



Northern Ireland  
Assembly

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COMMITTEE  
FOR THE OFFICE OF THE  
FIRST MINISTER AND DEPUTY  
FIRST MINISTER

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**OFFICIAL REPORT**  
(Hansard)

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**Proposed Legislation to Provide for a  
Public Services Ombudsman for  
Northern Ireland**

27 July 2010

**NORTHERN IRELAND ASSEMBLY**

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Proposed Legislation to Provide for a Public Services Ombudsman  
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**Members present for all or part of the proceedings:**

Dr Stephen Farry (Deputy Chairperson)  
Ms Martina Anderson  
Mrs Dolores Kelly  
Mr Barry McElduff  
Mr Francie Molloy  
Mr George Robinson  
Mr Jimmy Spratt

**Witnesses:**

Mrs Marie Anderson ) Office of the Assembly Ombudsman for Northern Ireland and  
Northern Ireland Commissioner for Complaints

Mr Tom Frawley ) Assembly Ombudsman for Northern Ireland and Northern  
Ireland Commissioner for Complaints

**The Deputy Chairperson (Dr Farry):**

The next item on the agenda is the proposed legislation to provide for a public services ombudsman. A research note from Research and Library Services has been tabled on the draft document. We welcome Tom Frawley and Marie Anderson. Thank you for coming in during your summer break. You are regular visitors to the Committee, in my time anyway. The evidence session will be recorded by Hansard. I invite you to make some opening remarks, after which we will open the floor for questions.

**Mr Tom Frawley (Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints):**

Thank you, Deputy Chairman, for extending your work into the summer. I do not, in any way, presume that you did so to facilitate me. Let other people's difficulty be our opportunity, if I may say so.

Deputy Chairman and Committee members, I thank you for the opportunity to introduce a draft consultation paper on the proposed Bill. It was prepared to assist the Committee in initiating the process of reforming and modernising the statutes under which the office of the ombudsman operates.

It would be helpful to remind the Committee of the reasoning that underpins the need for the new legislation. The principal reason for updating the statutory provisions is summarised in the Deloitte document 'Review of the Offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints'. That proposes arrangements to:

"ensure that proper structures are put in place so that the Office can deliver its work effectively and in a coordinated way; and provide a strong focus on improving future performance."

Accordingly, I will arrange my opening comments to reflect the principal themes of the draft consultation document. Those themes are: first, the benefits that will arise from the creation of a single office in contrast with the current arrangement of having separate roles of Assembly Ombudsman and Commissioner for Complaints; secondly, the removal from my jurisdiction of employment issues; and thirdly, the need of the office of the ombudsman to conduct systemic reviews of public service performance.

First, one of the main recommendations of the Deloitte review was the recommendation that the two offices of Assembly Ombudsman and Commissioner for Complaints be merged into a single office. The creation of a single office will, I believe, remove much of the confusion about my role that exists in the minds of the public. A single office of Northern Ireland ombudsman would have an impact on the role of MLAs in sponsoring complaints to my office, because currently that is a requirement under only the Assembly Ombudsman legislation.

Secondly, another major theme is the proposed removal of employment matters from the ombudsman's jurisdiction. The ombudsman in Northern Ireland is the only ombudsman in the United Kingdom who retains that jurisdiction. That is something of an anomaly, given the wide range of specific remedies that are available to individuals who wish to make a complaint about

work-related issues. Such remedies can include making use of the services provided by, among other bodies, the Office of the Industrial Tribunals and the Fair Employment Tribunal, and the Equality Commission. Moreover, the anomaly is further compounded by the fact that that aspect of the current legislation extends only to civil and public servants in Northern Ireland, and, as a consequence, it excludes those who work in the private and voluntary sectors. In my view, that is fundamentally unfair. However, rather than express any fixed position on that point at this time, the consultation paper invites people to give their views on the matter.

Thirdly, the proposed legislation should seek to enhance the purpose and impact of the office. I refer specifically to introducing tools to extend the traditional role of investigating complaints by the addition of an authority that would conduct systemic reviews. The Deloitte review recommended that that be done in consultation with the Comptroller and Auditor General to avoid duplication and to maximise scrutiny. Based on the investigation of individual complaints, it is possible to examine whether a particular complaint has systemic implications for the public services that have been complained about. That approach facilitates a process of using investigation as not only a means of redress and remedy for individual citizens but as an instrument for improving public services.

