



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (No. 2) Bill Part 2 — Prison
Ombudsman for Northern Ireland:
Department of Justice

26 November 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sammy Douglas
Mr Paul Frew
Mr Seán Lynch
Mr Alban Maginness
Ms Bronwyn McGahan
Mr Patsy McGlone
Mr Edwin Poots

Witnesses:

Ms Rosemary Crawford	Department of Justice
Ms Anne McConkey	Department of Justice
Mr Michael Meehan	Department of Justice

The Chairperson (Mr Ross): I welcome Rosemary Crawford, Anne McConkey, Michael Meehan and Graham Walker from the Department of Justice (DOJ). They will outline the purpose of clauses 28 to 40 and schedule 3 to the Bill. Afterwards, we will open the meeting up to questions.

Ms Rosemary Crawford (Department of Justice): I am grateful for the opportunity to provide the Committee with a further update on those elements of the Justice (No. 2) Bill that relate to the Prison Ombudsman. Members will have seen the written update that issued in advance of this briefing. That included our comments on the table of summary evidence and sight of the proposed amendments. I will, therefore, keep these opening remarks fairly brief in order to leave as much time as possible to deal with the specific issues that members may wish to explore in more detail.

As you will be aware, placing the ombudsman on a statutory footing has long been a goal of the Minister of Justice and follows the commitment in the Hillsborough Castle Agreement. It is worth noting that the ombudsman has operated very effectively on a non-statutory basis since the first appointment in 2005. However, establishing a clear statutory basis for his work is important for a number of reasons: it will further enhance the standing of the office; independence will be reinforced; and it will ensure that there is no room for doubt or ambiguity around compliance with article 2 of the European Convention on Human Rights (ECHR) in relation to death-in-custody investigations.

It is worth pausing for a moment to reflect on the proposed name change from "Prisoner Ombudsman" to "Prison Ombudsman". Although it is a seemingly minor change, it is intended to reinforce and emphasise the impartiality of the ombudsman. This impartiality is vital in his work in seeking to resolve

the types of issues that result in prison complaints. The ombudsman works neither for prisoners nor against prison officers; he acts as an honest broker, examining the facts and reporting on them as he sees fit.

We also think that it is important to retain the title "ombudsman", not least as the office has developed a recognised brand and reputation based on that over the last 10 years, and we do not wish to diminish or dilute that in any way. While some may consider that it does not entirely meet all the criteria of an ombudsman as defined by the Ombudsman Association, the office will continue to be independent, fair, effective, open, transparent and accountable. We believe, therefore, that the title remains appropriate for the role.

It is also worth noting that the ombudsman is more than just a complaints handler. The office was established in part response to the Steele review, which aimed to help to ease tensions in prisons and to provide a way for prisoners to deal with the difficulties that they encountered.

The ombudsman currently carries out two main functions. He investigates complaints made by prisoners and visitors to prisons, and he investigates cases of death in custody. The Bill will provide a statutory basis for those main functions and introduce one additional function to enable the ombudsman to carry out investigations at the request of the Department. This additional function is intended to provide a degree of flexibility, so that the skills and expertise of the ombudsman in dealing with custody-related matters can be called on as appropriate. That might include, for example, dealing with the investigation of near deaths in custody or issues that might arise at Woodlands, the juvenile justice centre. Currently, the ombudsman has no remit for dealing with issues in Woodlands. The Bill requires the Department first to discuss and agree with the ombudsman any such investigation before proceeding. The current ombudsman has welcomed this additional function.

The Bill also introduces a duty on the parties to an investigation to cooperate with the ombudsman. It will be an offence for anyone intentionally to obstruct an ombudsman investigation. He will have a right of entry to prison premises and the juvenile justice centre, and powers to access documents needed for his investigations. At present, the ombudsman's appointment falls under prisons legislation. Changing this arrangement will further demonstrate his independence from those he has the power to investigate.

As the Committee will be aware, the guiding principle adopted throughout this process has been to legislate for the as is position, taking what the ombudsman currently does and placing that in legislation. We have sought only to make minor adjustments where it has appeared sensible to do so. We have listened carefully to the views expressed during the consultation and, as a result, have brought forward a small number of proposed amendments. These have been shared with you. The amendments include taking on board a suggestion from the Attorney General that the ombudsman should have a general power to defer investigations, which might be necessary in the event of other ongoing investigations, adding the Attorney General to the list of those bodies with which protected information may be shared and placing a requirement on the ombudsman to inform the police of a suspected criminal offence in relation to any of his investigations.

The Minister has expressed interest in the suggestion from the Northern Ireland Human Rights Commission (NIHRC) that the ombudsman should have the power to initiate his own investigations. We had not considered that initially, as it is not part of the current arrangements. There are arguments for and against, but the Minister would very much welcome the views of the Committee on the matter.

I assure the Committee that we have reflected carefully on all the points raised during consultation and were content that the arrangements set out in the Bill will provide a sound statutory basis for the work of the ombudsman going forward. We have sought to build on the current arrangements, retaining the ombudsman brand while reinforcing his impartiality. He will be independent of those he has the power to investigate and completely separate from the prison structure and hierarchy in the Department. He will enjoy the same independence from the Department as others appointed by the Justice Minister into independent roles on, for example, the Policing Board, the Probation Board and the Criminal Justice Inspection Northern Ireland (CJINI).

