



Northern Ireland
Assembly

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

**OFFICIAL REPORT
(Hansard)**

**Proposals to Update Legislation to
Reform the Office of the Northern
Ireland Ombudsman**

12 January 2011

NORTHERN IRELAND ASSEMBLY

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FOR THE OFFICE OF THE FIRST MINISTER AND
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Northern Ireland Ombudsman**

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Members present for all or part of the proceedings:

Mr Tom Elliott (Chairperson)
Dr Stephen Farry (Deputy Chairperson)
Ms Martina Anderson
Mr Allan Bresland
Mr William Humphrey
Mrs Dolores Kelly
Mr Danny Kinahan
Mr Francie Molloy
Mr George Robinson
Mr Jimmy Spratt

Witnesses:

Mr Tom Frawley) Northern Ireland Ombudsman
Mrs Marie Anderson) Office of the Northern Ireland Ombudsman

The Chairperson (Mr Elliott):

Good afternoon, Tom and Marie. You are very welcome. There will be a Hansard report of this evidence session for our records. Your briefing should last around 10 minutes and then we ask that you leave yourself available for questions.

Mr Tom Frawley (Northern Ireland Ombudsman):

Thank you. Members will be familiar with my deputy, Marie Anderson, who has been here on other occasions.

I welcome the opportunity to respond to the Committee's consultation paper on the proposals that have been developed to update legislation to reform the office of the Assembly Ombudsman and the Office of the Commissioner for Complaints. I am grateful to the respondents who took the time to consider the issues that are detailed in the paper and comment on and respond to the consultation questions.

It is also important that I acknowledge the respondent stakeholders who participated in the 2003-04 Deloitte review process of my office, which was sponsored by the Office of the First Minister and deputy First Minister. In many ways, that review set the direction of travel for the analysis that I am presenting to the Committee today.

The matters that I deal with in complaints range widely from small issues, which are, by their nature, hugely important to individuals, to serious deficiencies that affect large numbers of people or that affect fewer people substantially. The ombudsman can play a role by enforcing legal accountability, along with the courts, and political accountability by helping the Assembly. That is reflected in some countries by the ombudsman's being formally recognised in the constitution, or as an officer of the Parliament, or both.

The ombudsman works with the Assembly but is independent of it in conducting investigations and complaint resolutions. The ombudsman is impartial and, although the work leads to the redress of grievances against public bodies, he or she is not a citizen champion. The thing that the ombudsman champions is good administration.

Administering justice is not simply about resolving complaints on the delivery of public services; it is also about seeking to promote good administration. That latter role is not something that the courts or the tribunals do, because they are concerned with determining whether the law has been broken. The ombudsman determines whether or not maladministration has occurred and if it has led to injustice.

The legislative framework within which the ombudsman works is essentially "bred" in the

Westminster Parliamentary Commissioner Act 1967. The need to review and refresh that framework is pressing for two reasons. First, at a time of unprecedented pressure on the public finances, with the consequent impact on the provision of public service, the adequacy and effectiveness of decision-making processes in public bodies will be of even greater importance, especially when public services are 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 some optional extra; it is now fundamental to a public body's organisational life, necessitating the engagement and ownership of staff at all levels if their organisation is to be successful and sustainable in a world with an increasing pace of unprecedented change.

Secondly, the role of ombudsman is unique. An ombudsman is autonomous and derives authority from statute. Moreover, an ombudsman reports to the legislative body, in this instance, the Northern Ireland Assembly. Given that his authority derives from the Assembly, he is independent of Government. The ombudsman is thus made part of the legislature to achieve independence at all levels from the organisations the ombudsman investigates. The need for independence is fundamental. If those who investigate complaints are not independent of the organisations they investigate, a perception can arise that they are there to preserve the interests of the organisation rather than establishing the facts of the case impartially. Independence thus promotes impartiality.

It follows, therefore, that a key aspect of the building up of trust in the ombudsman process is the fairness and impartiality demonstrated by the ombudsman's office in conducting its affairs. The legislation that governs the functioning of the office must fully reflect this reality. In that context, the purpose of the legislation being considered addresses the structure, role and governance of the ombudsman's office. Moreover, it seeks to ensure that the office is future-proofed and equipped to support the wider changes in public administration under way in Northern Ireland.