I have highlighted only a few of the major themes that emerged from the review, but I am of the firm opinion that any new model must have the confidence of the Assembly, the complainants, the public bodies that the ombudsman will investigate, and the wider public. Such confidence must be underpinned by a number of supporting principles: the rigour and transparency of the appointment process for the ombudsman; the independence of the office holder from the Executive, in actuality and in the perception of all who engage with the office; and the fairness of the process for handling complaints.

Securing fairness in administration is the principal purpose of my office, but it is important that the ombudsman is neither an advocate for the complainant nor a defender for the bodies complained about. If that task is to be achieved, the ombudsman must have extensive powers of discovery of and access to information and documents, in addition to having the opportunity to provide complainants and bodies complained about with an opportunity to test any such evidence. The decisions made by the ombudsman and the findings arrived at are based on the following steps: an analysis of the facts of the case; a review of those facts in the light of relevant and applicable law; and an examination of the evidence collected. New legislation must, therefore,

provide officer holders with all the necessary powers to follow where the evidence leads and to deal effectively with any parties that would obstruct that essential process.

I remind the Committee of the importance and urgency of the task at hand not only for the office of the ombudsman but for citizens, because complaints to the ombudsman are crucial to the citizens who make them. The modernisation of the legislation will have a significant impact on those citizens.

Prior to the updating of the ombudsman legislation in England, the Parliamentary and Health Service Ombudsman, Ann Abraham, gave evidence to the Public Administration Select Committee at Westminster in 2003 and noted that legislative constraints that existed at that time in her jurisdiction prevented the provision of a seamless, accessible and responsive service. My aim, as was hers then, is to have flexible, timely and appropriate resolution of complaints.

At a time of unprecedented pressure on public finances, and given the consequent impact that that has on the provision of public services, the adequacy and effectiveness of decision-making processes in public bodies will be of even greater importance, especially when trying to do more with less. In dealing with resulting accountability issues and their various manifestations, it becomes clear that a system of complaints is not an optional extra but is now fundamental to a public body's organisational life. Such a system necessitates the engagement and ownership of staff at all levels if their organisation is to be successful and sustainable in a world of unprecedented change.

The consultation has been drafted in a format that separates the issues that have been covered into 10 separate themes. Each section comprises a separate series of questions that consultees are asked to consider. Clearly, if consultees have further comments to make beyond their responses to the questions, they are invited to do so. The consultation paper also attributes views to the Committee that can, of course, be amended or deleted if members so wish.

In conclusion, one positive aspect of the architecture of accountability that exists in Northern Ireland is that it has been developed in a way that is sensitive to our own experience. Those developments recognise that, as society changes, the institutions that serve it must do likewise and respond to changing demographics, changing social mores and changing levels of expectation of public service standards among users. Therefore, let me take the opportunity to thank the

Chairman and the Committee for agreeing to sponsor this significant piece of legislation, which will be of great assistance in supporting the ombudsman's work for many years to come.

**The Deputy Chairperson:**

Thank you very much. I will ask a couple of initial questions, after which I will open the session to questions. What other bodies in Northern Ireland have the power to conduct a systemic review? I ask that because there is a concern that, if we give such a power to the ombudsman, there is potential for duplication or confusion. I am particularly mindful of the interaction between the ombudsman's office and the Comptroller and Auditor General. The modern trend in audits is not purely to look back over what has happened and gone wrong but to look forward at governance issues and the procedures that organisations follow. How will the new legislation fit in with the existing architecture?

**Mr Frawley:**

That is a valid point. In a way, that is covered by the Deloitte review, which indicates that, before any systemic investigation is undertaken, there will be consultation and discussion between the Comptroller and Auditor General and myself to agree that such a focus makes sense and that it is not an area on which he has already decided to proceed or on which an examination or investigation is under way. Equally, he can look to me to carry forward a focus on that area while he, in turn, can focus his resources elsewhere. That creates a complementary process that builds on the strengths of each office.