Members may be interested to note that, in tandem with bringing forward this legislation and to help to inform the process, the Department commissioned an independent review of complaints handling in the ombudsman's office. The report, which was completed last month and published on the Department's website, noted that the office operates effectively, the volume of complaints and willingness of parties to engage with the office are a reflection of its effectiveness, independence and

impartiality, and that providing a statutory basis for the ombudsman would enhance the standing of the office.

I hope that this overview has been helpful. We are happy to take any questions. As I mentioned, the Committee's views on the suggestion that the ombudsman should have the power to initiate his own investigations would be particularly welcome.

The Chairperson (Mr Ross): Thank you very much. To make things flow a little easier, we will split this up into sections of questions. I ask members to indicate whether they have a question on clauses 28 and 29 and schedule 3 to the Bill. We will move on to the other clauses afterwards.

A couple of weeks ago, Tom Frawley was here and suggested that, in times of austerity, when there are difficulties with public finances, it might be more prudent to bring the Prison Ombudsman into the Northern Ireland Public Services Ombudsperson (NIPSO) office. Has the Minister given any consideration to that?

Ms Crawford: It was given consideration at the outset of the process, and we recognise that there is more than one vehicle to achieve what we want to achieve, which is a statutory footing for the existing work. The Minister was very conscious that, when the issue was discussed at the OFMDFM Committee, there was an absence of political support for that suggestion. There are a number of means to achieve this. Another option that we considered was the potential establishment of a justice ombudsman and looking for efficiencies in that way by bringing everything in the justice family into one ombudsman arrangement. Again, there was an absence of political support for that. After reflecting on that, the Minister took the decision that the most appropriate arrangement was to put the as is process on a statutory basis, because nobody had any difficulties with that.

Another observation is that, when NIPSO is eventually on the statute, it will have a very wide-ranging responsibility. It will deal with some very important issues like health and education, and there is a concern that there is a potential risk of dilution or a potential impact on timeliness and timescales and on being able to deal with responses. I am conscious that the Prisoner Ombudsman role is not just about complaints handling. As I said, part of it is about trying to make sure that we do everything that we can to defuse tensions as they arise in prisons, which are a very closed environment. At present, the ombudsman and his staff have a lot of contact with the prison establishments and with the hierarchy. Quite often, as the recent independent report identified, there are times when the ombudsman or his staff get to hear of something and are able to escalate it, deal with it and address it before it gets into the formal complaints process. There are a number of factors that we believe mean that it is more appropriate to continue with the same arrangements. Even if there had been political support, we are still convinced that this is the right thing to do.

The Chairperson (Mr Ross): Dr Frawley also questioned whether investigation of deaths in custody is a suitable role for the Prison Ombudsman and suggested that it could be undertaken by the Police Ombudsman or the coroner's office. Do you have a view on that?

Ms Crawford: The premise that we have worked to throughout is to legislate for the as is position. The role of the coroner is to establish the cause of death. If we were to ask the coroner also to investigate deaths in custody, that would be quite a significant expansion of the role. Equally, with the Police Ombudsman — another option that Mr Frawley mentioned — it is not as is and would require primary legislation.

The Chairperson (Mr Ross): You are asking for the Committee's view on whether the ombudsman should be able to initiate his own investigations. I have some awareness of this from being on the Standards and Privileges Committee when it looked at the role of the Commissioner for Standards and whether he should be given a similar power. In one way, it copper-fastens his independence. At present, is it right that he has to go to the Justice Minister, or does a complaint have to come from the Justice Minister or a member of the public before he can look at it?

Ms Crawford: That is exactly right. That is one of the strong arguments for going down this route. It means that the ombudsman could initiate the investigation himself and act on that voluntarily and independently without having to wait for the Department to make a request. You are absolutely right: that is one of the arguments for it.

The Chairperson (Mr Ross): The other argument is that the ombudsman would go on a fishing expedition to initiate too many complaints, or he would use it to boost his profile. What is the argument against allowing him to initiate that?

Ms Crawford: I will say a couple of things in favour of this approach. It could be one way in which we try to future-proof the arrangements to make sure that there is no attempt, with different Justice Ministers or whatever down the line, to have any undue influence or to fetter the work of the ombudsman. He would be able to do things on his own initiative. Again, that could extend to near deaths or serious incidents. There are some arguments for it.

On the other side, it is, as I said, beyond the principle of as is. More importantly, I am conscious that the Prisoner Ombudsman is one element of a wider prison oversight architecture. We also have CJINI and Her Majesty's Inspectorate of Prisons. Given the work that they do and the breadth of their experience, those organisations are really well placed to do thematic investigations. The present Prisoner Ombudsman looks at individual cases, and that is the proposal for the future. Given that we have that arrangement, I am not entirely sure that there is a gap in provision anywhere. I know from talking to the current ombudsman that he is a little nervous about the fact that, if you establish a power, there is a not unreasonable expectation that it will be used. Given the size and scale of his office, he is concerned that that might be problematic for him. The Minister is keen to hear the views of the Committee before reaching a final decision.

