to the relationship between the Fol and the 'Executive restriction' during parliamentary passage of the Welsh Ombudsman legislation.⁷

6 <http://www.ni-ombudsman.org.uk/niombudsmanSite/files/08/08f9065a-fa6a-4b25-88bd-2cb9fab93150.doc>

7 <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=2769>