The consultation document gives the example of our colleagues in the Republic of Ireland, where an own-initiative investigation authority has existed since the inception of the ombudsman's office in 1984. The most striking example of how that works can be seen through the complaints that the ombudsman received in his office in Dublin from relatives of elderly people who lived in nursing homes. He recognised that the elderly people's personal moneys, which they are given for comforts, were not being allocated to them but were being used to offset their care costs. He saw that two or three times across the geography of the Republic. Therefore, he decided that it was worth examining how much of a systemic issue that was. He reached the most astonishing and scandalous conclusion that showed that that practice was common and that all the health boards followed it extensively at the time. The Houses of the Oireachtas and, indeed, the Government were reluctant to accept that conclusion. However, the ombudsman persisted, and it was eventually agreed that over €1 billion would be returned to the older people

and their families who had been deprived of that money for up to 20 or 30 years.

I see cases that are in a housing or a health arena or a social care payment setting, and I ask whether something similar has happened to other people. Currently, I have no basis for pursuing such cases, because I must receive a complaint before I can initiate an investigation. Therefore, I see that power not being used extensively but being targeted only when an argument or a case is made and, only then, after discussion with the Comptroller and Auditor General.

**The Deputy Chairperson:**

Paragraphs 4.7 and 4.8 of the consultation document refer to extending the remit of the ombudsman's office beyond bodies that receive "substantial" public funds. Could that effectively extend your remit to examining small community and voluntary organisations? If so, would that be desirable?

**Mr Frawley:**

I am tracking the same model that the Comptroller and Auditor General uses, which is referred to as "following the public pound". As the world develops, I have no sense of how government will deal with the challenge that we face in the public expenditure arena. The Northern Ireland Council for Voluntary Action (NICVA) paper that was published yesterday suggests that that challenge will have huge implications for the community and voluntary sectors. Increasingly, the community and voluntary sectors see themselves as direct providers of services to the public. They see that as being a legitimate area in which, in many ways, they feel they might even be able to deliver more tailored services. I would argue that once those sectors move into that arena, they should be no different to the current provider of public services, whether that is a health board or an education board. They act as agents for government in providing public services, so it is not unreasonable that people can complain if they feel that they have been treated unfairly in such a service or if they feel that the service that they have received is not adequate to their need.

**The Deputy Chairperson:**

Paragraph 4.9 refers to areas that are outside the ombudsman's remit. What is your understanding of how ombudsman's offices in other places deal with what are deemed to be contractual matters?

**Mr Frawley:**

I shall ask my deputy, Marie Anderson, to deal with that.

**Mrs Marie Anderson (Office of the Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints):**

If you followed previous Committee meetings on the matter, you will know that we have recommended the Welsh model. In Wales, a number of matters are excluded under schedule 2 to the Public Services Ombudsman (Wales) Act 2005. However, I understand that contractual matters are excluded because the need to provide for issues on contracts are matters for the court. Issues on the terms of a contract are justiciable, and, therefore, it is not appropriate for the ombudsman to deal with them. The Welsh legislation contains much more detailed exclusions than are currently in our legislation. For instance, it includes exclusions involving the determination of the amount of rent. Those are matters for other tribunals, and it is not appropriate for the ombudsman to consider them. Obviously, that will be a matter for consultation. We are very much aware that, for instance, the Department of Finance and Personnel (DFP) suggested a supply chain ombudsman for supply matters and that that issue came up again.

**Ms Martina Anderson:**

What kind of engagements are going on between AONI and NICC on the proposed measure to create a single office and on any confusion on the merger? Is there agreement that a merger is the best way forward? Your example about the systemic issues in what happened in the South was quite useful. I know that you said that you have no basis to pursue such a move at the moment, given that a complaint needs to be made to do so, but certain concerns have obviously drawn your attention to aspects of services that need to be better scrutinised and investigated. Can you indicate where you would wish to start a systemic review? Is it fair for you to give us such an indication?

**Mr Frawley:**

Mrs Anderson has given me the opportunity to avoid answering the question. I do not think that it would be fair to give such an indication, because I would probably ultimately need to — *[Interruption.]* That alarm has vindicated me.

We can look at the comments that have been made about, for example, a housing issue. There



is a single provider of public housing here, but this example equally applies to a housing association. If a problem exists in an area such as, for example, maintenance or upgrading, other people may be affected in similar ways. However, I am not saying that that is always the case.

