

**Committee for the Office of the First Minister and deputy First Minister**

# Report on the Committee's Proposals for a Northern Ireland Public Services Ombudsman Bill Volume One

Together with the Minutes of Proceedings, Minutes of Evidence  
and Written Submissions relating to the Report

Ordered by the Committee for the Office of the First Minister  
and deputy First Minister to be printed 27 June 2013  
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and deputy First Minister)

**REPORT EMBARGOED  
UNTIL COMMENCEMENT OF  
THE DEBATE IN PLENARY**



# Membership and Powers

## Powers

The Committee for the Office of the First Minister and deputy First Minister is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Office of the First Minister and deputy First Minister and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the First Minister and deputy First Minister.

## Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, and a quorum of five members.

The membership of the Committee is as follows:

- Mr. Mike Nesbitt (Chairperson)
- Mr. Chris Lyttle (Deputy Chairperson)
- Mr. Leslie Cree<sup>1</sup>
- Mr. Colum Eastwood
- Miss Megan Fearon<sup>2</sup>
- Mrs. Brenda Hale<sup>3</sup>
- Mr. Alex Maskey
- Ms. Bronwyn McGahan<sup>4</sup>
- Mr. Stephen Moutray<sup>5</sup>
- Mr. George Robinson
- Mr Jimmy Spratt<sup>6</sup>

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1 With effect from 11 March 2013 Mr Leslie Cree replaced Mr Robin Swann

2 With effect from 10 September 2012 Ms Megan Fearon replaced Mr Francie Molloy

3 With effect from 1 October 2012 Mrs Brenda Hale replaced Mr Trevor Clarke

4 With effect from 10 September 2012 Ms Bronwyn McGahan replaced Ms Caitríona Ruane

5 With effect from 1 October 2012 Mr Stephen Moutray replaced Mr William Humphrey

6 With effect from 15 April 2013 Mr Jimmy Spratt replaced Mr Paul Givan

## List of Abbreviations

C&AG	Comptroller and Auditor General
DEL	Department of Employment and Learning
DOE	Department of the Environment
DFP	Department of Finance and Personnel
DHSSPS	Department of Health, Social Security and Public Safety
DoJ	Department of Justice
DRD	Department of Regional Development
ECHR	European Convention on Human Rights
ECNI	Equality Commission for Northern Ireland
E&LBs	Education and Library Boards
FE	Further Education
HMRC	Her Majesty's Revenue and Customs
HSC	Health and Social Care
MEP	Member of the European Parliament
MLA	Member of the Northern Ireland Legislative Assembly
MoD	Ministry of Defence
MP	Member of Parliament
NI	Northern Ireland
NICS	Northern Ireland Civil Service
NIAO	Northern Ireland Audit Office
NICCY	Northern Ireland Commissioner for Children and Young People
NIJAO	Northern Ireland Judicial Appointments Ombudsman
NIPSO	Northern Ireland Public Services Ombudsman
OFMDFM	Office of the First Minister and the deputy First Minister
PAC	Public Accounts Committee of the Northern Ireland Assembly
RoI	Republic of Ireland
UK	United Kingdom

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# Executive Summary

The Committee for the Office of the First Minister and deputy First Minister in this mandate, and the 2007-2011 mandate, has developed policy proposals to combine the offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints with their current powers remit and responsibilities – subject to the proposals set out below and in the main body of this Report.

The proposals would also reform jurisdiction and powers and provide for appointment of the Northern Ireland Public Services Ombudsman (NIPSO) by Her Majesty on the nomination of the Assembly and for the NIPSO to report to the Assembly and Assembly Committees on a basis to be laid down in Standing Orders.

Westminster legislation is likely to be required to enable the Assembly to confidently legislate on a small number of matters within the proposed Bill. Following consideration of this report the Committee will seek the assistance and consent of the Secretary of State in bringing forward relevant legislation.

- The new office would be known as the Northern Ireland Public Services Ombudsman or NIPSO;
- Appointment as NIPSO would be for a single, non-renewable, fixed term of seven years;
- The mechanics of recruitment and selection of a suitable candidate would be under the auspices of the Assembly Commission;
- Formal appointment would be by Her Majesty on the nomination of the Assembly and removal before expiry of the fixed term would reflect the appointment arrangements;
- There would be restrictions on appointment and on leaving office aimed at avoiding actual or perceived conflicts of interest;
- Temporary vacancies in office would be provided for by appointment of an acting NIPSO;
- The NIPSO's salary would be determined by the Assembly Commission subject to an upper limit;
- Existing staff/secondees would have the opportunity to transfer to the NIPSO;
- The NIPSO would have a similar relationship to the Assembly as the Comptroller and Auditor General;
- Where the current legislation indicates a requirement for approval by or accountability to a NI Department this would transfer to the Assembly or its Committees as provided for in the Assembly's Standing Orders;
- In relation to budget and spending the NIPSO would be accountable to an Assembly Committee as provided for in Standing Orders;
- The NIPSO's remit would include schools, the Assembly Commission, the Northern Ireland Audit Office and further and higher education institutions, in addition to bodies currently within the Assembly Ombudsman/Commissioner for Complaints remit.
- The NIPSO's remit would not include public sector employment issues;
- In relation to public procurement the NIPSO's remit would be extended and complaints regarding professional judgment in social care would be dealt with on the same basis as complaints regarding clinical judgement in health care;
- Complaints could be made orally (if reduced to writing and agreed within 20 working days) and the NIPSO would have discretion in relation to accepting different written forms of complaint;
- Complaints could be made directly by the aggrieved person, by their Member of the Northern Ireland Legislative Assembly (MLA) or by the aggrieved person's representative;

- Complaints could also be referred to the NIPSO for determination - by a public body which had sought unsuccessfully to resolve an issue;
- The Northern Ireland residency requirement for complainants would be removed;
- The time limit for making a complaint would be reduced from 12 months from a complainant's knowledge of the event complained of to 6 months from the date of the final decision of the public body's complaints procedure – with public bodies under a duty to sign-post the right of complaint to the NIPSO;
- The NIPSO would have discretion to make an investigation report public where it was in the public interest to do so as well as providing copies to the complainant, aggrieved person's representative, public body and any assisting MLA.
- The option for a complainant of applying for a county court order for damages on foot of the NIPSO's upholding a complaint would be available in respect of all bodies within the NIPSO's remit, subject to compliance with Article 6 European Convention on Human Rights (ECHR);
- The NIPSO would be able to request the Attorney General for Northern Ireland to seek a High Court order where a public body is likely to persist in maladministration;
- The NIPSO would report to the Assembly and its Committees as provided for in Assembly Standing Orders;
- The Secretary of State and Northern Ireland Ministers would have a power to give notice prohibiting disclosure of information where it would be contrary to the public interest or prejudicial to the safety of NI/UK;
- Public bodies would be required to disclose relevant legal advice to the NIPSO for the purposes of his or her investigation, subject to compliance with Article 6 ECHR;
- The NIPSO would be required to cooperate and share information with other Ombudsmen, Commissioners and Regulators, particularly with a view to avoiding overlap and duplication of effort;
- Public bodies under investigation would be required to provide the NIPSO with facilities (such as access to a photocopier);
- The NIPSO would have a power of own initiative investigation subject to evidencing the need for this and giving notice to the relevant department and public body;
- The Department of Justice wishes to include in the NIPSO Bill provisions which would fill the office of the Northern Ireland Judicial Appointments Ombudsman (NIJAO) by reference to the person holding office as the NIPSO and the Committee is considering this proposal;
- Where matters do not fall within the legislative competence of the Assembly, legislation at Westminster will be sought. Where provisions of the Bill require the consent of the Secretary of State, this will be requested.



# Introduction

1. The Committee for the Office of the First Minister and deputy First Minister ('the Committee') has agreed to introduce a Bill to reform what is commonly referred to as the office of Northern Ireland Ombudsman.
2. There are presently two statutory offices:
  - the Assembly Ombudsman for Northern Ireland ('the Assembly Ombudsman') provided for in the Ombudsman (Northern Ireland) Order 1996; and,
  - the Northern Ireland Commissioner for Complaints ('the Commissioner for Complaints') provided for in the Commissioner for Complaints (Northern Ireland) Order 1996.
3. The 1996 Orders replaced the corresponding Acts of 1969 which first introduced the ombudsman concept into law in Northern Ireland.
4. The Committee's proposed Bill will combine the offices of Assembly Ombudsman and Commissioner for Complaints into a single office to be known as the Northern Ireland Public Services Ombudsman ('the NIPSO') and, subject to proposals set out below, combining the powers and remit of the current offices. The Bill will also reform jurisdiction and powers and provide for appointment of the NIPSO on the nomination of the Assembly and for the NIPSO to report to the Assembly and Assembly Committees on a basis to be laid down in Standing Orders.

