



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Prisoner Ombudsman Consultation:
Department of Justice Briefing

11 June 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Tom Elliott
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone
Mr Jim Wells

Witnesses:

Ms Anne McConkey	Department of Justice
Ms Karen Pearson	Department of Justice

The Chairperson: I welcome Karen Pearson, deputy director of the reducing offending division, and Anne McConkey, head of probation unit in the reducing offending division in the Department of Justice. You are both very welcome to the meeting. As usual, it will be recorded by Hansard, and the report will be published in due course. Karen, I will hand over to you at this stage.

Ms Karen Pearson (Department of Justice): Thank you, Chair. As always, we are grateful to have the opportunity to present to the Committee the outcomes of the consultation on the proposal to place the Prisoner Ombudsman for Northern Ireland on a statutory footing. We have provided a paper that, we hope, the Committee has found helpful. Obviously, Anne and I are happy to take questions.

The proposal was first put forward in 2008 prior to the devolution of justice powers. The review of the powers of the Prisoner Ombudsman became a commitment in the Hillsborough Castle Agreement of 2010. The Prisoner Ombudsman's office has two main functions: first, to investigate and report on complaints from prisoners and their visitors and, secondly, to investigate and report on deaths in custody.

The independent investigation of complaints is really important to us. It provides prisoners with a way in which to express their concerns. It also provides the Prison Service with a valuable source of feedback on how it delivers its services. Complaints, when handled well, help the Prison Service to improve its services and reputation and can save time and money that might otherwise be spent on issues escalating. The ombudsman's responsibility for investigating deaths in prison custody helps to fulfil and protect human rights in the context of article 2 of the European Convention on Human Rights.

The consultation was launched in January. We received nine responses, which were broadly supportive of the statutory-footing approach, with some recommendations for a different way forward to the one that we had initially recommended. The Department's proposals, which will come forward in the fines and enforcements Bill, would not alter how the ombudsman conducts his business on a day-to-day basis. No changes to the ombudsman's remit are proposed. The statutory footing would underline the ombudsman's independence. The legislation would provide the necessary and robust framework for continued operation on an entirely independent basis from the Prison Service.

I will summarise briefly the key points set out in our paper. The ombudsman will continue to be accountable to the Minister of Justice but will be entirely independent of those whom he investigates. When originally created, the ombudsman's office sat in the Prison Service. It was quickly recognised that it needed to sit outside the Northern Ireland Prison Service (NIPS) and at arm's length from government to maintain and demonstrate the independence of the office. The reporting structure will continue to be completely separate to the Prison Service.

Some powers will be necessary to underpin the statutory footing. The precise detail will be set out in the draft legislation. Our general intention is to legislate for replicating the existing administrative arrangements. Statutory footing will also help to underpin exchanges of information with relevant organisations. Our proposals seek to create a statutory office without adding significantly to costs. The ombudsman's office will be operated entirely independently from the Prison Service. However, we do not envisage that it would have full non-departmental public body (NDPB) status. The ombudsman will, however, need flexibility in his methods of staff recruitment through the use of seconded staff and shared services. It is vital that the ombudsman has the final say on who goes into his office.

Although there will be no changes to the ombudsman's remit, we will be proposing transitional arrangements to ensure continuity in the operation of his office for a period. We would also like to take the opportunity to alter the name to Prison Ombudsman to reflect the fact that, in his role, he neither defends the body being complained about nor champions the complainant. We think that this will further enhance his independent position.

That is a very brief summary of our proposals. We are very happy to take questions. I would just add that we have kept the ombudsman up to date on our thinking so far whilst keeping an appropriate distance between us so that he can comment to the Committee if you wish him to do so. Thank you very much.

The Chairperson: Thank you very much, Karen. I suppose that the key question for me is this: if the statutory footing is purely about underlining the independence of the body, is it really necessary?

Ms Pearson: That is a very good question. In the consultation process, there was support for a statutory footing. The Minister thinks that it would be a good thing to do to further enhance the ombudsman's independence and underline his distance from us, but it will not change very significantly in any way anything that he does on a day-to-day basis.