Mr Poots: How much will it cost?

Ms Crawford: Excuse me.

Mr Poots: How much will it cost?

Ms Crawford: How much will this arrangement cost?

Mr Poots: If it is moved to a statutory footing.

Ms Crawford: There will be no cost implications. It will be a continuation of as is.

Mr Poots: The office will be the same size.

Ms Crawford: Yes.

Mr Poots: It will not take on any more staff.

Ms Crawford: No.

Ms Anne McConkey (Department of Justice): There will be only very minor costs as a result of the changes — for example, changing the website and the literature. Those will be the main costs.

Mr Poots: Right. You are giving an assurance today that there is nothing more in terms of staffing.

Ms Crawford: They will be doing what they currently do. It will be a continuation of what currently happens.

Mr Poots: I take it that you have gone through the Hansard report of Mr Frawley's comments.

Ms Crawford: We did, yes.

Mr Poots: You have not really addressed them in your response today, have you?

Ms Crawford: Is there any particular point that you want me to address?

Mr Poots: The skills base in the current ombudsman's investigation department.

Ms Crawford: Do you mean the Prisoner Ombudsman or the Northern Ireland Ombudsman?

Mr Poots: The ombudsman as opposed to the Prisoner Ombudsman. You have not addressed, for example, the level of support and personnel and the ability to have support from ombudsmen across the world and from other departments.

Ms Crawford: The current Prisoner Ombudsman is content that he has access to the range of skills and expertise that is needed to carry out the function that he has been carrying out. I am not sure that there would be any particular benefit in that. As I said, what he currently does and what would happen under this legislation is more than just complaints handling, which is what the Northern Ireland Ombudsman's office does. If we were to move that piece of the jigsaw to the Northern Ireland Ombudsman, or NIPSO in due course, there would still be a need to put in place some arrangements to deal with death-in-custody investigations because that would not go to NIPSO. There could be a cost implication.

Ms McConkey: There is also sharing in the ombudsman communities, which Mr Frawley referred to in his evidence. The vast majority of costs in the Prisoner Ombudsman's office are for investigative staff, and that will not change. We struggle to see where real savings could be made.

Mr Poots: Rosemary, you stated that the ombudsman can highlight things to the Department of Justice and the prison authorities, and made reference to the last report — the CJI report. Did the ombudsman not highlight problems to the Department in that report?

Ms Crawford: Sorry, I am not sure which report you are referring to.

Mr Poots: The CJINI report on prisons.

Ms Crawford: The CJINI report on Maghaberry.

Mr Poots: Yes. Had the ombudsman not highlighted problems to the Department?

Ms McConkey: The ombudsman would have highlighted problems to the Department. The area that we deal with directly is the governance of the ombudsman. We do not get involved in the operational detail. That is really the sponsorship relationship that we have with the ombudsman's office.

Mr Poots: Rosemary made the point that the ombudsman highlights problems. Either the ombudsman did not highlight the problems that were obviously going on in Maghaberry, or the ombudsman did highlight the problems and the DG in the Department ignored them. Which was it? There are only two options.

Ms Crawford: Sorry, just to be clear: my reference to CJINI and Her Majesty's Inspectorate of Prisons was made to reflect the fact that they have a role in dealing with thematic issues, and that was the subject of the CJINI inspection. Now that you mention it, that is a really good example of demonstrating the fact that, even when the Minister makes an appointment, that appointment does not in any way fetter the independence of the individual who takes on that role, given the recent report.

Mr Poots: You must not have read the Hansard report of CJINI's evidence to the Committee. Mr McGlone questioned CJINI for about 10 minutes before it admitted that the buck stops with the director general. CJINI's independence was called into question by its reporting of the Maghaberry incidents and its attempt to cover the backs of the heads of the Prison Service — the director general and the directors in the Prison Service — and the scapegoating of two individuals. So do not come to this Committee and tell us about the independence of CJINI, because that independence has been found wanting in this instance. Rosemary, I referred you in particular to a comment that you made that the ombudsman had the ability to highlight issues and problems in the prison to the prison authorities. Were those issues highlighted by the ombudsman, were they highlighted and ignored, or were they not highlighted? There is nowhere in between.

Ms Crawford: I was making a general observation about the access that prisoners and visitors to prisoners would have to the Prisoner Ombudsman and his staff. I was not making a specific reference to the CJINI inspection of Maghaberry.

Mr Poots: Let us leave CJINI to one side. You indicated that the ombudsman could identify problems in the prison. In the past year, either the ombudsman identified problems in the prison and was ignored by the Department and the director general's team, or the ombudsman did not do that and, therefore, was not doing his job. Which is it?

Ms Crawford: It comes back to the difference between the role of CJINI and the role of the Prisoner Ombudsman, in that he is dealing with individual complaints.