## Background

5. The Office of the First Minister and deputy First Minister (OFMDFM) commissioned Deloitte to review the offices of the Assembly Ombudsman and Commissioner for Complaints and Deloitte's Report was published in 2004. The current Assembly Ombudsman/Commissioner for Complaints, Dr Tom Frawley, approached the Committee in April 2010 and asked it to consider taking forward the Review's recommendations for updating the offices.
6. The Committee engaged in 2010 with OFMDFM which was undertaking a review of the Deloitte Report recommendations. OFMDFM indicated by letter of 28 June 2010 that due to other competing priorities and resource constraints it would not be bringing forward legislation in light of the Deloitte Report but welcomed the Committee doing so and confirmed the Department's willingness to cooperate.
7. On 15 September 2010 the Committee took evidence from Mrs Jackie Kerr of OFMDFM:

**The Chairperson:** *The issue comes back to the 2004 report that was conducted by Deloitte and never acted on by the direct rule Administration. You seem to be saying that your Department would be content for us to proceed on that basis.*

**Ms Kerr:** Yes.

**Ms M Anderson:** *Would OFMDFM's current policy responsibility for oversight of the ombudsman change if it was put on a legislative basis?*

**Ms Kerr:** *There is the potential to change that relationship through the legislation, and perhaps to establish the ombudsman's office on the same basis as the Northern Ireland Audit Office, where the relationship is with the Assembly. However, that issue is to be considered as a part of the process and to be legislated for.*
8. The Committee carried out a public consultation on a range of recommendations coming out of the Deloitte Report and other matters between September and December 2010 and commissioned an analysis of the consultation responses from Assembly Research and Information Service (RaISe) published in March 2011.
9. Following the May 2011 Assembly Elections the reconstituted Committee was briefed in June 2011 by Assembly Research and by the Ombudsmen in the Republic of Ireland, Scotland and Wales. Also in June 2011 the Committee considered and reached a preliminary view on a range of issues emerging from the Deloitte Review and the consultation – it also took evidence from Dr Frawley and his deputy, Ms Marie Anderson.
10. The Committee considered and developed its policy proposals over the succeeding months and in July 2012 agreed a policy paper on which it sought the views of key stakeholders including OFMDFM, other Assembly Committees, the Assembly Commission, the Ombudsman and the Equality Commission. The Committee also sought legal advice on a range of emerging issues.
11. The Ombudsman provided the Committee with a very detailed response. OFMDFM sought the views of other Northern Ireland Departments and provided a comprehensive response to the Committee early in 2013. The Committee then re-visited its proposals in light of the consultation responses and legal advice received and was briefed again by the Ombudsman on a number of outstanding issues.
12. The Committee reached 'final' policy decisions at its meeting on 20 March 2013 when it also agreed that a written report should be prepared with a view to a debate to inform the Assembly on the Committee's legislative proposals.

## Merger of the existing offices

13. Merger of the existing offices was recommended in the Deloitte Review and supported by the current Assembly Ombudsman/Commissioner for Complaints Dr Tom Frawley as it would remove any confusion regarding whether the Assembly Ombudsman or Commissioner for Complaints had a remit in relation to a particular complaint. it would also:
- facilitate a single annual report to the Assembly covering all bodies within the combined remits, as opposed to separate reports.
  - avoid the need to lodge separate complaints with the Assembly Ombudsman and Commissioner for Complaints where bodies within the separate remits may have shared responsibility – for example the Department of Education and an education and library board.

14. The Committee noted that both Scotland and Wales had moved to a merged single public services ombudsman system. In its public consultation the Committee sought views on this approach and it was welcomed by a majority of respondents. The Committee supported this approach.

### **Title of new office**

15. In essence the Committee's proposal is to merge the existing offices of the Assembly Ombudsman and Commissioner for Complaints in a new office of the **Northern Ireland Public Services Ombudsman** or **NIPSO**, to enjoy the combined powers, responsibilities and remit of his or her predecessors subject to the policy proposals set out below which include decisions to reconcile differences in the current roles, responsibilities and remit of the Assembly Ombudsman and Commissioner for Complaints.

### **Term of appointment**

16. Under the current legislation appointment is not for a fixed term – the person appointed holds office 'during good behaviour' and is required to vacate office on completing the year of service in which he or she attains the age of 65 years.
17. The Deloitte Report proposed appointment for a fixed term of five years that could be renewed. The Committee preferred a fixed term of seven years and consulted on this option in 2010. Responses to the Committee's consultation indicated a significant majority of respondents favoured a seven year fixed term and Dr Tom Frawley considered that fixed term appointments were the norm in England, Scotland and Wales for such appointments. In its July 2012 consultation with key stakeholders the Committee proposed that the NIPSO should be appointed for a single, non-renewable term of seven years. Responses received raised no issues with this proposal and the NIPSO Bill would provide accordingly.

### **Recruitment and selection of the NIPSO**

18. Under the current legislation the mechanics of the process to identify a suitable candidate would be organised by the responsible Executive Department – currently OFMDFM, previously the Department of Finance and Personnel (DFP). In its public consultation the Committee highlighted the option of a selection process under the auspices of the Assembly Commission.
19. In terms of the formal appointment stage the Deloitte Report recommended that the NIPSO continue to be formally appointed by Her Majesty but that such appointment be made on foot of a resolution of the Assembly.
20. While public consultation responses to these proposals indicated a range of views, Dr Frawley remained of the view that the proposed process was appropriate.

21. The Committee considered a number of options for the involvement of the Committee in the recruitment and selection process but in its July 2012 key stakeholder consultation the Committee proposed that the NIPSO Bill should provide for the Assembly Commission to undertake the necessary recruitment and selection exercise to identify a preferred candidate. In its response the Assembly Commission indicated its willingness to undertake this role and the Committee proposes that the NIPSO Bill would provide accordingly.

**Formal Appointment**

22. Currently formal appointment to the offices of Assembly Ombudsman and Commissioner for Complaints is by Her Majesty under section 36 of the Northern Ireland Constitution Act 1973.
23. Responses to the Committee's 2010 consultation indicated a range of views and the Committee subsequently considered four main options for formal appointment of the NIPSO, namely appointment by:
- Her Majesty (as at present)
  - Her Majesty on the nomination of the Assembly
  - The Assembly
  - The Assembly Commission
24. The Committee noted that:
- the Comptroller and Auditor General (C&AG) reports to the Assembly and is appointed by Her Majesty on the nomination of the Assembly under the Northern Ireland Act 1998.
  - the Scottish Public Services Ombudsman is appointed by Her Majesty on the nomination of the Scottish Parliament; and,
  - the Ombudsman in the Republic of Ireland is appointed by the President on the nomination of the Oireachtas.
25. Responses from key stakeholders to the four options raised no issues. Dr Frawley again expressed a preference for appointment by Her Majesty on the nomination of the Assembly but felt it was very much a matter for the Committee and Assembly.
26. Some Members' preferred option was appointment by Her Majesty on the nomination of the Assembly while other Members preferred appointment by the Assembly itself without any other formality.
27. The Committee agreed by a majority that the Bill provide for appointment by Her Majesty on the nomination of the Assembly.

**Assembly competence to alter current appointment mechanism**

28. After consideration of legal advice the Committee has decided that legislation at Westminster would be required for any change to the current formal appointment mechanism, as it would deal with section 36 of the Northern Ireland Constitution Act 1973 and as such would deal with an excepted matter.
29. The Committee has agreed to write to the Secretary of State's office to request early views on an appropriate legislative mechanism to enable the Assembly to legislate on this and a number of other issues mentioned below.
30. The Committee noted that a similar power of appointment exists in the Scottish Public Services Ombudsman Act 2002 and trusts that a similar appointment mechanism for the NIPSO would be regarded as appropriate by the UK Government.

### Removal from office

31. The Commissioner for Complaints and Assembly Ombudsman both hold office 'during good behaviour'. The Assembly Ombudsman and Commissioner for Complaints could, at his or her own request, be relieved of office by Her Majesty or relieved of office by Her Majesty in consequence of an address from the Assembly. The current legislation provides that each office is to be vacated on completion of the year of service in which the holder attains the age of 65 years. Her Majesty may declare each office vacated if satisfied that the holder is incapable for medical reasons of performing the duties and incapable of requesting to be relieved of the office.
32. In addition to the expiry of the fixed term of appointment, the Committee agreed that the Bill should provide for the NIPSO leaving office or being removed from office, due to ill health or misconduct in addition to the mechanisms in the existing legislation.
33. All mechanisms to remove from office or declare the office vacant should reflect the respective roles of Her Majesty and the Assembly in the proposed new appointment mechanism – namely that action by Her Majesty would be on foot of a resolution or address of the Assembly.

### Restrictions on appointment and on leaving office

34. The Committee noted that the Scottish Public Services Ombudsman Act 2002 and the Public Services Ombudsman (Wales) Act 2005 both provided for restrictions on eligibility for appointment to the office and also restrictions for a period after ceasing to hold office in relation to working for or on behalf of authorities which the office holder might have investigated ('a listed body').

The Committee noted the following restriction on appointment as Commissioner for Complaints in Article 5A of the Commissioner for Complaints Order:

*.—(1) A person who is a member of a health and [social care] body shall not be appointed as the Commissioner or acting Commissioner, and a person so appointed shall not, during his appointment, become a member of such a body.*

*(2) A person who is a general [health care] provider shall not be appointed as the Commissioner or acting Commissioner, and a person so appointed shall not, during his appointment, become a general [health care] provider.”.*

35. The Committee was content with these existing restrictions and in broad agreement that the Bill should provide for a mechanism to deal with potential conflicts of interest which might arise – modelled on the legislation for Ombudsmen in Scotland and Wales.
36. Members considered that the demands of the role of NIPSO would preclude the holding of any other office or employment, paid or unpaid. Specifically, the Committee considered that a prospective appointee to the office would be required:
- to resign from any elected offices such as Member of Parliament (MP), MLA or Member of European Parliament (MEP)
  - to resign from any membership of any body within the NIPSO's remit ('listed authority') (such as a council);
  - to resign from any employment or office within any listed body.
37. The Committee also agreed that those disqualified from election as MLAs would be disqualified from taking up appointment as NIPSO.
38. Members also agreed that anyone holding office as NIPSO should be disqualified from election or appointment as described above, from appointment as a family health service provider and from holding any other office or employment in respect of which remuneration

or expenses are payable – during the drafting of the Bill the Committee will take advice on covering all types of service and rewards.