A new public sector architecture is being developed in areas such as health and local government. I am responsible for oversight of those areas and, unlike other parts of the United Kingdom, the scope of the Northern Ireland Ombudsman's legislation has not kept pace with devolution, nor with the modernised public service, which I must hold to account. I recognise the tight timescales that the Committee is working to, and I am mindful of the Assembly elections this year. However, I commend the Committee for seizing the opportunity, despite those

challenging timescales, to refresh the legislation under which my office operates to modernise and update the existing legislation in order to develop an ombudsman's office with all the necessary powers to meet the current and future needs of the people of Northern Ireland.

Importantly, the approach that is emerging meets the challenge of putting the Northern Ireland Ombudsman's legislation back into the position it occupied in 1969 of being at the forefront of providing recourse and remedy for our citizens. In 1969, the aim was to ensure that the citizen's experience of public services in Northern Ireland was scrutinised in a manner that was in advance of other parts of the United Kingdom. However, the thrust of the consultation in 2011 is to ensure that the office of the Northern Ireland Ombudsman does not fall behind advances in the other devolved jurisdictions.

The consultation paper invited comment on the Welsh and Scottish models, as well as the approach that has been implemented in the Republic of Ireland, rightly so, in my view. However, I note with interest the response to the Committee's consultation from the General Secretariat of the International Ombudsman Institute, which also reflects best international practice. I consider that this is a critical opportunity for the Assembly to adopt best practice in ombudsmanship for the UK and beyond. It will also allow the Assembly to legislate for a Northern Ireland model of ombudsman that meets the needs of the Northern Ireland citizen, and, as I suggested, will put us once more at the forefront of current developments in the protection of our citizens in their interactions with the services that are funded by public money.

I have already given evidence to this Committee on a number of issues that the review highlighted as potential areas of much needed reform; notably on 2 June and 27 July 2010.

I am grateful for the opportunity that the Committee has given me to allow me to develop that evidence and, crucially, for its sponsorship of a draft Bill. I am aware of the Committee's need to decide the policy issues that surround any new legislation. With that in mind, I commend the paper that I have come to the Committee to speak on this afternoon. It seeks to analyse the consultation responses in a first-cut empirical manner. It also includes my perspective and comments on the consultation responses that have been submitted to the Committee. I am happy to discuss and elaborate on any aspect of the views that are contained in my comments in the paper. Clearly, policy decisions on the future direction and shape of any legislative reform of the office are a matter for the Committee and, ultimately, the Assembly. It may be helpful to note

that there is clear support for the proposals as set out in the consultation document. That will be helpful in informing the Committee's judgement going forward and in shaping the broad drivers that should inform any new legislation.

In a limited number of areas, I have gone beyond the consultation proposals in some important aspects. For example, I do not consider that an actual list of bodies and jurisdictions is necessary, rather that a list of those that are not covered by the legislation would be more appropriate and helpful in informing citizens who want to make a complaint. Again, I consider that we should build on proposed reporting arrangements. I suggest, therefore, that Northern Ireland should develop a model of reporting that is similar to that of Wales. I am happy to expand on my reasoning for such an approach. I agree that the ombudsman should have similar reporting relationships with a Committee to that which is agreed with the C&AG. However, recognising the workloads and demands on existing Committees, I suggest that a subcommittee of an existing Committee might be the most constructive approach with which to take that forward.

The consultation is not explicit about the position of the ombudsman as an officer of the Assembly. However, that is an important matter which should be made explicit; perhaps in formalising the title of the ombudsman to "Northern Ireland Assembly Ombudsman". The new legislation should recognise the reality of today's complex regulatory and oversight frameworks. I recognise the challenge of making it comprehensible and accessible to individual citizens who seek recourse and remedy when they believe that public services have failed to deliver what they believe to be their entitlement.

While the C&AG has the central role in establishing probity and value for money in the expenditure of public funds, my office is focused on an individual citizen's experience of public service, which is an increasingly important matter when services are being retrenched and realigned. The Office of the Northern Ireland Ombudsman is, therefore, central to a uniform and consistent approach to the handling of public sector complaints. Its work will go on. Injustices will continue to be uncovered by my office. I will continue to hold Government and public bodies to account and, in so doing, contribute to the modernisation of the Northern Ireland public sector by ensuring that administrative justice is available to all citizens. In order to do that, the structure, role and governance arrangements for the office must be fit for purpose.