Mr Poots: You are muddying the waters here with CJINI. Leave CJINI out of this. We are not talking about CJINI; we are talking about the ombudsman. You indicated that the ombudsman had a role, when there were issues in the prison, to identify those to the Department. Over time and in advance of June 2015, did the ombudsman identify that there were issues and problems in the prison? If so, what did the Department do about it? Or did the ombudsman not indicate that there were problems in the prison? If that was the case, the ombudsman was not doing his job.

Ms Crawford: I am not aware of specific issues that the ombudsman may have raised about Maghaberry at any point. As Anne said, the relationship that we in the Department have with the Prisoner Ombudsman is a sponsorship role. It is about governance. We do not become involved in the operational, independent aspects of either the Prisoner Ombudsman or CJINI.

Mr Poots: You are asking us to place our faith in an organisation or body that has failed to do its current job and to put it on a statutory footing.

Mr Lynch: Rosemary, you said that there was a duty to cooperate. What does that mean? Would the ombudsman have powers to compel a witness?

Ms Crawford: There is a duty on people who are parties to an investigation. The Prisoner Ombudsman's role is about individuals — prisoners or prison visitors — so there is a duty on those who are a party to an investigation to cooperate with the ombudsman. This legislation takes us a step further in that it creates an offence if people should not cooperate, so that they are obliged to cooperate. Some thought was given to the requirement to compel a witness, but it is not part of the as is principle, for which we have been given the opportunity to legislate. The current ombudsman is a bit concerned that the power to compel is somewhat cosmetic. You can compel people to turn up and see you, but you cannot compel them to contribute positively and to help you in your investigation. In the current proposals, therefore, there is not a power to compel.

Mr Lynch: It would be an offence.

Ms Crawford: It would be an offence intentionally to obstruct an investigation.

Mr Lynch: If people had moved on, that would include legacy issues.

Ms Crawford: Anyone who is a party to any investigation that the Prison Ombudsman would undertake would have to —

Mr Lynch: Or had been a party to it.

The Chairperson (Mr Ross): We have gone somewhat beyond clauses 28 and 29. A load of members have indicated, so ask about whatever part of the Bill you want to, otherwise we will be here all day.

Mr A Maginness: I will try to be quick. As for independence in the appointment of the ombudsman, would that not be better served by giving the appointment role to the Assembly in the same way as it will appoint the NIPSO? Would that not clearly demarcate the relationship between the ombudsman and the Department of Justice?

Ms Crawford: The appointment has to be made somewhere. Our view is that, given its role in the justice system, the Justice Minister is the appropriate person to make the appointment. That has been the case until now, and there are no concerns or issues that we have been made aware of about the independence of the ombudsman being compromised.

As I said, the Minister makes appointments to other independent positions. Those are individuals and bodies that are fiercely protective of their independence. As I said in my opening remarks, the Policing Board, the Probation Board and the Criminal Justice Inspection are not impeded in their statutory functions by the work of the Department.

As I also said, the relationship is about sponsorship. We rightly take a very close interest in corporate governance issues, but, when it comes to the delivery of the statutory responsibilities that they alone are responsible for, we would have no way to influence or fetter them, and nor would we want one.

Mr A Maginness: I understand your point. I am not saying that anything has caused a problem with the independence of an office holder in the conduct of his office or that the Department has interfered in a role. It is food for thought anyway, because the NIPSO is to be appointed by the Assembly. That is probably a better way of doing things.

Ms Crawford: We got legal advice on the extent to which the Bill's proposals are compliant with article 2 of the European Convention on Human Rights, which confirmed that they are. Had there been any doubt about independence, that would not have been the case.

Mr A Maginness: I accept that.

To cut to the chase, in your description of the current Prisoner Ombudsman and the future Prison Ombudsman, the role is discrete within the architecture surrounding prisons in Northern Ireland. Due to that discrete role, it is different from other ombudsman positions, such as the Judicial Appointments Ombudsman, who could easily be absorbed into the structure of the NIPSO. Do you agree with that? Is that a fair assessment of what you are thinking?

Ms Crawford: This role is unique and different to that of any other complaints handler. It is, therefore, appropriate that we have different arrangements for it. As I mentioned, it is not just about handling complaints; it is about being conscious of the fact that the closed environment in a prison can create tensions very quickly. There is something about being close to and understanding the needs and concerns of prisoners and prison visitors and being able to react swiftly and deal with them.

That is not in any way to say that the concerns that people have or may want to make complaints about in relation to any other part of the public service are any different. Anyone with issues about health and education will obviously be concerned about them, but I see this as being unique. As I said, it is not just about complaints handling; it is about helping to manage the whole environment in a prison and the death-in-custody investigations, which are extremely important and emotive for all concerned.

Mr A Maginness: If that is not put on a statutory basis, you could be infringing rights under article 2.

Ms Crawford: That is one of the big benefits of the statutory footing. As I said in my opening remarks, the ombudsman role has been fulfilled effectively over the last 10 years, but there is a weakness in not having a statutory basis on which to take this work forward. It will give some assurance in that regard.