39. On leaving office, for a period of restriction, the NIPSO would not, without the approval of the Assembly Commission, be appointed or elected to any office that is a listed body, membership of any listed body, become an officer or employee of a listed body or hold appointment to a paid office by a listed body. The period of restriction would run from the date when the person concerned ceases to hold office as NIPSO and would end on the expiry of the financial year following the one in which the restriction started.
40. Such restrictions were not the subject of the Committee's public consultation but the Committee sought the views of key stakeholders in July 2012. The proposals which the Committee consulted on are set out above but in addition the Committee provided that the restriction on employment on leaving office should be qualified by providing that the Assembly Commission could give approval for the former NIPSO to take up a position which would otherwise have been prohibited – for example with an organisation which had not been investigated by the NIPSO or against which no complaints had been received.
41. The Assembly Commission expressed some concern that the restrictions might deter the best possible field of candidates from applying.
42. Both the Assembly Commission and Dr Frawley expressed reservations that the Commission – a body which the Committee proposes below should be within the NIPSO's remit – would also be the body deciding whether the Ombudsman should be allowed to take up employment or office with a listed body. This could, in certain circumstances give rise to potential conflict of interest, where, for example, a complaint against the Assembly Commission was recently determined by the NIPSO.
43. The Committee noted these concerns but was satisfied that the Assembly Commission was the appropriate body to exercise this discretion and that the Commission would manage appropriately any conflict of interest which might arise.

#### **Temporary vacancy in the office**

44. The Deloitte Review had recommended both the retention of the current position of deputy Ombudsman and the mechanism for the appointment of an acting Ombudsman. In Scotland the legislation provides for the appointment of up to three deputy Ombudsmen to provide for any temporary vacancy (although no deputies are currently in office). In Wales provision for a temporary vacancy in the office is provided for in the statute by a mechanism for the appointment of an acting Ombudsman – and this approach is also adopted in the Assembly Ombudsman/Commissioner for Complaints Orders.
45. The deputy Ombudsman in Northern Ireland is not a statutory office in the sense that the deputy Ombudsmen in Scotland are, but rather a de facto title for the most senior member of the Ombudsman's staff.
46. The Committee agreed that its preference was for the appointment of an acting NIPSO – with the power of appointment of the acting NIPSO amended to reflect the power of the Assembly to nominate and making provision for the appointment of an acting Ombudsman during recess or in an emergency.

#### **Salary and pension**

47. The Ombudsman's salary is currently linked to the senior civil service salary scale of deputy secretary. In the Republic of Ireland and the rest of the UK, except for Scotland, salary is linked to judicial salary scales. The Deloitte Review had recommended linkage to a judicial salary scale. However, the Committee noted that the salary of the Scottish Public Services Ombudsman was significantly less than the salary paid in other jurisdictions. In its public

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consultation the Committee sought views on whether the link to the judicial salary scales should be maintained and respondents were divided.

48. In its July 2012 key stakeholder consultation the Committee proposed that the Assembly would set the salary. The Committee noted the case made by the Ombudsman for a link to the judicial salary scale in his response based on the practice elsewhere and the quasi-judicial nature of the office. However, the Committee was mindful that there was no requirement for the Ombudsman to be a lawyer or to have held judicial office and that the Scottish Public Services Ombudsman exercises similar responsibilities for a more modest salary than other Ombudsmen in the UK and Ireland – £80-85,000 in 2011/12. The highest paid official under the Scottish Ombudsman has the title of ‘Director’ and a salary of £65-£70,000 in 2011/12. (Although there is a power to appoint up to three deputies in Scotland this is not a requirement) The Committee was also mindful that based on the 2011/12 Resource Accounts, the Assembly Ombudsman/Commissioner for Complaints’ salary of £125-£130,000 was almost double that of the current Deputy Assembly Ombudsman/Commissioner for Complaints at £65-£70,000.
49. In its response to the July 2012 consultation the Assembly Commission suggested that it may be appropriate for the Commission to determine the salary and pension. The Committee agreed, on the basis that salary would be set before candidates were appointed to avoid any conflict arising.
50. The Committee also agreed with a suggestion from DFP (via OFMDFM) that the Bill should provide for a limiting restriction on the maximum salary for the Ombudsman – e.g. the maximum payable in the Northern Ireland Civil Service (NICS) which applies to the C&AG.
51. It would be for the Assembly Commission to determine the salary of any new appointee.

#### **Transfer of Staff**

52. The Committee agreed that the Bill should make any necessary provision for the transfer of staff and assets of the Assembly Ombudsman and Commissioner for Complaints to the NIPSO and that the NIPSO should have the flexibility to employ staff as well as to second staff from other bodies. The Assembly Commission suggested that the Committee may wish to consider the range of issues which could arise from the transfer of staff from one entity to another. DFP recommended that the Bill provide for the direct employment of staff by the NIPSO if this was not already contemplated.
53. The Assembly Ombudsman/Commissioner for Complaints is currently considering the best approach to staffing the combined office of NIPSO and this is likely to involve employing more staff directly but also retaining the flexibility of seconding staff who might otherwise be reluctant to leave permanent positions with larger employers where there would be more opportunities for promotion and career development.

## Relationship with the Assembly

54. The Committee considered the relationship of the independent office of Comptroller and Auditor General with the Assembly a potential model for the NIPSO's relationship with the Assembly. The Committee noted the views of the Public Accounts Committee (PAC) on the benefits of the C&AG relationship. The Committee agreed that the Bill should provide for a broadly similar relationship between the NIPSO and the Assembly.
55. Under the current legislation the Assembly Ombudsman and Commissioner for Complaints come under the auspices of OFMDFM (previously DFP) with, for example, salary being such 'as the Department may by order determine' or the appointment of staff being 'with the approval of the Department'. The Committee agreed that references to 'the Department' should be replaced with references to "the Assembly" [in conjunction with an overarching provision for Standing Orders to set out how 'the Assembly' would 'approve' or 'determine' as the case may be – perhaps by means of an Assembly committee or by way of the Assembly Commission.]

### **Financial accountability**

56. The Committee is of the view that the NIPSO should submit his or her budget to the Assembly for approval. The Audit Committee currently agrees the C&AG's estimates and indicated it would be content to fulfil this role in respect of the NIPSO. The Audit Committee commented:

*'The Audit Committee is satisfied that arrangements should be put in place in order to safeguard the NIPSO's independence from the Executive, and that, in particular, neither DFP nor the Executive should control or direct the access to the reasonable human, material and monetary resources that the NIPSO shall require for undertaking its functions. In support of this principle the Audit Committee is content that it should agree the annual estimate of the use of resources of the proposed NIPSO and lay these estimates before the Assembly. The Audit Committee is also content to undertake any related relevant ancillary functions.'*

57. As part of OFMDM's response DFP commented that the proposals:

*'... proposes the approval of the office's budget by the Assembly's Audit Committee. The Audit Committee is a specific committee established under the requirements of section 66 (1) of the Northern Ireland Act 1988 to carry out the role specified in Article 6 of the Audit (Northern Ireland) Order 1987 in place of DFP. As such, this committee is very specific to the function of the Northern Ireland Audit Office and consequently it may not be the appropriate reporting location for the Ombudsman's office.' (DFP)*

58. The Committee agreed that Standing Orders should make provision for the approval of the NIPSO's budget estimates and the Committee will take advice during the drafting of the Bill on the issue raised by DFP above.



# Remit of the NIPSO

## **Bodies within the NIPSO's remit**

59. The Committee agreed that all bodies currently within the remit of the Assembly Ombudsman and Commissioner for Complaints should come within the remit of the NIPSO.
60. The current legislation lists the bodies subject to investigation by the Assembly Ombudsman/ Commissioner for Complaints in schedules and bodies can be added or removed by OFMDFM by order. In its 2010 public consultation the Committee sought views on this approach and on the merits of defining the remit by reference to the principle of *'following the public pound'*.
61. The Committee noted the Ombudsman's preference for the *'following the public pound'* approach. Responses also indicated wide agreement on the listing in a schedule to the legislation of the bodies within the Ombudsman's remit.
62. The Committee considered listing bodies in a schedule provided certainty as to which bodies and offices were within remit and avoided the risk that small organisations in receipt of short term grant funding might be treated as coming within remit if a principle of *'following the public pound'* were adopted.
63. In its July 2012 key stakeholder consultation the Committee proposed the listing in a schedule of bodies within the NIPSO's remit, in conjunction with a duty on DFP to keep the schedule up to date - subject to Assembly approval - as public bodies come into being or cease to exist. The Committee agreed that the Bill should provide accordingly.