It is important to acknowledge that there is much that works well in existing legislation, such

as the investigatory powers, privacy of investigation and protection of information, as well as the independence of the ombudsman by way of funding. In going forward, I do not wish to lose sight of those important successes. It is important that they are consolidated within any new arrangements. Thus, we must build on those strengths and achievements in order to create a modern, one-stop shop for the investigation of complaints about publically funded services that are provided in Northern Ireland.

The Committee is to be commended for accepting the challenge of creating a new beginning for the public services ombudsman in Northern Ireland through the enactment of legislation that is sufficiently flexible to meet future needs and sufficiently adaptable to meet the increasingly complex and challenging expectations of citizens in the twenty-first century. The important work that the Committee is taking forward ensures that it leads the way in strengthening and enhancing the democratic accountability framework that serves Northern Ireland. Refreshed legislation will leave a lasting legacy; one that protects the rights and responsibilities of our people and the public bodies that serve them.

In conclusion, some fundamental principles that inform the Office of the Ombudsman are to uphold the rule of law, democracy and accountability, and to promote good administration. That is achieved by enforcing institutional integrity, which goes further than protecting substantive rights and enforcing procedural rights by promoting values, as maladministration is more than legality; it also encompasses proper conduct. The ombudsman's long-term aim is to ensure that citizens receive efficient and effective quality public services in the future. Our means to achieve that end are to constructively confront the current failings of those services as and when we identify them.

Chairperson, I thank you and your colleagues for giving me a further opportunity to provide evidence. Marie and I are happy to answer any questions or provide any clarifications that members consider helpful.

The Chairperson:

Thank you very much, Tom and Marie. You noted that:

“The Ombudsman has given evidence to the effect that he considers the bodies should be included within his jurisdiction on the basis of ‘following the public pound’.”

Will you expand on that? I am unclear about what that refers to.

Mr Frawley:

Increasingly, not just in our jurisdiction but across the world, Governments are saying that modernised public services can be provided outside public sector agencies and authorities. For example, a significant amount of healthcare is provided by private clinics and social care is provided by nursing homes. Those are not in the statutory framework within which I operate. However, as those services are paid for by the public purse, I follow the public pound and can look at how those services are provided.

In a number of the proposals that are emerging across the United Kingdom to address the significant challenges of public funding, there is the issue that we should allow other providers to come in and deliver services. Increasingly, therefore, those services, although paid for by the public purse, may be provided by other authorities, companies or voluntary organisations. Therefore, the concept of following the public pound is important in the legislation. If the public has paid for the service that the individual receives, that service should be amenable to examination and test by my office. It would be wrong if the service could not be scrutinised in that way just because the money has moved.

The Chairperson:

Do you see any conflict though, Tom, with regard to smaller groups, particularly smaller voluntary groups that may get some public funding but not a substantial amount? An organisation with a turnover of £200,000 may get £5,000 of core funding from the Health Department, for example. Do you see a difficulty there?

Mr Frawley:

There is an issue. Indeed, to be fair, some of the respondents wanted to follow the public pound where the group is substantially — to use your word, Chairperson — funded by the public purse. The problem with that is that we need to define what “substantially” means. I accept entirely your example that £5,000 out of an expenditure of £200,000 might not necessarily qualify. However, if the Welsh definition of substantial — when 50% or more of the funding of a service is provided by the public purse — were applied, that would represent “substantially” in my judgement. I do not want to define that.

The problem in some areas, particularly social care and community activity, is that individual services are provided within quite small financial ranges. It is quite complex in social care.

Other issues that relate to the same theme came up a number of years ago. Under the Comptroller and Auditor General's jurisdiction, for example, where the principle is that he can go in and audit the books of big organisations, the example that came up was universities, which received significant amounts of public money but were not within the remit of the Comptroller and Auditor General. That issue was addressed, and the Comptroller and Auditor General now goes into universities, looks at the financial arrangements and undertakes a performance audit and so on. Interestingly, universities in Scotland have now been brought into the remit of the ombudsman. Equally, there is an issue with colleges of further education, which are outside the ombudsman's ambit yet increasingly provide large amounts of education and training to our younger people and receive significant sums of public money.