Ms McConkey: There is a range of ways in which we have sought to embed independence in the appointment process. The appointment will be made via an open public appointment process — a Commissioner for Public Appointments for Northern Ireland (CPANI) -regulated competition — on merit. As at present, there is no input into the appointment from the Prison Service, nor are there any direct relationships in the structures there.

The appointment is moving from a renewable three-year term to a seven-year term which, again, enhances its independence. The Prison Ombudsman will have security of tenure, in that he cannot be simply got rid of. If the Minister does not agree with the report that the Prison Ombudsman produces, we have arranged in our proposals that the office will be a corporation sole, which means that the powers and responsibilities will be invested in the office rather than in an individual, to give some continuity. That is particularly effective in ensuring independence.

Ms Crawford: One of the key aspects of this — and it is part of the current arrangements and we will ensure that it continues going forward — is that where the Prison Ombudsman is placed in the Department there will be absolutely no contact with the prison structure or hierarchy in the DOJ. The

office will continue to operate as an arm's-length body of the Department, and there will be no scope, or possibility, to influence or fetter the role in that way.

Mr Douglas: Thank you for your presentation. I have a couple of questions about complaints, but I was going through it there so I hope that I will not duplicate what others have said. NIACRO suggested that the remit of the Prison Ombudsman, as set out in clause 28, be widened to cover complaints and investing issues, or deaths, relating to the Youth Justice Agency, the Juvenile Justice Centre and the Probation Board. Would you comment on that?

Ms Crawford: We reflected on NIACRO's comments. The bodies you mention have complaints structures in place already; so, for that reason, we did not think that it was necessary to replicate those structures. One of the new and interesting things from the proposals is that the Prison Ombudsman will have access to the Juvenile Justice Centre at Woodlands, which is to be welcomed.

Mr Douglas: May I ask a question about clause 29?

The Chairperson (Mr Ross): Go ahead, Sammy, whatever you want.

Mr Douglas: The Human Rights Commission has recommended that, in clause 29, a specific obligation should be placed on the Prison Ombudsman to promote understanding and awareness of its complaints procedures to ensure they are accessible to all prisoners. Would you comment on that?

Ms Crawford: Again, we reflected on that and we discussed it with the Prisoner Ombudsman. We accept the validity of the point and its importance. I accept that it is important that there is clear signposting of the right avenues for anyone who uses the service. However, the existing arrangements that the ombudsman has in place for publicity and access include a Freephone service, free post service, and a biannual newsletter. A number of different vehicles are used to communicate and raise awareness. While we totally accept the importance of it, we did not think that it necessarily needed to be in legislation.

Ms McGahan: Thank you for your presentation. Under clause 28, the Prison Ombudsman could have the powers to initiate his own investigations. Did the Department consider the criteria for that, especially where issues in the prison system are identified as systemic?

Ms Crawford: Again, it is not something that we considered in detail, on the basis that it was not part of the "as is" arrangements. However, the Minister is keen to hear the Committee's views on that point, if you think that that would be helpful. To come back to the points that I made against doing that — you can see arguments for and against — CJINI and Her Majesty's Inspectorate of Prisons deal with those kind of systemic, thematic issues that arise across prison establishments, and so we are not entirely sure that there is, necessarily, a gap to be filled, because the Prison Ombudsman would continue to deal with concerns from individual prisoners or visitors.

Ms McGahan: Chair, I think it might be worth getting a research paper done on this particular area, looking at other jurisdictions. Having been through the detail of the NIPSO Bill from its inception, I know that issues were raised about that ombudsman having powers to initiate his own investigations into serious issues around health. He would have some remit for prisoners regarding complaints against the provision of healthcare, but I think it is something worth finding further detail on. I do not think that we can give a response now; I think that we need to weigh it up.

Ms Crawford: In coming up with detailed and specific criteria, I am conscious of the legislative timetable for this Bill. Our Bill manager will keep me right on this; but, if we were going to introduce something like that, we would need to come up with drafting instructions fairly quickly. At the minute, I suppose the question is whether the Committee considers, in principle, that it would be a useful provision and power to have. This is something that we could think about and that the Minister would be happy to consider placing in the Bill; and then, regarding specific criteria, or instructions on how it could be given effect to, that could be handled down the line.

Mr Graham Walker (Department of Justice): It is subject to the Assembly's timetable and we anticipate Consideration Stage to be around the middle of February.

Mr Frew: Explain again the potential confusion: there is bound to be potential confusion in both bodies, and both ombudsmen, around healthcare and the capacity to investigate complaints around healthcare if a prisoner is receiving treatment. Are there clear lines of demarcation there?

Ms Crawford: There are clear lines of demarcation and they even go to the point of the various complaints forms. If it is a healthcare complaint or *[Inaudible.]* it comes to the Prisoner Ombudsman; it is colour-coded. The vast majority of complaints, as I understand it, are raised via the Freephone service. Once a call is made to the office, and that happens very frequently, if it transpires that it is a healthcare issue, it gets redirected to the appropriate source very quickly. So, there are clear arrangements in place.