Some individuals have had a bad experience. Whenever there is a major refurbishment of a large estate, many people are very content with the work that was done in their homes. However, I am struck that there will always be some people who feel as though they did not get the same standard as someone else. Therefore, there is a human side to complaints, and I must see my way through that rather than just assume that a systemic investigation is necessary every time that a complaint is made. Therefore, I would be grateful if you allowed me some caution in discussing that issue at this time.

That leads me to the first part of Mrs Anderson's question. I do, believe it or not, claim to be huge value for money. I fulfil two jobs: I am the Northern Ireland Commissioner for Complaints and the Northern Ireland Ombudsman. The Northern Ireland Commissioner for Complaints post was created first in 1969. However, it was clarified that Departments at Stormont were not part of that original jurisdiction, so a second post, the Northern Ireland Ombudsman, was created to look after Departments and their agents. However, over a period of time, through the early part of the 1970s, it became clear that there was not a sufficient workload for two people, even though they were working part time. It was therefore decided that the sensible thing to do would be to merge the posts, with the result that one person would fulfil two separate offices, given that the roles are informed by two separate pieces of legislation.

That is part of the reason why we are where we are today. I am arguing today that the two roles should be brought under one piece of legislation and into one office. An ordinary member of the public, a little like you, will sit there and ask who they should go to with their complaint and whether that person is the ombudsman or the Commissioner for Complaints. They may think that if they choose the ombudsman, they will have to go to their MLA, because the issue in question must be sponsored. Part of our purpose for being here today is to ask for all that to be simplified and to mirror what has happened in all the other jurisdictions, which is to have one office of this kind.

**Mrs D Kelly:**

Thanks for your presentation. Paragraphs 4.10 and 4.12 refer to the proposal that public sector

grievance, discipline and employment matters should be an excluded item. How do you see that panning out? I am aware that, for various reasons, grievances in some local authorities have taken up to two years to be resolved. That obviously has quite a detrimental impact on staff morale.

**Mr Frawley:**

Again, I am not in any way suggesting that my office represents the answer to that problem. I want to give notice to the Committee that I am sure that trade unions and staff side organisations in the public sector will not be necessarily positive about this proposal. I want to acknowledge that to begin with, because they feel that my office is an important recourse for public officers and officials. However, the issue that I have and that I highlighted in my opening remarks is that that creates an unfair circumstance in that public and civil servants have recourse to my office, but people in the private or voluntary sector do not. Nevertheless, through the development of a significant architecture in the area of employment, à la the industrial tribunals, the employment tribunals and the Equality Commission, significant recourse is already available to anyone who has a grievance or a sense of having been failed by the system.

I, therefore, argue that part of this is about bringing the system up to date and moving out of areas such as employment, the jurisdiction of which, I think, other bodies cover very effectively. That would be part of the modernisation process. Therefore, I want to be honest with you and acknowledge that I do not think that public trade unions, and, perhaps some public officials, will be happy with the proposal. However, it would create fairness, which I think is part of our purpose.

**Mrs D Kelly:**

I want to follow up on paragraph 4.10 of your submission before referring to paragraph 4.12. I understand that people's grievances eventually go through the process. However, if that has not been adhered to in the way that it ought to have been, that means that there has been a failure of administration. Let's face it, very few cases make it to industrial tribunal level. A lot of people become so exasperated by the process that they give up the ghost and drop out along the way. How can you ensure that that will not be what people experience?

I want to touch on paragraph 4.12, which relates to the health and social care jurisdiction, which is an area that, as you quite rightly point out, comes under the auspices of the trusts. How

will your role sit with that of professional bodies in which professional standards have to be applied? As someone who worked in the Health Service, I know that the rules about which staff are often told are not the same as those that they experience. They can be very different. Who gets what can depend on who shouts loudest. Perhaps you understand what I am trying to say.

**Mrs Marie Anderson:**

I will deal with your point about employment. We are very much aware of individuals' frustrations. Not everyone has the money to go to an industrial tribunal, and, as cases that are brought to industrial and fair employment tribunals are not legally aided, employment matters are an area in which there can be no avenue for a lot of people to resolve grievances and disputes. I accept that totally.