## **NI Assembly Commission and NI Audit Office**

64. The Committee's public consultation also sought views on the inclusion of a number of bodies which are currently outside the remit of the Assembly Ombudsman/Commissioner for Complaints, including the Northern Ireland Audit Office (NIAO) and the Assembly Commission, schools, universities and colleges of further education.
65. The Committee sought the views of the Audit Committee in relation to the inclusion of the NIAO. Both the Committee and the C&AG were happy that the NIAO be brought within the remit of the NIPSO.
66. The Committee sought the views of the Assembly Commission on its coming within the remit of the NIPSO and the Commission was content save for concerns regarding conflict of interest which are dealt with at paragraphs 42-43 and 49.

## **Schools**

67. The Deloitte Review also highlighted that schools fell outside the remit of the Assembly Ombudsman and the Commissioner for Complaints. Responses to the 2010 consultation were broadly in favour of adding the listed bodies to the schedule. However, Education and Library Boards (E&LBs) suggested further consultation before bringing schools within remit.
68. The Committee was minded to bring schools within the remit of the NIPSO and sought the views of the Minister of Education on this proposal. The Minister was broadly supportive but expressed some reservations regarding the NIPSO's oversight of bodies within the education sector dealing with appeals from the decisions of boards of governors. The Committee sought the views of the Ombudsman on how the inclusion of schools would impact on these appeals bodies and shared the response with the Department of Education. In her analysis the Deputy Ombudsman, Ms Marie Anderson, explained that a number of appeals bodies were within remit at present but explained that:

*'In order to examine the merits of a discretionary decision, [the Ombudsman] must first find maladministration. In practice, he would require evidence of substantial failings in the decision making process, before he would be prepared to examine the merits of that decision.'*

69. The Minister of Education was content that schools come within the NIPSO's remit on the basis of the Ombudsman's analysis which *'addresses fully the issues raised by me in previous correspondence. I am satisfied that the extension of the Ombudsman's role to include schools will be a very positive step...'*

70. The Minister went on to suggest that the Committee consider including independent schools, as well as publicly funded schools, within the NIPSO's remit. However, the Committee did not consider that privately funded schools should come with the remit of a Public Services Ombudsman, noting that Commissioner for Complaints (NI) Order 1996 currently provides at Article 7(3)(b) that nothing authorises the inclusion in the schedule of bodies within remit of: *"a body which does not ... (ii) have its expenses substantially defrayed out of moneys appropriated by Measure."*

### **Institutions of Further and Higher Education**

71. The Deloitte Review noted that institutions of Further and Higher Education fell outside the current remit of the Assembly Ombudsman/Commissioner for Complaints and responses to the Committee's 2010 consultation broadly supported these institutions coming within the remit of the NIPSO. In its response to the Committee's 2010 public consultation the Further Education (FE) Colleges Directors Human Resource Working Group was opposed to inclusion of FE colleges on the basis of time and cost.

72. The Committee considered that FE colleges were providing a significant public service, publicly funded and that recourse to an Ombudsman in relation to maladministration was appropriate. In its July 2012 key stakeholder consultation the Committee proposed that Further and Higher Education bodies come within the NIPSO's remit.

73. The Department of Employment and Learning's (DEL) response to the Committee's July 2012 proposals indicated that it was content for FE colleges to come within the NIPSO's remit on the basis that this encompassed maladministration only and not the exercise of professional judgement. The Committee was content in light of the clarification provided by the Ombudsman in relation to his maladministration remit in the context of schools.

74. In respect of Higher Education bodies the Committee noted the arrangements in place for handling student complaints in the University of Ulster and Queen's University Belfast involving Visitor/Board of Visitors respectively but did not consider this required the exclusion of the maladministration oversight of the Ombudsman.

75. The DEL response to the July 2012 consultation also highlighted the Higher Education sector's grievance procedures and DEL's intention to standardise and that only after this would DEL consider if there is merit in extending the remit of the Ombudsman to include universities. DEL requested that the proposal to extend the NIPSO's remit to the Higher Education sector be subject to enabling legislation which would only be brought into effect should the review process determine that that is the best way forward.

76. The Committee for Employment and Learning's response stated that it strongly believed *'that the Ombudsman and Commissioner for Complaints should have jurisdiction of Further Education and Higher Education institutions'*.

77. While the Committee welcomes DEL's proposal to standardise internal grievance procedures it remains of the view that this should not preclude Higher Education bodies coming within the NIPSO's remit in relation to maladministration and that this would be reflected in the NIPSO Bill.

### Public Procurement

78. Currently the Assembly Ombudsman Order contains a statutory bar which precludes the Ombudsman from investigating ‘*contractual or other commercial transactions*’ of the bodies within the Assembly Ombudsman’s remit, including Northern Ireland Departments and their agencies. However there is no such bar contained within the Commissioner for Complaints (NI) Order 1996.
79. The effect of this bar is that the Assembly Ombudsman can look at the process up to, but not including, the award of a tender or contract. In relation to bodies within the Commissioner for Complaints’ remit an investigation can encompass complaints of maladministration up to and including the award of a contract.
80. In its July 2012 key stakeholder consultation the Committee proposed that the Bill should provide for investigation of public procurement complaints (on the basis provided for currently in the Commissioner for Complaints (NI) Order 1996) in respect of all bodies within the NIPSO’s remit and without any statutory bar of the sort currently found in the Ombudsman (NI) Order 1996.
81. DFP’s response to this proposal raised a number of concerns including:
- *Public procurement is a commercial matter highly regulated by European Directives, statutory regulations and fast developing case law;*
  - *The involvement of the Ombudsman would potentially add confusion and costs;*
  - *NI is the only part of the UK where such a proposal is being made in a Bill;*
  - *The proposal would be at odds with the tenor of a recent judgement of the NI Court of Appeal in the case of Traffic Signs and Equipment. This dealt with the case of an economic operator who was unhappy with the court’s decision and sought to attack it through alternative means. The judgement clearly took the view that the courts are the correct venue for procurement law disputes.*
  - *The proposal would drive up the overall cost and be impractical, requiring training for NIPSO officials in a highly complex area; it would seriously undermine the time limits for mounting a challenge under the European rules, and it would create an overlap with the courts.*
82. The Committee took evidence from the Dr Frawley in relation to the issues raised by DFP. The Committee noted that the DFP response did not highlight any problems with the Commissioner for Complaints’s remit nor how it has operated.
83. The Committee was of the view however that small and medium sized businesses may not necessarily have the resources available to pursue public procurement complaints against Northern Ireland Departments through the courts given the legal costs involved.
84. The Committee was also mindful of the Committee for Finance and Personnel’s comments:
- “The Committee for Finance and Personnel has been concerned about the disparity in the roles of the Ombudsman in relation to dealing with complaints about the actions of Government departments and the actions of public bodies. .... Members welcome the proposal from the OFMDFM Committee that this anomaly will be addressed.”*
85. The Committee agreed that the NIPSO Bill should provide for the investigation of public procurement maladministration complaints against all bodies within remit, including NI Departments, on the basis currently provided in the Commissioner for Complaints (NI) Order 1996 – that is up to and including the decision to award the contract or tender.

### Public Sector Employment

86. When established in 1969 the Ombudsman was given remit over public sector employment issues. Dr Frawley’s evidence to the Committee indicated that this was in order to provide

a means of addressing complaints of religious discrimination in the absence of the mechanisms which have developed since.

87. The Deloitte Review considered this matter and, whilst debate on the matter was balanced, it reported that a full range of redress structures have been established since 1969 which tackle issues relating to public sector employment. Examples of these structures include Industrial and Fair Employment Tribunals and the Equality Commission.
88. The Review did acknowledge that the Ombudsman has played an essential role in addressing public sector employment issues. However it considered that due to the sufficient remedies available to deal with public sector employment issues it recommended that public sector employment matters should be removed from the Ombudsman's remit.
89. Responses to the Committee's 2010 consultation were predominantly in favour of removal of the public sector employment remit. The Committee noted that the Equality Commission "*would urge some caution in relation to this*" change – and giving the example of an external applicant for a public sector job whose application form was lost and who wouldn't have recourse to a grievance procedure or a tribunal.
90. DFP and DEL in their responses to the July 2012 key stakeholder consultation both supported the removal of the public sector employment remit.
91. The Committee was mindful of the original rationale for including the public sector employment remit and the growth in employee protection and enforcement mechanisms in the intervening period.
92. The Committee also considered that the core element of the role of a public services ombudsman was to provide a right of redress for maladministration to **members of the public in their capacity as the recipients of public services**.
93. After consideration the Committee agreed that public sector employment issues should not be included in the NIPSO's remit.

#### **Social Care - Professional judgement**

94. Currently the remit of the Commissioner for Complaints includes considering (with the assistance of an expert clinical advisor) complaints about the exercise of clinical judgement in health care bodies. The Commissioner for Complaints is not required to make a finding of maladministration prior to investigating such a complaint and can look at the merits of the clinical judgment and not simply maladministration. This was introduced by the Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997.
95. In its 2010 consultation the Committee sought views on whether this remit should be extended to include complaints of professional judgement in the field of social care on a similar basis – without the need to first make a finding of maladministration.
96. A key consideration is that health and social care in Northern Ireland are jointly delivered by Health and Social Care Trusts and it seems appropriate that professional judgement in health and social care both be within remit. Consultation responses were divided on this, highlighting the anomaly of permitting investigation of clinical care while not social care and indicating possible confusion/overlap with other bodies' responsibility.
97. After consideration, the Committee's July 2012 key stakeholder consultation proposed bringing professional judgements in social care within remit on the same basis as clinical judgment in health care.