In a way, the principle was established when housing associations came under my jurisdiction two or three years ago. I agree with you that there are probably issues on which we need to get a bit of clarification on what "substantial" means, but I think that we can address that issue by virtue of the Welsh definition. You may have your own thoughts on where that level should be set.

The Chairperson:

Thanks for that. The bodies that fall outside your current jurisdiction have been indicated in paragraph 4.6 of the consultation document. Are those the areas that you would seek to bring in under the single ombudsman's body, or are there others apart from that?

Mr Frawley:

I do not think that that list is exhaustive. It probably represents the major players who are currently outside the jurisdiction. It includes universities, the colleges of further education that I have alluded to, and a number of others that have come along the way. There may be others; I would not say that that list is exhaustive.

The Chairperson:

I ask because obviously it does not include any of the bigger ones, like the Prisoner Ombudsman or Police Ombudsman.

Mr Frawley:

As ever, Chairperson, you move me onto ground on which I am not that comfortable, but if you

want to open up that debate with me —

The Chairperson:

That is why you are here.

Mr Frawley:

There are issues with the Department of Justice coming under my jurisdiction. For example, the Prisoner Ombudsman issue is becoming more complex for us. Simply put — I do not want to complicate the picture for members — healthcare, for example, is now delivered in prisons by the Health Service. The Health Service is under my jurisdiction; therefore health in prisons is under my jurisdiction. We have a dichotomy in that the prisoners' health is under my jurisdiction and the wider aspects of the prisoners' experience are under the Prisoner Ombudsman's jurisdiction. The Prisoner Ombudsman is not yet on a statutory footing, although I know that is an issue that people are looking at, and which may well come back into play depending on the progress that those discussions make.

In Scotland, which I use as an example, prisons have been brought under the jurisdiction of the Scottish ombudsman, arguing that, if prisoners are citizens, as they are, they are entitled to the same standard review, test, recourse or remedy as anyone else. They are not entitled, nor should they experience, less or more, so the idea of a standard examination assessment run by a single office, in a jurisdiction that, after all, has 1.7 million people and a prison population, as I understand it, of around 1,500 prisoners — as distinct from our colleagues in England, who have over 80,000 prisoners to cope with — is, to my mind, something that should be brought into play in any debate.

If I am consulted on that issue — and I assume I will be at some point — I will see that as an area where the extension of the jurisdiction would be consistent with the trend across Europe and in Scotland, as I said. That is not an issue that this consultation is focused on.

The Chairperson:

Surely it should be. If we are doing an overall review, why should it not be?

Mr Frawley:

We have just readily identified the list of those who undertook the consultation. There was an

assumption made that this debate was, as we understood it, within a discussion that had taken place at political level, on the issue of the statutory footing of the Prisoner Ombudsman, so it was not an issue that we looked at. However, as I reflected in the early part of my response, I have a very clear view on how that should proceed. If I am being asked directly, I believe that the Northern Ireland Prison Service should be within the jurisdiction of the Northern Ireland Ombudsman. I do not want to underestimate its complexity, but one of the other aspects that the Prisoner Ombudsman currently deals with is deaths in custody, for example.

In my view, deaths in custody is not, and should not be, an area in which the ombudsman has a role. That is an issue for the coroner, in my opinion. There are a lot of aspects within that big question that need some consideration. However, I have no difficulty in putting a clear view that I am supportive of consistency with other jurisdictions and the direction of travel of a single ombudsman's office. If you are asking me for an opinion on the Prison Service, I would say that it should be in the jurisdiction of the justice bodies, as it is, but there is a debate about whether it should be put on a statutory footing.

Mr Molloy:

I want to speak about the following of public money. Many bodies provide public services now, and although there might be a measure regarding the amount of money that is put into them, the amount of services that they are providing also need to be measured. It is not all about the amount of money in the public purse, but about what the public has become accustomed to and the services provided by the number of outside bodies within that. That is one of the areas, other than the money, in which we need to have qualification.