As you may know, following the introduction of GB legislation, an initiative known as the statutory grievance procedure was introduced recently. Clearly, however, that initiative has failed. The procedure was brought in to simplify employment grievances. However, it became a very bureaucratic system in which individuals who had disagreed with their employers or with employment decisions had to jump through a number of hoops. My understanding is that, in GB, that statutory procedure has now been abolished. I also understand that, although it is a matter for others, there is ongoing consultation to abolish the statutory grievance procedure in Northern Ireland because of those frustrations and delays. In essence, I am aware that some of the issues will be dealt with in another forum or fora.

At the end of the day, the review suggested that any removal of employment matters from the ombudsman's jurisdiction would be subject to an equality impact assessment. Therefore, it is perhaps something that could be looked at again in a broader sense. By way of mitigation, section 3 of the Public Services Ombudsman (Wales) Act 2005 gives the Welsh ombudsman very broad provisions to deal with disputes in any way that they think fit, which may include mediation or ADR. We are recommending that, in any new ombudsman's legislation, a similar, very broad provision would open up the ability for the ombudsman to perhaps get into the ADR business much more than is possible at present. However, that is for the Committee to decide, and there will be consultation on that. Certainly, that may be an area in which employment matters —

**Mrs D Kelly:**

You will have to tell me what ADR is.

**Mrs Marie Anderson:**

It means alternative dispute resolution. That can mean an employer and employee sitting in a room with a trained mediator or referee trying to work the matter through. In some ways, there is mitigation for the removal of the employment jurisdiction, because, if accepted, there will be a wider power for the ombudsman to enter into those kinds of alternative dispute resolution. Having spent two years working on industrial tribunal cases, I think that, as far as employment matters are concerned, alternative dispute resolution and mediation can be helpful, because people have to go back into employment relationships.

**Mrs D Kelly:**

In Craigavon, we have spent over £20,000 on external investigators for two or three grievances. That means that a colossal amount of public money is being spent on such matters.

**Mrs Marie Anderson:**

Indeed.

**Mrs D Kelly:**

I think that such money could be better spent.

**Mr Frawley:**

That is right. I know that that is an area on which the Committee will focus going forward. I take on board entirely the sense of frustration that you communicated. At the end of the day, however, the reality is that my office exists already, and it is clearly not of much help in the current circumstances.

**Mrs D Kelly:**

Maybe you have not yet met your match.

**Mr Frawley:**

Maybe so; I will take that as a compliment. That being said, this is a very complex area. The Labour Relations Agency also exists to facilitate agreements and so forth. Therefore, a panoply

of such bodies exists, and, for the next number of years, part of the argument in this matter will be to simplify all that.

**Mrs D Kelly:**

What about social care?

**Mr Frawley:**

All that we are asking is to mirror the jurisdiction that exists in health, which has already been developed in Wales. Purely and simply, we have a unique distinction in health in that we can look at the clinical decisions of doctors and other health professionals and test those against professional advice that I can commission to see whether the treatment regime that was followed or the diagnosis that was given was consistent with best practice, for example. That allows me to make a judgement at the end of that process.

The Committee will see that a theme runs through the consultation process. That theme is that I be allowed more discretion to share my insights and work with other oversight and professional bodies such as the General Medical Council (GMC) and the Northern Ireland Social Care Council (NISCC), so that if, as is the case in Wales, someone has any concerns about an individual's competence or professional abilities, those can be shared with the relevant professional bodies. I hope that that addresses that part of your concern.

**Mr Molloy:**

Thank you, Tom and Marie. I think that we are reaching a very important stage in bringing forward new legislation on this matter. If we consider your present role and how it may expand, are many changes required to the Welsh model to apply it here, or could we take it near enough as it is? What aspects of the Welsh model have you identified that could be changed?

The person in your role must consider matters such as procurement in Departments to ensure that equality and the relevant legislation is being followed. You mentioned housing. We have one housing body, the Housing Executive, but we also have many housing associations, which means that standards may vary. Is there a role in that area to ensure that people get what they are entitled to?