98. The Department of Health, Social Security and Public Safety's (DHSSPS) response highlighted that the social care workforce contains many unqualified staff as well as qualified social work staff and proposed that only the professional judgement of the latter should be subject to the NIPSO's investigation.
99. Following discussion, the Committee agreed that the Bill should provide for the NIPSO to investigate exercise of professional judgement in relation to complaints about social care without a requirement to first find maladministration. The Committee will take advice during the drafting of the Bill on the necessity/implications of limiting application to those holding professional social work qualifications.

# Complaints

## **Rights of appeal or legal redress as a bar to investigation**

100. At present the Assembly Ombudsman/Commissioner for Complaints is not allowed to investigate any action where the person has or had a (a) right of appeal, complaint, reference or review to a tribunal (statutory or otherwise) or (b) a remedy by way of proceedings in a court of law. However there is discretion to investigate where the Assembly Ombudsman/Commissioner for Complaints is satisfied (a) it is not reasonable to expect a complainant to resort to a right of appeal or legal remedy or (b) where the complaint has exercised his or her rights but the injustice remains un-remedied and there are reasonable grounds for complaint. The Committee was content that the NIPSO should operate with the same statutory bar and exercise the same discretion. In determining whether to initiate, continue or discontinue an investigation the Assembly Ombudsman/Commissioner for Complaints shall act in accordance with his or her own discretion. The Committee was content that the NIPSO exercise the same discretion.

## **Role of MLAs in bringing complaints to the NIPSO**

101. Article 10 of The Commissioner for Complaints (Northern Ireland) Order 1996 requires that a complaint be made by the actual aggrieved individual. However Article 9 of The Ombudsman (Northern Ireland) Order 1996 requires that a complaint be made, or relayed, to the Assembly Ombudsman by an MLA.
102. There is no requirement for sponsorship of complaints by elected representatives in Scotland, Wales or the Republic of Ireland however in England complaints against government departments and agencies to the Parliamentary Ombudsman must be signed by a MP but not complaints in respect of the health service.
103. The Review recommended that a complainant should be able to deal directly with the Ombudsman or authorise an MLA to do so on their behalf.
104. The Committee's 2010 public consultation sought views on this proposal. The response was overwhelmingly in favour of this approach and it was adopted in the Committee's 2012 key stakeholder consultation. There were no objections to this approach and it was welcomed by the Ombudsman, the Committee for Employment and Learning and the Consumer Council. The Committee proposes that the Bill should provide accordingly.

## **Aggrieved person's representative**

105. The Committee's 2010 public consultation had sought views on allowing complaints to be made by an *aggrieved person's representative* – an approach which had been adopted in Scotland and Wales. Dr Frawley considered that this approach would provide greater scope for appropriate third parties to support a complainant. All responses on this approach were positive. The Committee favoured this approach in its 2012 key stakeholder consultation and there were no objections to this approach.
106. The Committee agreed that complaints may be made to the NIPSO by either the individual who suffers injustice, by an MLA on their behalf or by an *aggrieved person's representative* – a person who appears to the Ombudsman to be appropriate.

## **NIPSO may accept complaints from a public body**

107. In Scotland the Ombudsman legislation provides for a listed authority to refer a case to the Ombudsman where there has been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and the listed authority has unsuccessfully sought to resolve the matter.

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108. In its 2010 consultation the Committee sought stakeholders' views on whether public bodies within remit should be able to refer a complaint to the Ombudsman. While Dr Frawley had some reservations about this approach the majority of respondents were in favour of it.
109. The Committee adopted this proposal in its 2012 key stakeholder consultation which the Ombudsman welcomed on the basis that it should be at the NIPSO's discretion.
110. Following discussion the Committee agreed that the Bill provide that the NIPSO should have discretion to accept complaints referred by a listed authority on the same basis as the Scottish Public Services Ombudsman.

#### **Oral and written complaints**

111. Currently all complaints to the Ombudsman must be made in writing. While this approach provided a written record of the complaint made and clarity about what was to be investigated, the Committee was mindful that it could act as a barrier for some complainants.
112. During its 2010 consultation the Committee sought views on whether a complainant should be able to choose how to submit a complaint, namely orally or in writing. Responses to this were balanced and the Ombudsman considered that he should have discretion in relation to the mode of submission of a complaint.
113. The Committee developed this proposal further and in its 2012 key stakeholder consultation proposed that oral complaints should be accepted on the basis that they are reduced to writing by the NIPSO and agreed with the Complainant within a ten day time limit.
114. In his response the Ombudsman agreed that whilst a complaint could be made orally there may difficulties associated with reducing a complaint to writing within ten days. For example, the ten day time limit could prove to be difficult in instances where complainants may be ill or vulnerable.
115. After discussion the Committee agreed that complaints to the NIPSO could be made in writing or orally and that a complaint made orally should be reduced to writing by the NIPSO within twenty working days and approved by the complainant.
116. In relation to written complaints the Committee was content for the Ombudsman to have discretion whether or not to accept complaints in different written forms, in light of advances in communications technology.

#### **Residency requirement**

117. Under current legislation a complaint to the Ombudsman is not admissible unless the person aggrieved is resident in Northern Ireland or the complaint relates to events which took place whilst the complainant was resident in Northern Ireland.
118. In its 2012 key stakeholder consultation the Committee proposed that the Bill should remove this residency requirement and responses were supportive of this proposal. The Ombudsman welcomed the proposal as did the Consumer Council. In particular the Consumer Council noted that this proposal would help to simplify the process of submitting a complaint.
119. The Department for Regional Development (DRD) queried whether there was currently unmet demand that this would meet. DRD also questioned what consideration had been given to the practicalities and resource implications of investigating and fulfilling redress in respect of complaints from people not resident in Northern Ireland.
120. The Committee discussed this issue with the Ombudsman, including an example of a complaint from a tourist which the Ombudsman had accepted. The Committee was content that the Bill should remove the residency requirement, leaving the requirement that the complaint would still, as at present, have to relate to action taken in relation to the person

aggrieved while he was present in Northern Ireland or in relation to rights or obligations which accrued or arose in Northern Ireland.

**Time limit for making complaints and ‘signposting’ duty for public bodies**

121. The Committee considered the current provision in the legislation which states that a complaint shall not be entertained unless it is made not later than 12 months from the day on which the person aggrieved first had knowledge of the matters alleged in the complaint. The Committee also noted that the Ombudsman has discretion to investigate a complaint made later than 12 months if there are special circumstances which make it proper to do so.
122. The Committee considered the desirability of ensuring that complaints were made to the proposed NIPSO as soon as possible after the conclusion of the public bodies’ own dispute resolution processes – while witnesses’ recollections were fresh and the best evidence regarding the matters in dispute was available. The Committee also considered that, other things being equal, the sooner complaints were made and a decision reached by the NIPSO the better.
123. In its 2012 key stakeholder consultation the Committee proposed that complaints must be made within six months of the complainant receiving the listed body’s final decision in writing on his or her complaint.
124. The Committee also proposed that this written notice to the complainant:
- must include confirmation that this decision represents the conclusion of the final stage of the body’s own complaints procedure; and,
  - Must inform a complainant in writing of his or her right to refer the matter to the NIPSO and details of how to do so (‘signposting’);
125. The Committee considered that the NIPSO should have discretion to investigate complaints outside the six month time limit on same basis as at present, namely, where NIPSO “considers that there are special circumstances which make it proper to do so.”
126. The Ombudsman’s written response urged the Committee to reconsider this proposal as he believed that it disadvantages the most vulnerable people or those people who are unable to act promptly in bringing a complaint due to personal circumstances. The Committee for Employment and Learning, on the other hand, supported the proposed time limits with the view that they provide the complainant with a degree of flexibility following the conclusion of the internal complaints procedure.
127. Following discussion with Dr Frawley of his concerns the Committee was satisfied that the discretion provided for the NIPSO to accept complaints outside the six month time limit would protect the most vulnerable. The Committee agreed that the Bill or Standing Orders should provide for the NIPSO to report on the exercise of this discretion. The Committee considered that both the six month time limit and signposting by the public bodies would encourage speedier dispute resolution.

**Reports on investigations and publication in the public interest**

128. The current legislation requires the Ombudsman to forward a copy of an investigation report to the complainant, to the body concerned, and any person alleged to have taken or authorised the action complained of, or is otherwise involved in the complaint’s allegations.
129. The above provision is also reflected in the Public Services Ombudsman (Wales) Act 2005, however it goes further to require the body concerned to publicise reports and any action to be taken on receipt of a report. For example, the public body is required to make copies of the report available at their offices; it is required to publish the report on its website and these publications must be publicised in a local newspaper.