Mr Frawley:

Within the definition, it is possible to look at the amount of service that is being provided by an organisation, as Mr Molloy suggests. There are issues, such as whether all of it is being provided back to the public. Mr Molloy is right. If one were looking at a complaint that had been received, one would be testing how far that service was provided with public money and how far the service met the standard that the public had the right to expect. The quality content and the amount of service would be part of that examination.

Mr Molloy:

My second point relates to the use of MLAs. May I suggest that we should be extending that to

councillors? One of the responses said that direct access to the ombudsman would remove a substantial barrier for complainants. Do you see the present process of having to go through an MLA as a substantial barrier? If so, why? The problem seems to be that a lot of people want to go back to outside bodies, rather than having elected Members processing it. The current process of going through an MLA is, to some extent, a filtering process, which allows an assessment to be made. The ombudsman deals with the second stage. I am not certain that every complaint going directly to the ombudsman is the best way of dealing with it.

Mr Frawley:

If you look at the model, you will see that we are not suggesting that. We are talking about a twin-track model, which allows the complainant to decide whether they want the support of the MLA. We would want to encourage that, if that were their choice. We worry that people sometimes feel inhibited, because of the personal or confidential nature of their query. Under the Assembly Ombudsman legislation, sponsorship is required. Therefore we have to go back to someone who comes in without sponsorship, tell them that we cannot consider their complaint and ask them to take it to an MLA for sponsorship. That, sometimes, feels like an unreasonable imposition on people.

On the other hand, we get many complaints under the Commissioner for Complaints legislation, within which are most public bodies in Northern Ireland, and, often, there is no need for MLA sponsorship. We often get Members who are supporting the complainant asking us to look at an issue. So it works well.

It is our intention to facilitate those who feel inhibited or who feel that it is a barrier or a limitation to be able to come directly to us. However, if people wanted their elected representative to be involved, we would actively encourage them. There is always the option to come alongside a complainant and support them. We are trying to model it on what is happening in Scotland, which is to abolish a requirement that people may feel inhibits them from making a complaint.

I accept the spirit of Mr Molloy's point that we think it is helpful to MLAs to get insight into the performance of public services by virtue of their constituents' experience when they make a complaint. People around the table have supported complaints, and that allows you to get a sense of how well services are performing.

Mr Spratt:

Thank you, Chair, and thanks for your presentation, Tom. I wonder what your views are on an area that has been highlighted in one of the submissions. I will not name the individual who submitted it, but it makes a lot of common sense. A theme that has been coming through in relation to the Commissioner for Older People and the Commissioner for Children and Young People at the minute is shared function, office space and so on. One individual says, and I think it makes a lot of sense:

“I would also argue that there should be one Ombudsman office for all executive functions (except police, which can involve large-scale criminal investigations leading to prosecution). Prison Ombudsman, a possible Children’s Ombudsman and an Ombudsman for the elderly should all be combined in one office to concentrate investigative expertise”.

That is one of the key issues.

The second key issue, which is very appropriate to the public purse at the moment, is administrative costs. To be fair, you have made this point: we cannot continue having all these ombudsmen with various administrative offices and so on. Let us face it, Northern Ireland plc cannot afford this in the future. I suppose there is an opportunity here to concentrate on legislation, and make common sense of using expertise across the various offices; not to diminish services in any way, but to ensure real and proper accountability to the public purse.

Mr Frawley:

I could respond to Mr Spratt, without encouraging him too much, by saying yes to all of that. I believe that we have to look at the affordability of the arrangements. He makes a very powerful point, which has also been made by some of the respondents, that there is an area of expertise in investigation and that you need to get a critical mass. If you break it up or spread it too thinly, you lose a lot of the real focus that you get from experienced investigation.

The argument that I have always made is included in the paper that I tabled to the Committee today. I made the point that investigating is different from advocating. There is a real advocacy role and challenge, which is hugely important and central, but when you are asked to investigate, that takes a different skill set, as you pointed out in your question. Scotland has five million people, whereas we are 1.7 million people. Scotland has had a review of all those offices and moved to having a single ombudsman. Now I am told that the Scottish Parliament is already debating the police complaints process going into that single office. Despite your misgiving about that —

Mr Spratt:

I do not have any personal misgivings about that. I would welcome that as well, just to put it on the record.