The Chairperson: One issue that was mentioned to me when I met the current Prisoner Ombudsman was that the statutory footing would help other Departments to share information. Does the Department feel that it is necessary to have that statutory footing of independence so that the issue of the sharing of information can be resolved, or is that not a problem?

Ms Pearson: It is not a problem on a day-to-day basis. I have not heard of any problems with the sharing of information. However, the ability to share information between organisations is one of those things that can just be enhanced by setting it out very clearly. We are not facing any problems as far as I am aware today.

The Chairperson: There is one change around looking into custody-related deaths that slightly broadens the scope of what the Prisoner Ombudsman would currently look at if the Minister asked him to look at an issue.

Ms Pearson: The Minister could ask him to look at an issue, yes. If we had an issue that fell outside the existing arrangements at the moment, I do not think that there would be a barrier to the Minister asking him. To put another category on the face of the Bill, the precise purpose would have to be very clearly understood.

The Chairperson: Can you elaborate a little bit more on why the change from Prisoner Ombudsman to Prison Ombudsman is necessary?

Ms Pearson: Again, I do not think that it changes anything dramatically. It is a clarity point. I think that current ombudsman would welcome the change. The title of Prisoner Ombudsman tends to suggest that he is there as a prisoner advocate. That is not his role. It is just a point of clarity.

The Chairperson: So that I am clear in my mind, what is the Prisoner Ombudsman not able to do currently that he would be enabled to do by being put on a statutory footing?

Ms Pearson: I cannot think of anything in particular that that would cure, because we are not facing any particular problems in the operation at the moment. As you said, it is really about underlining his independence and his status. It is not a dramatic shift in what he could do compared to today, but, in article 2 terms, it would be good to have it in legislation that we have a statutory ombudsman, and the consultation exercise was supportive of taking that step. Previous ombudsmen have also asked for this.

The Chairperson: I note from the list of respondents that the Prison Officers' Association (POA) did not respond. Did it engage in the consultation process?

Ms Pearson: We did not receive a response from the POA. That is correct.

The Chairperson: I take it that it was advised of the proposals but did not respond.

Ms Pearson: That is correct.

Mr McCartney: Does the legislation that is in place now place a responsibility on all parties to be part of the investigation, or is that a change?

Ms Pearson: At the moment, we do not have legislation that we are relying on for the operation of the ombudsman. We think that a statutory footing requires us to think about powers, so we are currently looking at the powers that the Criminal Justice Inspection Northern Ireland (CJINI) has. Those are in section 48 of the Justice (Northern Ireland) Act 2002. We are still looking at precisely what will be needed, but that is our starting point for our consideration. CJINI has powers of entry and powers to require documents, so that is our starting point at the moment.

Mr McCartney: That would be a strengthening of the current position.

Ms Pearson: On the face of the legislation, yes, but we are not facing any problems on those issues. The ombudsman is getting full cooperation.

Mr McCartney: I accept that, but the legislation just strengthens it and it then becomes a legislative responsibility rather than just people working in good faith.

Ms Pearson: That is correct.

The Chairperson: Do any other members have questions?

Mr A Maginness: Can I ask one question?

The Chairperson: Yes, Mr Maginness. Do not let them off this lightly.

Mr A Maginness: Some concern was expressed about deaths in custody. The South Eastern Health and Social Care Trust expressed concern about the Prisoner Ombudsman taking the lead on clinical issues with death in custody. It considered that the Department of Health, Social Services and Public Safety should be in the lead, given its expertise. Has that issue been resolved in any way?

Ms Anne McConkey (Department of Justice): Yes, it has been resolved in that the ombudsman is there to do a fully independent investigation and needs to look at all the factors in that investigation — the prison-related factors as well as the health-related factors. For it to be an effective investigation, it

needs to be completely independent, so, of course, the ombudsman is going to use the information that he gets from the health trust in his overall investigation, in which he will have primacy to fulfil the article 2 obligation to protect life and provide an independent investigation.

Mr A Maginness: Do you think that the health people will be happy with that?

Ms McConkey: This has been a matter of ongoing discussion with the Health Department, and, at the moment, the ombudsman has a working protocol of working arrangements that are entirely that.

Mr A Maginness: They are satisfactory.

Ms McConkey: Yes.

The Chairperson: It looks like you are going to escape. Thank you very much.