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130. In its 2010 public consultation the Committee sought views on adopting the approach of the Welsh legislation and sought views on whether these were sufficient and responses indicated broad support for this approach.
131. The Committee was mindful that the confidential nature of the investigation by the Ombudsman encouraged open and frank engagement by public bodies in the process and perhaps encouraged a greater willingness to recognise the merits of a complaint. The prospect of greater publicity may be a corresponding disincentive. Some Members also had concerns regarding the costs to the public purse of advertisement in local newspapers.
132. In its 2012 key stakeholder consultation the Committee proposed and subsequently agreed that the Bill should provide for the Ombudsman to send his or her reports on investigations (or statement of reasons for not investigating/discontinuing) to
- i. The head of the department/body being complained about;
  - ii. Any other person alleged to have taken the action complained of;
  - iii. The person who made the complaint
  - iv. Any Assembly Member assisting the complainant
  - v. Anybody else that the NIPSO feels appropriate.
133. Reports on investigations are disseminated on the basis that they are confidential and not to be disclosed by the recipients.
134. The Committee also considered representations from Dr Frawley that the NIPSO should have a power to publish a report where it is in the public interest to do so. The Committee was content with this proposal subject to the Bill providing that the NIPSO demonstrates that the public interest test has been satisfied. The Committee agreed that the Bill should provide for reporting on the basis of its July 2012 proposals with a power to publish in public interest.

## Enforcement

### **Enforcement/Compensation in the county court and public bodies' right to a formal hearing with legal representation**

135. Where a complaint is upheld by the Assembly Ombudsman/Commissioner for Complaints, the public body normally accepts and implements the recommendations. However, the Commissioner for Complaints (Northern Ireland) Order 1996 provides
- 1) Where on an investigation under this Order the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration, the county court may, on an application by that person, by order award that person damages to be paid by the body concerned.*
136. In its 2010 consultation the Committee sought views on whether this provision should be removed entirely or retained only for local government bodies. A clear majority of responses favoured removing the county court enforcement mechanism.
137. Dr Frawley's view was that the enforcement mechanism is *'inconsistent with the ombudsman model in the UK and Ireland, Europe and the rest of the world, and the Assembly Ombudsman's legislation, which is founded in the moral suasion of the Ombudsman's office which secures compliance where a complaint is upheld.'*
138. Moral suasion can be strengthened by a Special Report – Dr Frawley commented:
- 'In the UK and in the Ombudsman's current legislation there is an authority to make a special report which can be laid before the Assembly (or Parliament) and when this unusual step is taken, the publicity and pressure which results has the potential to create a dynamic which usually succeeds in bringing about an outcome which the relevant Ombudsman considers to be a satisfactory outcome. The Parliamentary Ombudsman has issued six such special reports in 43 years. Five resulted in satisfactory outcomes and the other one a promise of legislation in the current Coalition's Programme for Government to provide compensation to the complainants.'*
139. On the other hand, the Law Society of Northern Ireland and the Equality Commission were of the view that, whilst this provision had not been used in recent years, this may well be because bodies within the Commissioner for Complaints' remit are aware of the possible legal ramifications if recommendations are not implemented.
140. The Committee was reluctant to see any reduction in the range of remedies available to the citizen and in its 2012 key stakeholder consultation proposed:
- Bill should provide, in respect of all listed bodies (**including Health Service Providers**), that where NIPSO finds that a complainant has sustained injustice in consequence of maladministration by a listed body, then the complainant may apply to the county court for an order for damages to be paid to him or her by that listed body – (on same basis as currently in the Commissioner for Complaints (Northern Ireland) Order 1996).*
141. In his response to this proposal Dr Frawley made a number of points:
- *The Ombudsman considers that the proposed extension of the County Court enforcement mechanism to all bodies will not necessarily result in greater compliance with NIPSO recommendations as there is already an established pattern of compliance by almost all bodies in his jurisdiction.*
  - *The County Court mechanism is a feature of the 1969 Act when the Northern Ireland Commissioner for Complaints was the sole route for redress for individuals who had suffered discrimination in allocation of jobs, housing or local government services. The Ombudsman considers that the removal of the employment jurisdiction calls into question the need for*

*this enforcement mechanism given the alternative routes available to a complainant to claim discrimination in the courts, tribunals, the Northern Ireland Human Rights and Equality Commissions and Labour Relations Agency.*

- *Further, the Ombudsman considers that the existence of the mechanism may result in a greater reluctance to meet the recommendations of NIPSO for financial redress as a recalcitrant body could simply ignore the NIPSO recommendation and rely on the threat of legal costs and stress of litigation as a deterrent to a complainant to pursue the case in the County Court.*
- *The Ombudsman considers the County Court mechanism will increase uncertainty in the process which can be lengthy and unless legally aided, the individual would risk a potential further costs penalty.*
- *Given the proposed continuation of the power to “issue a special report” and the proposed extension of the Attorney General’s power to seek relief in the High Court in certain cases, it is considered this County Court mechanism is unnecessary.*
- *The Ombudsman considers that the appropriate forum for dealing with issues of non-compliance by a body is the Assembly or an appropriate Committee of the Assembly as enforcement of Ombudsman recommendations is a matter for the political rather than judicial arena. This approach has been endorsed by the Law Commission of England and Wales and their recommendation’s (sic) Public Services Ombudsmen report of 2011 as follows: Recommendation 12 - We recommend that recommendations of the public services ombudsmen continue to be part of the political process*

142. The Committee was also mindful that the Commissioner for Complaints Order provided certain rights for the public body/servants facing adverse findings:

- *(7) If at any time during the course of an investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any body or person, the Commissioner shall give to that body or person, if it or he so desires—*
  - (a) The opportunity of being examined by its or his own solicitor or counsel; and*
  - (b) The opportunity of testing by cross-examination, by its or his own solicitor or counsel or otherwise, any evidence which may affect it or him.*
- Public bodies under the Commissioner for Complaints Order have an effective right not to disclose legal advice (dealt with below).

143. The Assembly Ombudsman Order does not provide these rights in respect of bodies within the Assembly Ombudsman’s remit. These rights would appear to counterbalance the possibility that under the Commissioner for Complaints Order a public body could find itself the subject of a county court order for damages without having had the opportunity to defend itself which the legal process and court hearing would normally provide.

144. In its 2010 public consultation the Committee had sought views on the following approach:

*‘Should a person about whom an adverse comment might be made in an Ombudsman’s report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person’s representations are fairly included?’*

145. Dr Frawley’s response stated:

*‘The Ombudsman accepts that fairness requires that any person against whom an adverse comment is made should have an opportunity to make representations in writing to the Ombudsman about that finding and that he should consider same.’*

*[This is modelled on a State of Queensland provision.]*

146. Dr Frawley also highlighted that the complainant is also offered the same right to legal representation at the formal hearing but commented that the process 'provides those who can afford legal representation with an unfair advantage'. The Committee understands that although formal hearings are relatively rare the costs involved in running such hearings are significant.
147. On merging the remits of the Assembly Ombudsman and Commissioner for Complaints the Committee was not minded to extend these rights to legal representation and formal examination/cross-examination to all the bodies in the NIPSO's remit.
148. The Committee has taken legal advice regarding this approach (retaining the county court enforcement mechanism and removing the right to a formal hearing with legal representation) and will take advice during the drafting of the Bill on appropriate options to ensure that the proposed process, as a whole, complies with Article 6 of the European Convention on Human Rights (ECHR), including the right to make written representations referred to by Dr Frawley.
149. Subject to further advice during the drafting of the Bill the Committee agreed that the Bill should provide, in respect of all listed bodies (including Health Service Providers), that where NIPSO finds that a complainant has sustained injustice in consequence of maladministration, then the complainant may apply to the county court for an order for damages to be paid to him or her by that listed body on the same basis as currently exists in the Commissioner for Complaints (Northern Ireland) Order 1996.

#### **Application to the Attorney General for Northern Ireland**

150. Currently, Article 17 of the Commissioner for Complaints (Northern Ireland) Order 1996 allows the Commissioner to request the Attorney General for Northern Ireland to apply to the High Court for the grant of relief where the Commissioner believes that a body has previously engaged in conduct that amounted to maladministration and is likely to engage in such conduct again. On hearing the application from the Attorney General the High Court may 'grant such mandatory or other injunction or such declaration or other relief as appears to the court to be proper in all the circumstances'.
151. In its 2012 key stakeholder consultation the Committee proposed that this provision should be retained across all bodies within the NIPSO's remit. Dr Frawley welcomed this proposal.
152. The Committee also sought the view of the Attorney General for Northern Ireland who saw no difficulty in a similar provision to Article 17 of the Commissioner for Complaints Order being included in the NIPSO Bill. The Attorney General for Northern Ireland noted that this might involve him being asked to consider pursuing an application in respect of a department but as he exercises his functions independently there would be nothing irregular in this.
153. The Committee therefore agreed that the Bill should provide for the NIPSO to request the Attorney General for Northern Ireland to make application for relief in respect of all bodies within the NIPSO's remit.

#### **Reports to the Assembly**

154. Currently the Assembly Ombudsman and the Commissioner for Complaints are required to annually lay before the Assembly a general report on the performance of their functions. In addition the Commissioner for Complaints may '*from time to time lay such other reports before the Assembly as he thinks fit*' and the Assembly Ombudsman '*may from time to time lay before the Assembly such other reports with respect to those functions as he thinks fit*'
155. However the Assembly Ombudsman legislation allows the Assembly Ombudsman, if he or she thinks fit, to lay a special report on a case before the Assembly if injustice has been sustained by a person as a result of maladministration and that injustice has not been, or will not be, remedied.

