



Northern Ireland
Assembly

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

**OFFICIAL REPORT
(Hansard)**

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

1 June 2011

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DEPUTY FIRST MINISTER**

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Members present for all or part of the proceedings:

Mr Tom Elliott (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Trevor Clarke
Mr Colum Eastwood
Mr William Humphrey
Mr Alex Maskey
Mr Francie Molloy
Mrs Sandra Overend
Mr George Robinson
Mr Jimmy Spratt

Witnesses:

Mr Ray McCaffrey) Northern Ireland Assembly Research and Information Service

The Chairperson:

We welcome Ray McCaffrey from the Northern Ireland Assembly Research and Information Service. Perhaps, Ray, you would give us a presentation on your paper.

Mr Ray McCaffrey (Northern Ireland Assembly Research and Information Service):

Thank you, Chair. The research paper that members have in front of them follows on from consultation that was carried out during the previous mandate to seek views on the future of the

Office of the Northern Ireland Ombudsman. We were asked to address a rather long list of questions based on responses to the consultation process. The paper groups those together under three or four key themes. For the purposes of the presentation, rather than attempt to address every single issue, I will focus on what emerged as overarching issues. Those issues are the potential overlap that the office may have with existing bodies and the accountability and appointment of the ombudsman.

I will turn first to look at the potential overlap with bodies that already exist in Northern Ireland. In that context, it is useful to look at the examples of the Scottish and Welsh ombudsmen and similar bodies that exist here. The research found that there are, essentially, two ways to address overlapping remits. The first is to legislate for joint working between organisations; the second is to employ memorandums of understanding (MOUs) that outline the respective jurisdictions of organisations and how issues that cut across can be best addressed and managed.

For example, the Scottish Public Services Ombudsman Act 2002 places a duty on the ombudsman to consult other commissioners or ombudsmen in circumstances where a complaint may, perhaps, be the subject of investigation by a different office. The Welsh legislation contains similar provisions to that of Scotland. In addition, the Commissioner for Older People (Wales) Act 2006 makes specific provision for that commissioner to work jointly with the ombudsman where there is an overlap in their investigatory functions. The National Assembly for Wales may extend by Order the list of people whom the commissioner has to consult.

Along with the statutory obligation to consult, both the Scottish and Welsh ombudsmen have entered into MOUs with other organisations. That is particularly apparent in Scotland. The research paper lists the bodies with which the Scottish Public Services Ombudsman has to date agreed MOUs. The paper provides a fairly typical example of an MOU. It sets out arrangements for co-operation, how complaints will be handled, information-sharing and consultation.

The Northern Ireland Ombudsman currently has in place mechanisms for minimising duplication of effort. For example, when a complaint is received, it goes through a process of validation. If appropriate, the complainant is signposted to another organisation if it is felt that it is best placed to deal with that complaint. In Northern Ireland, a number of existing organisations have agreed MOUs with each other or other organisations. Examples include the Regulation and Quality Improvement Authority (RQIA), the Equality Commission, the Children's Commissioner

and the Police Ombudsman. The table in the paper provides further examples of that. As regards the future direction of the ombudsman's office, therefore, one issue to consider is the extent to which there should be a legislative duty to consult and co-operate with other commissioners or ombudsmen, as is the case in Scotland and Wales.

I will turn now to the issue of appointment and accountability. There is some variation in the length of time that various commissioners and ombudsmen may serve in office. Again, if we look at the offices in Scotland and Wales, we can see that the Scottish ombudsman can be appointed for two five-year terms with a third term possible only if it is deemed to be in the public interest. However, I understand that recent changes mean that the next ombudsman will be appointed for one eight-year non-renewable term. In Wales, the ombudsman is appointed for one seven-year term only.

In Northern Ireland, the legislation currently stipulates that the ombudsman must leave office when he reaches the age of 65. The coalition Government at Westminster has introduced reforms around the default retirement age meaning that people cannot be forced to retire just because they have reached the age of 65. The extent to which that would apply to the ombudsman may need to be considered. For comparative purposes, I will give examples of other terms of office. The Northern Ireland Children's Commissioner and the Commissioner for Older People will be appointed for a maximum of two four-year terms. The new Northern Ireland Assembly Commissioner for Standards will be appointed for one five-year term.

