



Ombudsman Northern Ireland

Mr Mike Nesbitt MLA
Chair of Committee for OFMdfM
Room 435
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

2nd July 2015

Dear *Mr Nesbitt,*

NIPSO BILL – REQUESTED AMENDMENT TO SCHEDULE 1 OF THE NIPSO BILL

I refer to the current draft of the proposed NIPSO bill and in particular schedule 1 of the Bill as it is currently drafted relates to delegation by the NIPSO only to members of staff (paragraph 14) as follows:

'5) Any function of the Ombudsperson may be performed by any member of staff of the Ombudsperson authorised by the Ombudsperson for that purposes'

I would be obliged if the Committee would consider amendment to extend the power of delegation to 'any other person'. This is to deal with two possible circumstances that may arise.

Firstly, such a provision would allow the NIPSO to invite another Ombudsman to undertake an investigation if the NIPSO were conflicted and also members of his senior staff were also conflicted. For instance, if the complaint were from a former member of NIPSO staff or about a body that the new NIPSO may have been employed by previously, in the interests of openness and transparency it would be important that another Ombudsman deals with the complaint. Currently I have a Protocol with my Scottish and Welsh colleagues in relation to cases where they are personally conflicted and I attach a copy for your information.

Secondly, I am aware that some stakeholders have requested an external review process and that the Committee is considering this issue. I am aware from my colleague in Scotland that this can be an expensive process and would suggest that an alternative would be to make provision in the NIPSO Bill for delegation to another person such as another Ombudsman.

I am also writing to the Chair of the Ad Hoc committee in similar terms.

ASSEMBLY OMBUDSMAN FOR NORTHERN IRELAND
NORTHERN IRELAND COMMISSIONER FOR COMPLAINTS

Your officials are most welcome to contact me for any clarification that may be required regarding this matter. May I take this opportunity to wish you as Chair and the members of the Committee and staff a very enjoyable summer recess.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Dr Tom Frawley'. The signature is fluid and cursive, with a long, sweeping underline that extends downwards and to the right.

Dr Tom Frawley CBE
Northern Ireland Ombudsman

Protocol

between

The Scottish Public Services Ombudsman (Transferor)

and

Northern Ireland Ombudsman (Transferee)

For Delegation of the Investigation Function of the Transferor

Definitions: The Transferor shall be the Scottish Public Services Ombudsman (SPSO)

The Transferee shall be the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints (NIO)

The Parties shall mean SPSO and the NIO

1. Introduction

This Protocol is made pursuant to paragraph 12 of schedule 1 of the Scottish Public Services Act 2002 (SPSO Act) or Transferor equivalent. The purpose of this Protocol is to describe the arrangements for transferring the investigation of a complaint between the SPSO and the Northern Ireland Ombudsman.

Both SPSO and the Northern Ireland Ombudsman have policies and procedures in place to ensure that conflicts of interest whether real or perceived are managed appropriately. As part of that management, they have agreed that in some cases, the complaint should be investigated by the other body. This Protocol sets out the arrangements for an investigation.

Nothing in this Protocol affects the individual accountability of each party and they remain responsible for the decision in any complaint transferred by them.

2. Responsibility for the decision in relation to the complaint

The Transferor remains responsible for the decision in relation to the complaint which has been transferred by them. This Protocol does not change or impact on any statutory obligations of the Transferee. The Transferor is responsible for ensuring that the transfer is appropriate and does not conflict with their statutory powers and functions.

The final decision to delegate an investigation remains with the Transferor.

It is important that the Transferee recognises throughout that they are acting not in their own capacity but with the delegated authority of the Transferor and that this may impact on how they can conduct any investigation.

3. Making the Transfer

Prior to the transfer of any information relating to the complaint an agreement will be signed by the Transferor and Transferee which provides the Transferee with the delegated authority of the Transferor. The authorisation will be in a standard format to be agreed between the bodies and can be amended for specific situations if required. The authorisation will contain as a minimum the following details:

- For the Transferee to have the delegated powers of the Transferor for the purposes of investigating a particular complaint;
- The details of the complaint has been agreed with the complainant by the Transferor;;
- The complaint has been accepted by the Transferor as lying with the Transferor's jurisdiction;
- That the delegated authority extends to specified members of the Transferee's staff;
- Where appropriate, that the Transferee confirms they agree that any information obtained by them in relation to the complaint should not be retained permanently but returned in full at the conclusion of the investigation and any copies held whether electronically or otherwise destroyed in accordance with the Transferor's retention and destruction schedule. In the event of any subsequent legal proceedings, the Transferor will provide the Transferee with all relevant information for the purposes of giving any witness statement or other evidence;
- While investigating the complaint the Transferee will ensure appropriate security measures are undertaken in respect of the information received from the Transferor and any further information obtained;
- That the delegated authority will continue for the duration of the investigation and this may include some work beyond the submission of the report to the parties; and
- That the delegated authority will include the ability to take appropriate action where the Transferee becomes aware of a real and immediate risk to any person.

For the avoidance of doubt, the terms of the authorisation will not alter the Transferor's or Transferee's joint responsibility to ensure security of the personal data they hold in accordance with the seventh data protection principle. Both Transferor and Transferee will ensure they act in accordance with the Information Acts¹ throughout. Where this may differ between jurisdictions, the Transferor and Transferee will at all times apply the relevant statutory provisions in relation to requests for information.

