



NILGA views on the proposed Northern Ireland Public Services Ombudsperson (NIPSO) Bill

Pre-ambble

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties in Northern Ireland.

Independent, impartial investigation of complaints about public administration is fundamental to any just society and NILGA commends the work to date carried out by the Commissioner for Complaints/Assembly Ombudsman. The Association engaged significantly with the Commissioner for Complaints to develop and deliver a programme of events to discuss the Code of Conduct and associated Guidance with council members and officers. This programme of work was very well received and proved invaluable to elected members.

NILGA looks forward to working with the Northern Ireland Public Services Ombudsperson and we welcome that investigation of complaints will be taken forward by this one new office which will merge and reform the powers, remit and responsibilities of the Assembly Ombudsman for Northern Ireland with those of the Northern Ireland Commissioner for Complaints. The Association supports the intentions of this new legislation to simplify the procedure for making a complaint of maladministration and strengthen the mechanisms for providing redress.

NILGA would be happy to discuss this issue with the Committee, should an oral evidence session be planned in the future. For further information on this submission please contact f.douglas@nilga.org or call Fiona Douglas at the NILGA Offices (028) 90798972.

General Comments

NILGA welcomes the opportunity to comment on the proposed Northern Ireland Public Services Ombudsperson Bill.

NILGA considers the proposed legislation to be comprehensive and progressive in its endeavours. NILGA welcomes the closer alignment with the Northern Ireland

Assembly and its committees as the office is an integral part of the scrutiny structures that hold ministers, departments and agencies to account. NILGA considers that in reality this will create a new dynamic whereby bodies in jurisdiction will be clear that an opportunity now exists for the Ombudsperson to go directly to the committees as a means of strengthening the scrutiny structures between the two levels. NILGA suggests that this alignment could be further enhanced by designating OFMDFM to receive an Annual Report from NIPSO if this is not already the intention.

The Association supports the direct access that the Bill will now give members of the public to the new NIPSO for all complaints. Enabling the public to complain to the NIPSO directly without securing the sponsorship of an MLA will remove an unnecessary hurdle that may have inhibited people in coming forward.

NILGA welcomes in principle the widening of the remit to include additional public bodies, such as schools, universities and further education colleges. The Association has no issues as long as this enhances the impact/outcome for the customer. However, NILGA is concerned that there is no detailed financial modelling or discussion of how the increased workload will be resourced. In particular, it is our understanding that a fund was made available through Councils – a fund which is larger than that originally postulated - to pay for the recently extended remit related to the implementation of a statutory Code of Conduct for locally elected representatives. In the absence of any comprehensive modelling, NILGA has legitimate concerns that the increased remit and associated costs may be unfairly apportioned across users. Moreover, the Association, not taking away from the comprehensive drafting and progressive intent of this Bill, worries that there is a danger of an unwelcome outcome of trying to do too much too soon and therefore adversely impacting on the quality and standards that the service currently affords.

The Proposed Northern Ireland Public Services Ombudsperson Bill

NILGA welcomes that investigation of complaints will be taken forward by this one new office which will merge and reform the powers, remit and responsibilities of the Assembly Ombudsman for Northern Ireland with those of the Northern Ireland Commissioner for Complaints. In doing so, any disparities between access to redress and remedies should be addressed. However we note that in all cases the Complaint will only be passed to NIPSO if it has not been resolved – the only negative exception seems to be that this is not the case for Councillors.

Clause 1 outlines the purpose of the NIPSO in investigating maladministration in government, public and quasi-public-bodies. NILGA supports the inclusion of this upfront. However, the Association suggests that the inclusion of a definition of maladministration or the framework under which it is measured will enhance clarity and provide greater understanding of the purpose and remit of the legislation.

Part 2 of the proposed Bill sets out how the power to investigate listed authorities will be used. For completeness, NILGA suggests that reference could be made in Part 2, which appears to cover the various categories of investigations to be carried out, to the role in investigating complaints against councillors as governed by the Local Government Act (Northern Ireland) 2014.

Clause 8 relates to the power to investigate own initiative investigations and it is advised that the criteria used are similar to the criteria for ordinary investigations. However, the clause does not detail what this similar criteria is and therefore it is difficult to ascertain what criteria the NIPSO will apply. It is NILGA's view that as it stands this clause is vague and therefore we urge that in the interests of consistency with Clause 5, 6 and 7 that the actual criteria used is included in the primary legislation. It is NILGA's estimation that the absence of such criteria will result in the provision being an enabling power rather than a compulsory, statutory duty. Clarification on this would be welcome.

Clause 9 puts the onus on the NIPSO to establish further criteria to launch own initiative investigation and publish them. NILGA reiterates the consistency point made, as the other types of investigation criteria will be enshrined in the primary legislation. Moreover, given that there will be no mechanism to approve these criteria, if published by the NIPSO, who is supposed to be independent, does this enable a level of bias?

Regarding Clause 11, NILGA suggests that reference should be made to a preliminary review to determine if the matter warrants a full investigation. As written the Clause suggests carrying out an investigation to determine if the matter warrants a full investigation.

Clause 18 relates to the new power given to the NIPSO to investigate maladministration as it relates to university students. The Clause is clear that the Ombudsperson has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement. The Association is concerned that this is contradictory to the provision to investigate matters that relate to clinical judgement. Further, the explanatory memorandum is clear that where differences in the 1996 Orders required a policy choice to be made the Committee's approach has been, where possible, to "level up" in terms of the powers and remit of the NIPSO and the remedies available to the claimant. NILGA considers that such consistency should be applied across the board.

Clause 28 relates to the procedure for a complaint to be referred to the Ombudsperson. NILGA acknowledges that sub-section 2 does leave the final timescale open. However, it is our view that, six months is too short a period to specify. Moreover, this period is even more unrealistic as the clock appears to start ticking on the day that the complaint was made to the listed authority. It is worth

noting that a complaint against a councillor can take up to a year to progress by comparison.

Clause 29 outlines the procedure for own initiative investigations. The Association suggests that, in the interests of natural justice, an authority should have a right to respond/express an opinion before an investigation is commenced.

Clause 31 relates to information, documents, evidence and facilities. NILGA is concerned that the provisions do not enable the Ombudsperson to request information from the aggrieved person. NILGA requires explanation of the rationale for omitting this from Clause 31.

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