One area I am very concerned about is making sure that the individuals, the service users, are very clear on what they need to do and what they can expect from which bodies. While I do not think that this needs to be specified in primary legislation, there have been protocols in place up to now between the trust and the Prisoner Ombudsman about how things are handled and how information gets shared; those sorts of issues. We have already had some initial conversations with the trust, the ombudsman and departmental officials, and we are quite keen to make sure that we enhance and develop those protocols to ensure that the interfaces between them are quite clear to those who are operating the system as well as those who are at the service end.

Mr Frew: Can you ever envisage a time when the two ombudsman offices are investigating the same scenario, even if it is a matter of, let us say, investigating the death of a prisoner, and there may be a suspicion that it was down to previous treatment?

Ms McConkey: There is provision for the ombudsmen to work together. They would be able to work together in those scenarios and they do work together.

Mr Michael Meehan (Department of Justice): If I could perhaps clarify; the Prisoner Ombudsman would not deal with healthcare complaints. His only interest or role would be in relation to the healthcare dimension of deaths in custody. It is important, in terms of the state's duty under article 2, to look at that interface.

Mr Frew: Another completely different aspect is efficiency. Whilst the ombudsman will be independent, clause 28 states that:

*"(4) The Ombudsman shall exercise the powers under this Part in such manner and to such extent as appears to the Ombudsman to be best calculated to secure—
(a) the efficiency, effectiveness and independence of the office of Ombudsman".*

How do you measure efficiency? How do we know whether it is efficient? What do we do to make it more efficient?

Ms Crawford: In many ways, it is no different to the way in which we would seek to measure efficiency and effectiveness in any part of the system. Given that we would be sponsoring the ombudsman, as we currently do, the sort of regular conversation we would have would be around how the budget is used, the level of budget, and what has been achieved for that. I suppose, given the nature of this particular service, efficiency also comes down to the customer experience and how effective and efficient customers believe the process has been. The ombudsman makes an annual report on the number of complaints he has been dealing with and the sorts of trends and issues that have been arising; so, there is scope to look at the volume of work, its nature, and how effective the ombudsman has been in producing reports with recommendations and the extent to which those recommendations have been accepted and implemented. There is a whole range of things we can look at to ensure efficiency.

Mr Frew: I am sure it would be very difficult, because I can send the Northern Ireland Ombudsman something to investigate which could be a very small, and then the next complaint could be very large. These are things on which you do not ask for a monthly update. Is there a wide spectrum of indicators that measure efficiency?

Mr Meehan: Let me just clarify: the Prisoner Ombudsman, in his annual report, will detail complaints and investigations per prison establishment, trends against previous years and give a context by

comparing them to similar statistics in England and Wales and through the Scottish Public Services Ombudsman.

Ms McConkey: We will also meet the Prisoner Ombudsman on a quarterly basis at a sponsorship meeting and look at his finance, his budget and how he is performing. Again, we will look at the high-level management information that he has; so, we will see, on an ongoing basis, whether there is any change to that.

Mr Frew: Do you not think that the office of Prisoner Ombudsman would be more efficient if it was a section of the Northern Ireland Ombudsman's office?

Mr Meehan: No. There is a risk there that you are splitting functions between complaints and, I will call it, the statutory obligation on article 2 for death in custody. The function of death-in-custody investigations would still have to be performed. Look at the size and scale of the Prisoner Ombudsman's office currently; some 90% of costs are for the staff, which is obviously desirable; so, we were not convinced that creating a separate entity to deal only with death in custody is effective or proportionate.

Mr Frew: I am happy enough to leave it there.

Mr McCartney: I have just a couple of points. I apologise for having missed the start of the presentation. When the Prisoner Ombudsman was here, I asked him about the ability to compel witnesses. Have you any view on the ability or inability of the ombudsman to compel witnesses?

Ms Crawford: We have discussed this issue with the current ombudsman as well. The reason why it is not part of the proposals at the minute is because it is not part of the current arrangements, and the policy behind all this has been to replicate the current non-statutory arrangements. The current ombudsman was concerned that simply having a power to compel somebody does not mean that they are going to contribute positively and help. You can compel someone to turn up to a meeting but you cannot compel them to talk to you and tell you the information you need and that will further your investigation. One of the things we have done in the Bill is try to strengthen this by making it an offence for anyone who intentionally seeks to obstruct an ombudsman's investigation.

Mr Meehan: Perhaps I will just add that the provisions in the Bill provide that the ombudsman, in any part of an investigation, can require any documentation or information, electronic or otherwise, to be produced together with an explanation of that information.

Mr McCartney: If someone comes in front of an investigation, they can refuse to speak, but the compulsion means that the people might feel that it is serious or that it could become a breach of discipline not to comply or be amenable to an investigation that is part of the remit.

Ms Crawford: The introduction of the offence to intentionally obstruct goes some way to addressing that.

Mr Meehan: That will include withholding information.

Mr McCartney: I accept that.

Regarding clause 38, I made the point to the Prisoner Ombudsman that prison officials have appeared in front of us to try to explain the role of the British Secretary of State. It has never been clear where the powers begin and end. It was interesting that the ombudsman, when asked, said that he did not think that it was relevant because it is only guidance. I think he said very clearly that it would not allow him not to do his job. Is it a necessary clause?