**Mr Frawley:**

I will answer the latter question first, and I will ask Marie Anderson to deal with the Welsh legislation and how that may be relevant and offer us a model. The housing process is under way already. As you probably know, and as I think you suggested in your question, nearly 40 housing associations are involved in housing. Some of those associations are very significant players in the area, while others are very small and limited. Indeed, there has been some realignment and consolidation as the smaller ones have merged or have looked at a particular area of work in which they want to specialise. That is happening, and the current financial circumstance will drive that even further. For example, the recent review of housing associations' reserves and so on, which has implications for the wider spend, will create a drive toward consolidation.

That being said, we subject complaints from housing associations and the Housing Executive to exactly the same tests. Through that common examination, we are beginning to create a uniformity of performance and standards. We also see some very good practice in the smaller housing associations, and we commend that.

At the end of the day, we must acknowledge that housing is a very personal issue. Individuals will criticise aspects of their housing that, to others, do not seem a problem at all; therefore, absolute uniformity and conformity will never be achieved. However, we see significant improvements in housing standards year-on-year and, as I commented in recent annual reports, the Housing Executive has improved its performance.

**The Deputy Chairperson:**

OK. The next member to ask a question is Mr George Robinson.

**Mr Frawley:**

We will just take the Welsh question; sorry, I should not call it the Welsh question.

**Mrs Marie Anderson:**

To be concise, about 80% to 85% of the Welsh legislation could be reflected — I do not want to use the word copied — in any new ombudsman's legislation. The Welsh legislation is pertinent because it is structured to deal with complaints, the investigations procedure, right through to evidence gathering. In the Welsh legislation, the extensive provisions for publicising reports are particularly beneficial. That procedure is very open and transparent. In short, a substantial part

of the Welsh legislation is relevant.

However, one difference is that, because Mr Frawley's current remit includes jurisdiction over North/South bodies, new legislation here would have to provide for information sharing and co-operation with ombudsmen in the Republic of Ireland. That is one area in which we may depart from Wales, but otherwise the legislation will be substantially the same.

**Mr Molloy:**

Have the witnesses any particular thoughts on the procurement issue?

**Mr Frawley:**

Again, I have a limited jurisdiction over contracts. I do not want to revisit previous evidence to the Committee, but before creating yet another office — that of a procurement ombudsman — we should look at how existing offices may be able to address that problem. Marie Anderson highlighted that issues arise once the tendering stage is reached, but there are administrative aspects to all of that, in which my office would be competent to be involved. However, we would need to be specific about which areas come within the remit.

**The Deputy Chairperson:**

Thanks. I hope that our colleagues elsewhere on these islands sometimes talk about Northern Ireland legislation.

Apologies to George Robinson for being premature in calling him earlier.

**Mr G Robinson:**

That is no problem.

Would the proposed new streamlining process mean that complaints sponsored by MLAs will be dealt with more quickly?

**Mrs Marie Anderson:**

I think that it would. Currently, because they are confused about the two roles — that is, those of the commissioner and the Assembly Ombudsman — a lot of people write to the office and we write back to tell them that they need MLA sponsorship. That causes further delay, because the

complaint may sit on an MLA's desk while he or she deals with other business. The other issue is that, under the Assembly Ombudsman legislation, communication is via the MLA. The proposed streamlining process, which is an excellent description, would involve direct contact with the complainant, which would speed up the handling of a complaint.

**Mr G Robinson:**

It is sometimes quite a while before there is even any communication.

**Mrs Marie Anderson:**

Yes, indeed. We had one complainant who said that they did not want to go to an MLA and asked why they had to do so. They really did not understand the reason for that process. We explained that ombudsmen in other jurisdictions, such as Scotland and Wales, do not require complainants to first go to an elected Member. Some people may not feel comfortable about going down that route.

**Mr Frawley:**

I am trying to put both sides of the argument, so I want to say that Westminster has been very protective of the sponsorship principle. The argument there is that the sponsorship requirement helps inform elected representatives about their constituents' experience of public services. Therefore, there are other aspects to the discussion.

We want to address that, in part, because we want to demonstrate that we are not a prisoner of the Welsh model or the Republic of Ireland model. We want to emulate the Scottish, who have launched what they call a digest of cases, which is published every quarter. That would be sent to MLAs every quarter and would contain a record of the cases that we are dealing with or have completed, as well as information on relevant trends. That would allow Committees to invite me or Marie to talk about, for example, health complaints, social care issues, social security failures or whatever the case may be. We are trying to build that dialogue, but not around individual cases.