As regards the office's accountability, the 2004 review carried out by Deloitte recommended that the ombudsman's office should be accountable to the Assembly, through the Public Accounts Committee, for its performance but obviously not for its decisions. Currently, the ombudsman is required to lay an annual report before the Assembly. However, the ombudsman has no statutory relationship with an Assembly Committee that could oversee its performance. That is also the case in Scotland, where the ombudsman commented that a stronger link with the relevant Committee there would allow the Scottish Parliament to hold the ombudsman to account more effectively.

The ombudsman in the Republic of Ireland published a document in advance of the election in February that advocated a closer relationship with the Oireachtas. She believed that the work of the ombudsman could be enhanced by a direct reporting relationship with a specific Oireachtas

Committee that would monitor and support that work. For example, the ombudsman would expect her investigations and recommendations to be reviewed critically by that Committee, which would make its own assessment of her work.

That raises the wider and more fundamental issue of where the office of the ombudsman should sit and what its status should be. Currently, funding for the ombudsman's office is "vote-funded" by the Assembly, which is similar to the arrangements for the Comptroller and Auditor General. However, unlike the Comptroller and Auditor General, the ombudsman is not accountable to an Assembly Committee. Again, any future legislation may wish to consider whether that is an issue that should be addressed. To some extent, it would reflect the arrangements in Wales, where the ombudsman must submit the costs of running the office to the Finance Committee for its consideration.

As regards staffing and salary, the Office of the First Minister and deputy First Minister (OFMDFM) currently determines the salary of the ombudsman by way of an order. However, the Department does not fund the office. Rather, the salary and pension of the ombudsman is paid from the Consolidated Fund. Nevertheless, the resource accounts of OFMDFM state that the Department has policy oversight of the offices of the Assembly Ombudsman and Commissioner for Complaints. Another area that future legislation may wish to clarify is whether consideration of staffing numbers or terms and conditions of service should be completely removed from OFMDFM to further enhance the independence of the office.

It is worth touching on one other issue that emerged from the consultation process, namely systemic reviews. Those have been cited as a significant power available to ombudsmen in addressing maladministration. In a systemic review, the ombudsman brings together a number of single complaints into a larger investigation that might culminate, for example, in a special report that makes wide-ranging recommendations. Most ombudsmen in other parts of Europe, including the Republic of Ireland, enjoy that power. However, it is not a power currently available to ombudsmen in Scotland and Wales, so they stand apart from the normal practice somewhat.

Finally, it is interesting to reference the reform of public services that has recently taken place in Scotland. That followed a 2006 inquiry by the Scottish Parliament's Finance Committee, which looked at the accountability and governance of bodies supported by the Scottish Parliamentary Corporate Body. The inquiry was prompted by concerns about increasing costs,

the perceived shortcomings of budgetary accountability, the lack of consistency in governance arrangements, and other matters in certain offices. The offices examined as part of the review were those of the ombudsman, the Scottish Parliamentary Standards Commissioner, the Commissioner for Children and Young People, the Commissioner for Public Appointments in Scotland and the Scottish Information Commissioner. It is interesting that the Committee's report noted that insufficient checks and balances had been put in place to reassure Parliament that commissioners and ombudsmen represent value for money. The Committee went on to recommend that bodies with similar roles and responsibilities should be amalgamated wherever possible; that the potential to pool the resources of existing bodies should be considered wherever possible; and that unnecessary direct remit overlaps should be dealt with by removing responsibility from one of the bodies involved and adjusting staffing accordingly.

What emerged was the Public Services Reform (Scotland) Act 2010, which abolished certain bodies and ended up enhancing the role of the ombudsman, for example, by transferring complaints about water services to his jurisdiction. It will be interesting to refer to the experience in Scotland as the Committee takes this issue forward.

I am happy to take questions.

The Chairperson:

Thank you very much, Ray. You made a point about the power to have systemic reviews. Is there any indication as to why the other jurisdictions in the UK do not have that power?

Mr McCaffrey:

I could not find anything specific, but some of the literature on the role of an ombudsman's office shows that there are pros and cons. One way of thinking is that it does not seem right that, if the ombudsman is aware of a problem, he or she is not given the power to investigate it. The other view is that giving the ombudsman such powers would leave him or her open to political pressure to undertake wide-ranging investigations and would, perhaps, take the focus away from the individual complaint, which is what the ombudsman would currently focus on.

The Chairperson:

No other members wish to ask questions. You are getting off very lightly. Thank you very much.