Ms Crawford: That has been part of the "as is" arrangement. That guidance has been in place since 2010. It has recently been updated by the Northern Ireland Office and shared with the current ombudsman; he has seen it. It is in draft form and will not be finalised until the legislation goes through. The current ombudsman has no concerns with it. The clause makes specific reference to having to "have regard to". He sees no issue with that in terms of it in any way inhibiting him from doing what he needs to do.

To put it in context, the national security information that the ombudsman is exposed to is minimal. The only time it becomes an issue is perhaps in relation to applications for separated accommodation, which is a very small aspect. The ombudsman has not encountered any difficulty with it at all and has no issue with the guidance.

Mr McCartney: I accept that, and I know about the particular role that the British Secretary of State has for separated prisoners. However, this is dealing with investigations. It was very telling, from my point of view, that the ombudsman said that it really had no relevance. Sometimes, these things are put in but are not necessary or required, so why should it appear in the Bill? That is the only point.

In fairness to prison officials, they have tried to explain it on a number of occasions. It was always, "It's a power, but we don't know when or how it'll be used". It is something that I am a bit cautious about.

Ms Crawford: I might have been more concerned had the ombudsman not seen the guidelines and been content and not worked effectively with them over the last number of years.

Mr Meehan: On the issue of the phrase "must have regard to", the ombudsman sought and obtained legal advice, and he is content that it does not fetter him.

Mr McCartney: That is what I am saying. If it does not fetter you, what does it mean? It is saying, "I must have regard to something which I can totally and absolutely ignore". That makes you feel that it is not a necessary power. If there was a legal challenge, you do not know what the outcome of that would be. His powers could then be fettered.

Ms McConkey: If the ombudsman chose not to have regard to it, he would need to have reasons for that.

Mr McCartney: I understand that, but he said last week that he has a legal opinion. I might be wrong about this — I do not want to second guess anybody — but, in my opinion, he said on perhaps three occasions, "It doesn't matter. It's not necessary. I wouldn't take it as an instruction not to do my job". So, why do we need it?

Mr Meehan: It clarifies the expectations so that there is no confusion between any two bodies as to what information it relates to and what he should use it for. In that respect, it is a clarification.

Mr McCartney: But that could be done without it being in legislation. If the British Secretary of State wanted the ombudsman to take regard of something, I am sure that she could write to him. The ombudsman is saying very clearly that he has not seen and does not foresee circumstances where it would be necessary, never mind enforceable. We have teased this out in legislation. It is understandable why people might want the power, but we are legislating for something that cannot be changed.

Mr Meehan: I take it that you are suggesting that it could be done administratively.

Mr McCartney: Yes.

Ms McConkey: That would be a change from the current arrangements. There are currently arrangements in the prison rules that provide for the Prisoner Ombudsman at the moment. To move away from that would be a change to the as-is position.

Mr McCartney: Making law is about making changes. That is why we have to be careful.

Mr McGlone: Sorry for missing the initial stage of your presentation. I had to go out and deal with other Committee business. NIACRO made the case here for incorporating into the Prisoner Ombudsman role the handling of complaints and investigation of issues of deaths at the Youth Justice Agency, juvenile justice centre and Probation Board — pardon me if somebody else has covered this — yet the Department's response was that complaints mechanisms are in place for each of these bodies and that complaints can be made to the Northern Ireland Ombudsman if individuals are dissatisfied. I am not getting the logic here.

Ms Crawford: We answered that question for Mr Douglas. We looked at that when we saw the NIACRO proposal. There are already complaints mechanisms, and systems to handle complaints, in place for the bodies identified, and, in the event of the individual not being satisfied once the investigation is concluded, they can make a complaint to the Northern Ireland Ombudsman.

Mr McGlone: I am getting all that; but you are establishing this for one wing of the justice system. I am picking up on Mr Frew's point. I am not getting the logic of this. What I am saying is based on experience. You could have a situation where serious issues that the Prisoner Ombudsman is dealing with could have come about as a consequence — and I have been there — of a health condition not being properly dealt with. I do not get the logic for excluding all these other bodies. Forgive me for saying so. I am hearing what you are saying. There are already complaints mechanisms in these bodies, but it could be argued that there is already a complaints mechanism in place for prisoners. That is not a reason for not doing it better or in a more joined-up way. We hear so much about that at the moment. Mr Frew asked why they could not be joined up, and it seems an eminently logical position to me: we have too much in this place of one wing doing something, another wing doing something else and never the twain shall meet. This is how I see it, as someone who has been there helping to deal with the problems, and some of them have wound up in death. Someone could be carrying out an investigation over here, about what anyone could have seen is a major issue, while they are carrying out an independent investigation over there, and over here somebody else does not know about it until the dodo hits the wall. I am not getting the idea that that is over there, and this is over here.

Ms Crawford: That was one of the issues that I had mentioned earlier. You are absolutely right: it is important that it is clear who does what and that individuals who have concerns know what they can expect to receive from different parts of the system. Just to be clear, the Prisoner Ombudsman would not investigate healthcare issues in prisons.