Once the authorisation has been agreed the Transferor will provide the Transferee with the following:

¹ Information Acts are the Data Protection Act 1998, Freedom of Information Act 2000 [in Scotland the relevant legislation is the Freedom of Information (Scotland) Act 2000] and Environmental Information Regulations 2004.

- A statement of complaint as agreed with the complainant;
- All relevant information obtained relating to the complaint;
- Contact details for the complainant and the body complained of and confirmation that both parties to the complaint have been informed of the transfer, and the identify of the Transferee as well as the purposes for which their personal information will be processed and to whom it may be disclosed, to include information about any reasonable adaptations that have been made;
- The legislative provisions which may be relevant to the investigation of the particular complaint.

4. Conduct of an Investigation

The Transferee will conduct the investigation in accordance with the delegated authority and with any statutory provisions relating to the complaint. The Transferee need not comply with specific process or guidance set out by the Transferor which would apply to their own staff. This recognises that it would be difficult for either body to have in place identical or to accommodate a completely new investigation process or practice.

5. Information and Document Storage

It is important that it remains possible for the quality of the investigation to be assessed by the Transferor and during the investigation the Transferee will ensure that:

- All information and documents received are carefully stored electronically on a secure network and details kept for the duration of the investigation;
- Hard copies are kept of all communications relating to the complaint;
- Clear file notes are made which can show the reasons behind requests for information and any decisions made under the authorisation;
- Updates on progress are sent to the complainant and Transferor on a six-weekly basis.

The Transferee will decide how to conduct the investigation and this will include how often and how they communicate with the parties involved. However, the Transferee should be aware that any complaint about the service provided will be dealt with in line with the Transferor's service complaint process as they remain responsible for ensuring the quality of the service that is delivered in accordance with section 11 below.

6. Expert Advice

The Transferee may obtain expert advice if they consider this is required. As the Transferor may already have agreements in place with expert advisers, they should first contact the Transferor to see if an advisor is already available. If not they will need to seek formal and written confirmation for the expenditure from the Transferor prior to using an external adviser.

7. Expenses

The Transferee is also entitled to have any travel and subsistence expenses refunded in relation to this investigation that have had prior written approval of the Transferor. This is also required if it appears that the cumulative expenses below the agreed limit will go above that level.

8. New matters and evidence of risk that arise during an investigation

If during an investigation it appears to the Transferee that new issues or significant information which may indicate a risk to any person or which raise some concern have arisen, they should immediately contact the Transferor. It is a matter for the Transferor to decide whether any new issue should be dealt with alongside the original complaints agreed. The Transferor will also decide how to deal with information that indicates a risk to any person. The exception to this is when the Transferee becomes aware of an imminent and real danger to any person. In these circumstances they can act immediately and inform the relevant person and the Transferor as soon as possible in accordance with the Transferor legislation.

9. Conclusion of the Authorisation

At the conclusion of their investigation, the Transferee should send to the Transferor by recorded delivery/secure mail:

- All documents/information received by the Transferee relating to the complaint;
- All evidence obtained during the investigation;
- All documents created by the Transferee during the investigation;
- A report on the investigation which should include:
 - Details of steps taken
 - Summary of evidence obtained
 - Details of findings and conclusions
 - Recommendations about:
 - Whether or not the complaint should be upheld
 - The injustice that has been caused in consequence of the maladministration or service failure and those elements that may require a remedy
 - Remedy that may be appropriate
 - A statement that all information held by them in connection with this matter has been returned and anything held on the Transferor's system has been destroyed.
 - Confirmation that the complainant and the body have both been informed that the complaint has been returned and that they should expect to receive the final report from the Transferor.

10. Decisions and Recommendations

When making recommendations the Transferor must consider:

- The decision will remain that of the Transferor;
- The recommendations ultimately made will need to be in line with the Transferors own powers and policy on redress.

11. Dealing with Disputes and Complaints

The decision to transfer does not prevent the complainant or the body from using any of the systems or processes in place by the Transferor for dealing with challenges to the decision or complaints about service. This will include any arrangement the Transferor may have for independent review. This point should be made clear by the Transferor to the complainant and body when they explain that the complaint has been transferred.

If a complaint or challenge relates to any aspect of the Transferee's involvement they should inform the Transferee who will have an opportunity to make representation. The final decision will remain with the Transferor who should inform the Transferee of the outcome.

In some cases when a decision is made to reopen a complaint on the basis of a challenge, it may be appropriate for the Transferor to ask the Transferee to undertake some additional work. This may occur when, for example, new evidence has been provided by the complainant. The authorisation will include this work. The Transferee should provide the Transferor with:

- The complete file including all the information and documents obtained;
- A statement which sets out clearly the decisions and any action taken or remedy recommended;
- Any relevant information about the limits of which is required.

Once the additional work has been completed, the Transferee should again return all the documents; and any additional documentation along with a report detailing;

- Action taken;
- Any new information obtained;
- Recommendations; and
- Confirmation that all additional information on any system held by the Transferee has been destroyed.

12. Contacts and Review

The Transferor and Transferee will provide each other with a single point of contact for each complaint. The general contact for any matters which relate to this Protocol is the Deputy Northern Ireland Ombudsman.

This Protocol will be reviewed after every transfer to ensure it remains fit for purpose and it will be reviewed annually.

Signed: _____
JIM MARTIN, SPSO (Transferor)
Date: February 2013

Signed: _____
TOM FRAWLEY, NIO (Transferee)
Date: February 2013