I want to reassure George Robinson. We are saying openly that we are very happy for MLAs to continue to be involved. One of the first questions that we ask people is whether they want their MLA to be involved. I also recognise that some older, frail, or vulnerable people do not necessarily have the confidence or the stamina to highlight concerns and pursue a complaint. As



Mrs Kelly suggested earlier, it can be important for such people to have an MLA ready to take up the case. Therefore, we want to keep MLAs involved.

**Mrs Marie Anderson:**

The model that has been suggested is flexible; it is an either/or model.

**Mr Spratt:**

Thank you, Tom and Marie, for your presentation. Your consultation paper recognises the effect of the current economic climate, and that is important. We all agree that you made a very powerful case on the appointment of an older people's commissioner; you gave us a lot of food for thought about duplication in respect of that role. It would be helpful if you were able to indicate points at which duplication might occur in this instance. Should a Bill for the establishment of a public services ombudsman include clauses to prevent duplication?

Public spending will be an important issue over the next few years. Resources will be scarce and will have to be protected. There has been a tendency to have three or four different bodies doing the same thing or meddling in certain areas. I would welcome a situation in which similar functions are dealt with by one person. Have you any advice on that, or would you be prepared to give some advice on it at a later stage?

**Mr Frawley:**

I am happy to take notice of that question. In some ways, that concern is what has brought us here today to present our consultation document. For example, there is confusion around specific roles of my office. As the Deputy Chairperson indicated at the beginning of our discussion, if we are looking at systemic issues, there is potential for my office to cross wires with the Comptroller and Auditor General. We have to have prior discussions to ensure that the other party is not already in that arena. That is a conversation that we want to have.

Part of what we had to say about the appointment of an older people's commissioner is more fundamental than that. It is about advocacy versus investigation.

**Mr Spratt:**

I understand that.

**Mr Frawley:**

We are absolutely at one with the concept of advocating. However, we really have a difficulty with someone being able to do both. That seems, to us, to lack objectivity, and, I would argue, ultimately compromises justice and fairness. That said, I do not think that problems would arise as long as it is determined that a particular office is the place to go to air a grievance, to highlight a sense of failure by a system, or to complain that a public service has not addressed the issues that an individual has concerns about. That is a key issue for us, and we will focus on it.

As the consultation unfolds and if the Committee makes a judgement that the consultation paper represents a full, complete and comprehensive approach to the exercise — we will be happy to amend it if you do not — we will take note of what you have said. When the Committee begins to brief the draftsmen about the detail of the Bill we will come back to you about how to more explicitly protect against duplication.

**Ms Martina Anderson:**

Will the consultation process involve any element of public consultation?

**The Deputy Chairperson:**

That will be a matter for the Committee. We can have a quick discussion about that after the formal evidence session.

**Ms Martina Anderson:**

Simply sending out the document for consultation may not generate the kind of debate that is needed.

**The Deputy Chairperson:**

The Committee will run the consultation.

**Mr Frawley:**

The format that we offered you is one that includes questions at the end of each section. You might decide that you wish to include additional questions. Alternatively, you might prefer to put all the questions together on one page, but our worry about that format is that people may not read the substance of the proposal and immediately go to answer the questions. The format that we suggested gives people an opportunity to read the substance of each part of the proposal

before answering questions that relate to it. However, there is an open-ended opportunity to add to any section or to include something in an overall commentary.

We want the consultation to be as inclusive and as expansive as we can make it. The Deputy Chairperson made the point that, at this stage, it is no longer for us to be involved. It is up to you, should you decide on sponsorship, to take forward the consultation as your own. Beyond that, however, we are at your disposal whenever you wish to call on our resources or to seek an explanation from us.

**The Deputy Chairperson:**

That is great. I formally thank Tom and Marie for their evidence today, which, as always, was very useful to the Committee. We will now have a general discussion on how to move forward, and the Committee Clerk will keep you informed about any developments.

**Mr Frawley:**

Thank you, Deputy Chairman and members.