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156. In its 2010 consultation the Committee sought views on whether the Ombudsman's ability to make special reports was appropriate. Responses indicated support for this provision and the Ombudsman supported the view that special reports were an effective tool to deliver recourse and should be a sufficient final recourse (as opposed to the County Court mechanism under the Commissioner for Complaints legislation).
  157. In its 2012 key stakeholder consultation the Committee proposed that the NIPSO would have the Assembly Ombudsman's power to lay a special report and responses supported this view in addition to the other reporting provisions.
  158. The Committee also proposed that the NIPSO's reports would be to the OFMDFM Committee and the Bill would provide a power for the OFMDFM Committee to request a briefing on a report or any other matter, or refer a report to another Assembly Committee. Responses suggested that the OFMDFM Committee may not be the appropriate body to receive all reports.
  159. The Committee noted these views and was also mindful that the committee structure within the Assembly is subject to change and agreed the broad principle that Standing Orders should make provision for the NIPSO to report to the Assembly and Assembly Committees to provide the flexibility to deal with changes in committee structure and responsibility. The Committee proposes that the NIPSO Bill should provide accordingly.

## Further Proposals

### **Notices prohibiting disclosure of information**

160. The current legislation provides that the Secretary of State or *'the head of a department'* may give notice in writing to the Assembly Ombudsman or Commissioner for Complaints, identifying certain documents or information, stating that *'the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of Northern Ireland or the United Kingdom or otherwise contrary to the public interest'*.
161. The Committee has taken legal advice in relation to this matter and takes the view that the legal effect of these provisions is to prohibit the disclosure by the Assembly Ombudsman or Commissioner for Complaints of the documents or information specified in the written notice. There are similar legislative provisions which prohibit the disclosure of information in other regions of the United Kingdom and in the Republic of Ireland.
162. In its 2012 key stakeholder consultation, the Committee proposed that the Bill should refer to a *'Northern Ireland Minister'* rather than *'the head of a department'* when specifying who can issue a notice to prohibit the disclosure of information. In its response OFMDFM stated that *'There is support for this amendment to bring the legislation in line with the current political context.'*
163. The Committee has taken legal advice in relation to this matter and takes the view that references to *"head of department"* could be replaced by references to *"Minister"*, the effect of which would - if linked to the definition in section 7(3) of the Northern Ireland Act 1998 and Article 4(10) of the Departments (NI) Order 1999 – be to include First Minister and deputy First Minister as well as departmental ministers.
164. The Committee noted that in Scotland a *'Member of the Scottish Executive'* may issue this type of notice and considered whether it is necessary, in light of devolution, for the Secretary of State to retain this notice issuing power. In doing so the Committee noted examples where the NIPSO's remit and investigations may overlap with matters for which the Secretary of State and UK Ministers retain responsibility – such as the Ministry of Defence (MoD), Her Majesty's Revenue and Customs (HMRC), Borders Agency - who might incidentally be involved in a complaint being investigated by the NIPSO and who could be required to provide documents/information to the NIPSO. The Committee noted that the Ombudsman's office was not aware of such a notice ever being issued.
165. The Committee has taken legal advice regarding the possible removal of the Secretary of State's power and takes the view that the Secretary of State's consent would be required to enable the Assembly to legislate to remove this power.
166. The Committee discussed this issue at its meeting on 20 March 2013. Sinn Féin Committee members present were opposed to the use of this type of notice in principle. Other Committee members present considered that the power was not unreasonable - noting that it would not prevent the information or documents being given to the NIPSO and used by him or her for the purposes of reaching a decision on a complaint. The Committee agreed by a majority that the NIPSO Bill should provide that the Secretary of State and Northern Ireland Ministers may issue such notices on the same basis as in the current legislation.

### **Obligations of confidentiality or secrecy (Article 14(3) of the Assembly Ombudsman Order)**

167. Advice to the Committee also highlighted an issue in relation to the re-enacting in an Assembly Bill of the provisions of Article 14(3) of the Assembly Ombudsman Order which provides:

*(3) Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to persons in the service of the Crown, whether imposed by any*

*statutory provision or by any rule of law, shall not apply to the disclosure of information for the purposes of an investigation under this Order.*

168. The effect of this provision is that common law duties of confidence and statutory restrictions on the disclosure of certain information (under, for example, the Data Protection Act 1998) do not apply where the Ombudsman requires the disclosure of that information for the purposes of an investigation.
169. However a number of statutory restrictions on the disclosure of information which could be disapplied by a provision equivalent to Article 14(3) of the Assembly Ombudsman Order in the NIPSO Bill are matters which are excepted or reserved within the meaning of section 4 of the Northern Ireland Act 1998. Save in very limited circumstances, an excepted matter cannot be dealt with in an Assembly Bill; and while an Assembly Bill may make provision dealing with reserved matters, such a Bill will usually require the consent of the of the Secretary of State.
170. The Committee noted that there is an equivalent provision in the Scottish Public Services Ombudsman Act 2002. The Committee has received legal advice on including provision equivalent to Article 14(3) of the Assembly Ombudsman Order in a Bill, and will take further advice during the drafting of the Bill on how such provisions could be given effect in respect of the NIPSO (for example, the extent to which provision would need to be made by Westminster legislation).

#### **Legal Privilege**

171. Article 14(4) of the Assembly Ombudsman Order provides:
- (4) The Crown shall not be entitled in relation to any investigation under this Order to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.*
172. There is no equivalent provision in the Commissioner for Complaints (NI) Order 1996. The Committee has received legal advice in relation to this matter and takes the view that 'privilege' in this context could be argued to include legal professional privilege. Normally, the advice which a public body receives from its solicitor and barrister is treated as privileged (legal professional privilege) and would not have to be produced in the context of court proceedings. The effect of this provision in the Assembly Ombudsman Order is that in the context of a complaint against a public body within the Assembly Ombudsman's remit such as a Northern Ireland department, the public body cannot rely on this legal professional privilege and is required to produce to the Assembly Ombudsman the legal advice which it received about the matters in dispute.
173. The Committee noted the absence of a similar provision in the Commissioner for Complaints (NI) Order 1996 and was mindful of the following provision (also referred to above) under the Commissioner for Complaints (NI) Order 1996:
- (7) If at any time during the course of an investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any body or person, the Commissioner shall give to that body or person, if it or he so desires—*
- (a) the opportunity of being examined by its or his own solicitor or counsel; and*
- (b) the opportunity of testing by cross-examination, by its or his own solicitor or counsel or otherwise, any evidence which may affect it or him.*
174. In the circumstances of an investigation by the Commissioner for Complaints, where the public body may well be advised and represented by its lawyers, the Committee noted that it is currently open to the public body to claim legal professional privilege and refuse to disclose the legal advice it received.

175. The Committee understands that legal advice provided to public bodies within the Assembly Ombudsman's remit by their solicitors and barristers is sought by the Assembly Ombudsman and provided by those public bodies. However, within the Commissioner for Complaints remit it is accepted by the Commissioner for Complaints that public bodies are not required to produce the legal advice they have received.
176. The Committee was of the view that as much information as possible, including legal advice, should be available to the NIPSO in reaching a decision on a citizen's complaint. Accordingly, the Committee proposed in its July 2012 key stakeholder consultation that the NIPSO Bill should, in respect of all bodies within the NIPSO remit, adopt the approach of the Assembly Ombudsman Order – so that legal advice to the public body would have to be produced to the NIPSO. This approach was welcomed by the Ombudsman.
177. The Committee recognises that such an approach, in conjunction with the County Court enforcement mechanism across all bodies within the NIPSO's remit, may raise issues of compliance with Article 6 of the ECHR. The Committee will take advice in this regard during the drafting of the Bill and particularly whether the proposed procedure as a whole complies with Article 6 of the ECHR.

#### **Information Sharing/Co-operation**

178. In its 2010 public consultation the Committee sought views on information sharing and co-operation:
- Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?
  - Should the Ombudsman be able to share information with other Ombudsmen in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?
  - Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated [in the paragraph] above?
179. The response to these questions was overwhelmingly positive and OFMDFM considered it appropriate
- ‘that the NI Ombudsman as with other regulatory and statutory bodies should work cooperatively and collaboratively with for example the ECNI, NICCY and the Commissioner for Older People (once in post) and would urge consideration of the legislative provision in the Public Service Ombudsman (Wales) Act 2005 ... which provides for joint or collaborative working and/or reporting.’.*
- This was reflected in the Committee's 2012 key stakeholder consultation. While welcomed by the Ombudsman OFMDFM commented that *‘It is expected that a full analysis of the implications of wider disclosing of information with other agencies including those outside Northern Ireland will be undertaken.’*
180. The Committee's agreed policy proposals, set out below, reflect those in the 2012 consultation and during the drafting of the Bill the Committee will seek advice on options bearing in mind the object of avoiding duplication of investigation and any implications of wider disclosure of information:
- Bill should provide for the sharing of information by the NIPSO on the basis provided for in the existing Orders.
  - Bill should also provide for the NIPSO to share information not only with the Information Commissioner but also with other Ombudsmen throughout the UK and the Republic of Ireland, to be listed in a schedule to the Bill;
  - Bill should allow NIPSO to co-operate with other Ombudsmen throughout the UK and the Republic of Ireland in matters which overlap their jurisdictions.
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### **Requirement on public bodies to provide facilities to the NIPSO**

181. In its 2010 public consultation the Committee sought responses to the following question:

*It is proposed to add ... a power similar to that in the Welsh legislation, enabling the Ombudsman who thinks a person may be able to provide information or produce a document also to provide any facility which the Ombudsman may reasonably require. An example of which could be when at that person's premises to use a photocopier.*

182. Responses to this were positive and this was reflected in the Committee's 2012 key stakeholder consultation proposals and final agreed view that the NIPSO Bill should make provision on the lines of the Welsh legislation.