Mr McGlone: That is not my point. I am picking up on the point that Mr Frew made earlier. If you have both of them within the one management framework, it can be done in such a way that people at least know what the other is about. It is the equivalent, for example, of two separate police forces here. I am afraid I am just not getting the logic of this.

Ms Crawford: The thing that I see as unique to the Prisoner Ombudsman comes out in the healthcare aspects of death-in-custody cases. He gets to look not just at the healthcare issues and at what was happening in the prison but at the interface between healthcare and the prison arrangements and what happens there. He would also have access to some wider information that people who are only investigating health would not, such as CCTV footage from prisons if that helped. The other point —

Mr McGlone: Sorry, but you are actually making the case for one body to do it, by your own words.

Ms Crawford: Again, we are legislating for "as is". He currently has a role in investigating the healthcare aspects of death in custody.

Mr McGlone: I appreciate that.

Ms Crawford: The reason we do not want it separated is so that, when he is looking at investigations like that, he can look at the totality of the issue. What we have in place at the minute — I accept that there is room for improvement — are protocols between the trust and the Prisoner Ombudsman. It is not statutory legislation, but agreements in place about information sharing, who does what and where the two systems interface. We have had conversations with the trust and the ombudsman, and I think we all accept that there is scope to improve and enhance those to make sure that it is clear. There are arrangements in place which we can improve and which we are happy to work with others to improve. However, when it comes to the ombudsman investigating deaths in custody, healthcare could, potentially, be an important element of that, so I think it is important that one person gets to get their arms around that whole issue.

Mr McGlone: Which is exactly my point. Why have two separate wings or two separate management structures doing all of this stuff?

The Chairperson (Mr Ross): The NIPSO Bill went through the OFMDFM Committee. Was this issue discussed at the OFMDFM Committee? The Further Consideration Stage of the NIPSO Bill is coming up. Was there a discussion at that Committee, during the Consideration Stage, or was there a

proposal from the current Northern Ireland Ombudsman that he would take on the powers that are currently with the Prisoner Ombudsman? Did that Committee come to a decision on it?

Ms Crawford: Yes, my understanding is that that is the case. As I said at the outset, there are a number of ways in which we could have achieved this. That might have been one and, indeed, was one of the aspects that we looked at, but there was not political support at those Committee discussions for that move. It was for that reason that the Justice Minister reached the conclusion that we should legislate for the "as is".

Mr A Maginness: By way of information, I was on the Ad Hoc Committee that dealt with the NIPSO legislation, and I cannot recall that discussion at that Committee.

Mr Meehan: That is a Committee process that has been going on for a number of years. There were certainly members who noted that there was no desire to take away a separate prisoner or police ombudsman or, indeed, to move towards the creation of a justice ombudsman. It was noted that that would not be legislatively on the table.

Mr McGlone: No desire by whom?

Mr Meehan: By members.

Mr McGlone: That does not mean to say that it defies logic. I am just not getting the rationale for this; I am sorry. Whatever you have, I just see the usual thing. Where we are supposed to have joined-up government here, it is un-joined-up. I see further potential for two administrative blocks growing up here when the one, or at least the conjoined one, could serve a better purpose. Anyway, Chair, I am sure there is greater logic for it somewhere else, but it totally evades me at the minute.

The Chairperson (Mr Ross): I can see the logic of having one body, from a cost point of view, but it might be a minimal saving. My only issue is that if this is something that the ombudsman raised with the OFMDFM Committee at the beginning of its consideration, it would have been a much neater way of doing it. The fact that that has not been part of the discussion, and we are about to go through a Further Consideration Stage of the NIPSO Bill, makes it seem as if we are almost passing a Bill and immediately amending it.

I have another point of clarity on the role. If, at present, it is well established that there is a Prisoner Ombudsman and that there will be a Prison Ombudsman, people will at least know where to go to, and there may be confusion. If we want to ensure that people are aware of where they should lodge their complaints, moving away from that title may make it less likely that they will come forward with complaints, arguably.

Mr McGlone: Are we going to get that down here?

Ms Crawford: Yes. All of this has its origins in the Hillsborough Agreement. It is what the parties had asked the Department to do, and that is why we have brought it forward. If there is a change of opinion, we will equally listen to that. I think that you are absolutely right: to me, the most fundamentally important aspect of this is that people who need to access the system know where to go and how to use the system and get a swift and timely response to their concerns. If it was part of a much bigger system, there might be an issue around that.

Mr McGlone: How swift? How timely? Have you set a time-bound set of protocols or procedures for how quickly an investigation should be returned?

Ms McConkey: We are working on the regulations which will underpin this legislation, and the timelines will be included in those regulations.

Mr McGlone: When are those likely to be available?

Ms McConkey: We are working on them at present. It will be in the new year.

Mr McGlone: If it is in new year, have you any —

Ms McConkey: We are basically working on a similar time frame for complaints as is in the current legislation.

Mr McGlone: Forgive my ignorance, but what is that?

Ms McConkey: Twenty-eight days for a response, from when the complaint comes to the Prisoner Ombudsman.

The Chairperson (Mr Ross): There are no other questions. Thank you all very much.