Ms Martina Anderson:

Surprise, surprise.

Mr Frawley:

That said, all I am suggesting is that having one office makes sense to me. I entirely endorse that. I think that I have said it already in reference to the point the Chairperson made about the Prisoner Ombudsman, that I believe it makes sense. If older people or children or any other group under a commissioner have a complaint that they want to be investigated, that should be undertaken by the ombudsman if that is the right context for that particular examination.

One thing that I have found with public bodies is — and I made this point in the paper that I tabled to the Committee, which I know caused controversy and upset to some people — if four and five organisations all pursue a complaint, it becomes completely confusing. Complainants go to different places with their complaints. Say for example, one of the health trusts has a complaint from the Children’s Commissioner or from the ombudsman; the question will be who has primacy, who is it dealing with and who should it respond to.

We have to get away from that and focus our resources in the way that was emphasised by Mr Spratt. As I said, I agree completely with the thrust and direction of what he said.

Mrs D Kelly:

Thank you for your presentation. For the record, the SDLP will not support the Prisoner Ombudsman or the Police Ombudsman coming under the remit of the Northern Ireland Ombudsman. The confidence of the community in justice issues still has to be nurtured.

I want to ask some specific questions about your presentation, Tom, starting with the issue of codes when you find that an agency has been guilty of maladministration. You suggested that the ombudsman’s office should operate in a similar way to the Equality Commission when it comes to follow through on such decisions. I would welcome that.

In your role as Commissioner of Complaints, you recently ruled against Craigavon Borough Council in a case about how it conducted interviews. How are you going to ensure that such behaviour is not replicated, that lessons are learned and that procedures are put in place to prevent such cases happening again? Will there be an opportunity, or is there a necessity, for powers to be sought to ensure that action is taken against those who are culpable and that people are held to account. The organisations should do that, but it is not always the case that they do; some people just wring their hands.

I note that there is a difference of opinion about the tenure of the ombudsman. Some respondents favour five years and others favour seven. I am also taken by the linking of the ombudsman's salary scale with that in the judiciary. One respondent, who has obviously been quite industrious, commented that for a population of 1.7 million people the potential cost of the ombudsman, with a salary scale of between £128,000 and £171,000, a budget of £1.4 million does not necessarily represent value for money.

Mr Frawley:

For the record, my salary is at the lower end of that scale.

Mrs D Kelly:

It is still a good scale to start off with.

Mr Frawley:

It is a very good salary scale. The salary scale is a public matter and is decided by the Assembly every year. No doubt, there are opportunities to challenge the salary, if Mrs Kelly wishes to do so.

Let me go back to the question. If you are considering the concept of a quasi-judicial office, which is what the office of the ombudsman is, the concept of numbers is not the issue. The issue is the nature of the decision-making, the content of the decision-making and the skill sets, the experience and the quality of the people in the role.

On the issue of salary scale being linked with judicial scales, what I am saying might be consistent with what some Assembly Members are saying, because I rejected a Civil Service

salary scale on the basis that it included a performance-pay element. I was not willing to say that I should get a bonus for making findings against anybody or for anybody, which made it quite difficult to be paid within a Civil Service scale.

As I understood it at the time, and I have now established this to be fact, my colleagues in Scotland, Wales and England are all paid under a judicial scale. So, to take the personal piece out of the argument, that is the way that the process is managed and delivered across these islands.

That said, the figure of £1.4 million is interesting, but it is significantly less than the cost of a number of other bodies that I could allude to. I still have pressures on me to deliver value for money, and that is something that I intend to do and my office will have to do that like every other office over the next couple of years. That is something that we will be very committed to and clear about.

As far as tenure is concerned, the arrangement in the Republic of Ireland is a five-year term after which you can apply for a second term. However, you cannot apply for more than two terms. The problem with that is that someone has to make a decision at the end of the five years as to whether your contract should be renewed. The general sense is that the incumbent is under huge pressure to please those who might use the opportunity to say that they are not happy with the way in which things have been delivered and therefore have to review whether he or she should be reappointed.

That brought in the potential for an external consultation, which people felt could be avoided with a single term of seven years. A seven-year term is considered reasonable, because the first year is needed to establish knowledge, expertise and familiarity with the role, and the final year is needed to deal with circumstances where resignation is imminent and appointment processes are under way. That is the balance at the end of it.

In Catalonia, Spain, for example, a term lasts for nine years, and in other settings, such as the Republic, there are two terms. All those models exist, but I came down in favour of the seven-year model, because my colleagues across the European arena are taking that one on. Marie will deal with the enforceability of the codes of practice.

Mrs Marie Anderson (Office of the Northern Ireland Ombudsman):

The section of the consultation document on the issue of codes and guidance dealt with the suggested wider remit of the Northern Ireland Ombudsman and asked whether the ombudsman should not only consider complaints but should have a role in the promotion of good administrative practice. Unlike his Welsh colleague, the Northern Ireland Ombudsman does not have the power to issue good practice guidance. He would, therefore, welcome a provision similar to section 31 of the Public Services Ombudsman (Wales) Act 2005 that allows him to have that power.

The next question was about how public bodies would respond to guidance that had been issued and whether they ought to be obliged to follow that guidance. There was some debate about that among the consultees, and not everyone responded. Tom would welcome his codes of practice having the same status as the Equality Commission codes of practice. In other words, if any proceedings were ever to arise on, for instance, judicial review, the court would have to have regard for how the bodies behaved in accordance with his codes of practice. That makes sense, and it puts him in line with the Equality Commission's position.

Although the ombudsman does not have a specific power to issue good guidance, he has already issued some advice in the form of a framework document on complaints handling. That has been distributed to public bodies, and some training has been given. If members look at the consultee responses, they will see that some of the public bodies welcome that good-practice guidance power.

Mrs D Kelly:

I am supportive of that additional power. If you were to follow the logic of following the public pound, it would make sense to ensure that good practice is embedded in the organisations.

If the Assembly adopts this and there are further examples of maladministration on the same type of issue, would there be an opportunity for the ombudsman to lay a report before the Assembly further highlighting the potential deficiencies?

Mr Frawley:

We see that as — this is a bit of an exaggeration or hyperbole — the nuclear button. If public

bodies are not willing to respond to the suasion that is the authority vested in the ombudsman, we would have no choice but to go to the public arena with that issue. The public arena is the Assembly, where the behaviour or actions of the organisation will then be exposed and scrutinised by public representatives. Our experience until now is that no public body wants to be in that circumstance.

You will have seen from the responses that there is a debate and a difference of view about the fact that a complainant has recourse to the County Court if a public body, not a Department, refuses to implement a recommendation. The whole drive of the ombudsman is to move away from the judicial system to the administrative justice system, with the ombudsman as an alternative to the courts, because of the cost. I am sure that you know that going to court is incredibly expensive. That is something that you might want to look at. My predecessor, Dr Maurice Hayes, who responded, feels quite strongly that that arrangement should be maintained. The Equality Commission also supports that. However, that is a debate for the Committee, and it is up to it to decide on the right way forward.

The other issue about the discipline of individuals is one that we need to clear. As the Committee knows — or it may not — we do not move into the disciplinary arena. That is not for us. We will highlight failures, system mistakes and so on. It is then for the internal organisation to decide culpability, responsibility and what sanction might apply to an individual. It would be inappropriate for us to become involved in making those judgements. Therefore, we have no involvement in that at all and do not wish to.

Ms Martina Anderson:

It will not surprise you that, like Dolores did on behalf of the SDLP, I want to put on record that Sinn Féin would not support the amalgamation of the Prisoner Ombudsman or the Police Ombudsman into your office. If such a discussion were to take place, you are not alone and would need another consultation on that. I imagine that such legislation will not go anywhere. Therefore, to try to move forward and get you the powers that you require to look at the structure, role and function of the office, it would be wise to take that on board. The differences that there will be might mean that the legislation will probably not even get onto the Floor of the House and might not even get to a Committee Stage. That is just an observation.

Of course, there is support for simplifying the whole process of complaints. Marie outlined that, and I want to ask her about the guidance, which she picked up on in response to Dolores. The Equality Commission is concerned about the proposed removal of the right of the complainant to pursue compensation in court. What is your view on that?

Mrs Marie Anderson:

I am happy to deal with that point. I read the Equality Commission submission with some interest. The Law Society is also against that removal. Interestingly — or perhaps not surprisingly — the public bodies are for complete removal. There is a solution, namely the Welsh model of legislation. I understand why individuals might feel that they need to go to court to enforce ombudsman powers and that, perhaps, a special report to the Assembly might not be enough. However, it ought to be enough. I recognise the Equality Commission's points. In Wales, provision has been made for a special report to the Assembly if there is a failure to comply with the ombudsman's report. In addition, under section 20 of the Welsh legislation, the ombudsman is allowed to take the matter to the High Court in cases where there is a wilful disregard of his report. Therefore, in essence, that takes the expense of going to the County Court and the stress of any uncertainty about the outcome of litigation away from the individual and puts the onus back on the ombudsman if his report is disregarded.

Ms Martina Anderson:

That is similar to schedule 9. The Equality Commission has the opportunity to take action if it one of its recommendations is disregarded. If it feels that it needs to enact schedule 9, it can do that. However, it is the Equality Commission that does that.

Mrs Marie Anderson:

Yes. It takes the onus away from the individual. Even following a report of the ombudsman, injustice may remain unremedied. That is unsatisfactory but allows the ombudsman to certify the matter to the High Court and allows the court to deal with the issue. That is a solution that would allay some of the concerns of consultees.

Dr Farry:

Apologies for my lateness; we are juggling equal pay and pensioners next door — not literally.
[Laughter.]

If this matter has been raised, please cut me off and I will read the Official Report. Will Mr Frawley give us his reviews on the ongoing review in relation to the rationalisation? I appreciate that we have just passed the legislation on the Commissioner for Older People, and that will be part of the mix. I also know that the Department of Justice is keen to look at some sort of review of the various ombudsman-type roles that fall under its remit. Do you see the potential for a review to be broad enough to take into account those types of structures and the benefits that there will be from streamlining that, while at the same time protecting the commissioner functions that exist?

Mr Frawley:

I am seeking the Chairperson's protection before I answer that question; I have already incurred the wrath of some. I go back to the answer I gave to the Chairperson. That area was not part of the review when we started out, and the consultation document is therefore completely focused on the issues that we looked at during the mid-point of last year. Clearly those matters are now beginning to emerge. I have just been given notice, Mr Farry — for fear you might proceed any further — that you could lose all of the review proposals if you pursue some of those matters. I throw myself on the mercy of the Committee in that circumstance, because I am not seeking that change; I was merely asked by the Chairperson to respond to it.

Dr Farry:

I was simply asking your opinion.

Mr Frawley:

Oh, sorry. My opinion; something as modest as that.

Dr Farry:

You have never been shy in the past about your opinion.

Mr Frawley:

To use a wonderful colloquial phrase, I have just had my card marked, so I am trying to negotiate my way through the minefield that has now emerged. I will be open again and say that, in my view — it is interesting that one of the respondents highlights this — when you have specific ombudsmen for specific arenas, such as prisons or policing, there is always a potential for what he calls “service capture”. The person can become very closely involved with that part of the

organisation that they are overseeing. Either they end up in a difficult, fractured circumstance or they end up in a circumstance where they are incredibly engaged. That is always a risk, and that has been highlighted.

I argue simply on the principle of the wider European experience and the developing UK experience in Scotland recently. My judgement is on a jurisdiction of this size. Other issues have been introduced by other voices at the table, and I am sure that you are aware of them. Someone used the phrase, “nurture the public confidence”. I think that that is absolutely critical. In relation to my jurisdiction, I argue that a single ombudsman for Northern Ireland on all of those aspects makes sense. That is not necessarily the political perspective, or, indeed, the community perspective. People may well have other issues, but if you ask me for my view, and I am being open and honest with it, I say yes. However, if the price of having that issue debated is that all else is lost — and, of course, it is in the Committee’s gift — I would not wish to see all of it lost in order to address those issues.

Dr Farry:

Thank you very much, Chairperson, for your indulgence.

The Chairperson:

Thank you for your presentation, Tom and Marie. Obviously, we will continue our deliberations on the issue.