### **Power to take action to resolve a complaint short of a full investigation**

183. In its 2010 public consultation the Committee sought responses to the question 'Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?' This proposal reflected an approach similar to that in section 3 of the Public Services Ombudsman (Wales) Act 2005.

184. This approach was welcomed by Dr Frawley who considered it would enhance his ability to achieve an early resolution of complaints. It was also approved by a substantial majority of all respondents who commented.

185. The Committee understands that the evidence from Wales suggest that this power has the potential to resolve a significant number of complaints at an early stage.

186. The Committee proposes that this power should be made available to the NIPSO on the same basis as in Wales.

### **Own initiative investigations**

187. The proposal for own initiative investigations was raised by Dr Frawley with the Deloitte Review and in its 2010 public consultation the Committee noted

*'Unlike the situation in ROI and in most other countries which have the ombudsman institution, neither the Ombudsman in Northern Ireland nor his counterparts in Great Britain, has a power to conduct an investigation or systemic review on his own initiative.'*

188. The Committee sought responses to the question:

*'Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?'*

189. The cost of resourcing such investigations or reviews and the potential for overlap/duplication with the roles and responsibilities of other bodies – and how these could be managed - were among the issues raised by respondents. Opinion on the merits of this proposal was relatively evenly divided with 12 responses favouring the proposal and 9 opposing it.

190. The Committee's 2012 key stakeholder consultation proposed the following:

*'Bill should provide NIPSO with power to initiate a systemic inquiry (where he or she believes systemic maladministration is taking place) subject to the NIPSO giving detailed reasons and evidence in a notice to the relevant Member of the NI Executive.'*

191. The proposal was welcomed by the Committee for Employment and Learning and also by the Public Accounts Committee which saw the power 'as an important addition to the governance arrangements' of the offices of Assembly Ombudsman/Commissioner for Complaints.

192. DHSSPS, via OFMDFM, commented:

*'There is concern about the potential impact of the proposal to provide the NIPSO with the power to initiate systemic inquiries on the Health and Social Care Complaints Procedures. This would represent a significant change in policy, with the potential to shift the focus to systemic reviews. Such a shift could have a negative impact on HSC service users' access to redress, potentially give rise to confusion and duplication with other bodies with the powers to conduct wide ranging reviews and ultimately give rise to increased costs.'*

193. The Committee concluded that the Bill should provide NIPSO with power of own initiative inquiry (where he or she believes systemic maladministration is taking place). During the drafting of the Bill the Committee will take advice on options for mechanisms to require NIPSO to evidence the need for the own initiative inquiry, give notice to and share evidence with the relevant department/minister on the issue and to demonstrate no overlap/duplication with role of other investigatory authorities.
194. In terms of the resource implications of own initiative investigations and any potential impact on the resources available to deal with citizens' individual complaints the Committee proposes that the Ombudsman will be accountable to a committee of the Assembly in relation to the proposed budget for, and actual spend on, own initiative investigations.
195. The Committee also considered whether the NIPSO should have a specific responsibility to seek to improve public administration but concluded that this role would be adequately addressed through the NIPSO's other reporting powers and the ability to conduct own initiative investigations.

# Ministers' Proposals

## Northern Ireland Judicial Appointments Ombudsman

196. Included with OFMDFM's response of 21 January 2013 to the Committee's July 2012 key stakeholder consultation was a letter dated 15 August 2012 from the Minister of Justice advising that as part of the review of arm's length bodies he was giving consideration to the possibility of combining the functions of the Northern Ireland Judicial Appointments Ombudsman (NIJAO) with those of the proposed NIPSO, subject to consultation with stakeholders including the Justice Committee. In April 2013 the Department of Justice (DoJ) wrote to the Committee:
- 'This is to advise that the Minister of Justice has now decided that he wishes to ask the Executive to agree that the NIJAO should remain as a separate statutory office but that the functions should be carried out by the proposed new Northern Ireland Public Services Ombudsman. He also wishes to retain specific disqualifications that currently apply to the NIJAO, but only in relation to investigations of judicial appointments complaints. This would be achieved by providing that, should the Public Services Ombudsman be so disqualified, he or she should delegate such investigations to an appropriate person (eg. the Deputy Ombudsman or another ombudsman from a different jurisdiction) who is not disqualified. As far as possible, we do not wish to disturb the NIJAO's existing powers, duties and responsibilities, which are provided for in the Justice (Northern Ireland) Act 2002.'*
197. DoJ requested that the Committee agree to carry the necessary provisions to introduce this change in the NIPSO Bill. DoJ also highlighted restrictions on who could be appointed to the office of NIJAO.
198. The Committee for Justice wrote on 25 March 2013 to advise that it had been briefed on the Minister's proposals and was content. In relation to the restrictions on who could hold the office of NIJAO, the Justice Committee stated:
- The Committee also agreed that, rather than extend the current restrictions in relation to the legal profession and judicial office on eligibility for appointment as NI Judicial Appointments Ombudsman to the holder of the Public Services Ombudsman post, the effect of the current restrictions should be retained by requiring that in the event that the Public Services Ombudsman is or has been a member of the legal profession or holder of judicial office, the Deputy Ombudsman would carry out an investigation relating to a judicial appointment.*
199. The Committee was briefed at its meeting on 22 May 2013 by DoJ officials including on the disqualification of lawyers, persons who have held judicial office and persons who have been engaged in political activity as a member of a political party.
200. The Committee raised a number of issues with DoJ officials including the parameters of political activity. DoJ officials reported that they had proposed to the Justice Committee that rather than disqualifying categories of people *'any public appointment needs to be underpinned by a strong principle of preparedness to acknowledge and step aside where a conflict of interest arises'*. However, the Justice Committee's preference had been to retain the existing restrictions.
201. The Ombudsman wrote to the Committee on 30 April indicating his support for the extension of the 'political activity' eligibility criterion to the office of the NIPSO itself.
202. The Ombudsman's evidence to the Committee was broadly supportive of the DoJ proposals noting that the roles were a fit in terms of responsibility for investigating maladministration. Dr Frawley also expressed a preference for managing conflicts of interest as they arose, as he currently does, rather than blanket exclusions of entire categories of people.

203. The Committee agreed to write to the DoJ seeking clarification on a number of issues including the restrictions on appointment, financial reallocation to cover the costs of investigations, clarification on the nature of the political activity, accountability of the NIJAO (in terms of any envisaged annual report) and also advising that the Committee intended to seek procedural and legal advice on the DoJ proposals.
204. DoJ's response of 14 June 2013 confirmed that any restrictions applicable to the NIJAO would not prevent the holding of the office of NIJAO by, for example, a lawyer but would require delegation of investigation of complaints to a non-lawyer. DoJ's response also clarified its understanding of how 'political activity' would be interpreted and that it would require more than merely being a member of a political party. In terms of annual reporting/accountability the NIJAO currently provides an annual report to the DoJ and DoJ lays that report before the Assembly. DoJ is now proposing that the annual report would be provided directly to the Assembly subject to obtaining the views of the Justice Committee on this point. The OFMDFM Committee will finalise its views on DoJ's proposals in light of legal advice to be received and the views of the Justice Committee when available.

### **Local Government Standards**

205. The Minister of the Environment contributed to OFMDFM's response to the Committee's 2012 key stakeholder consultation in which he stated:

*In November 2010 the former Executive agreed to policy proposals for local government reform being issued for public consultation. The consultation put forward proposals for a new ethical standards framework for the 11 new councils. The proposed framework includes the introduction of a mandatory Code of Conduct for councillors and associated mechanisms for investigation and adjudication. The consultation also proposed a role for the Northern Ireland Commissioner for Complaints in the new ethical standards framework which would see all written complaints regarding alleged breaches of the mandatory code referred initially to the Commissioner's office to decide whether a complaint should be referred to the relevant council for local resolution or whether the matter should be retained for investigation by the Commissioner's office. It was also anticipated that the Commissioner should have a role in adjudicating on cases.*

*I have considered the responses to the policy consultation and will shortly be asking my Executive colleagues for agreement to the final policy proposals to be taken forward in a Local Government (Reorganisation) Bill. The ethical standard proposals will form part of that Bill.*

*I am bringing to your attention that the ethical standards proposals in the Local Government (Reorganisation) Bill and the proposals in the OFMDFM Committee Bill may impact on each other. I have asked my officials to monitor and keep me advised of progress on the OFMDFM Committee's Bill and I will, of course, advise the Committee of the final policy proposals that I intend to introduce, once I have agreed these with my Executive colleagues.*

206. Dr Frawley's letter of 30 April 2013 referenced this proposal and in his evidence to the Committee Dr Frawley stated: '*It is unavoidable, I think, that we have a mandatory code in local government, and, for all sorts of good reasons, that mandatory code becomes absolutely essential when you see the new statutory responsibilities around planning and so on.*'
207. Dr Frawley thought that it made sense for the role to be under the NIPSO. He noted that in Wales, standards in local government were overseen by the Public Services Ombudsman but warned against the indemnifying of local councillors which had resulted in expensive and legalistic hearings.
208. Ms Marie Anderson, the deputy Ombudsman, provided some further detail:

*For clarity: the position in Wales is that the ombudsman investigates and makes recommendations, depending on the nature of the breach of the code, to either a standards committee, which can deal with minor breaches, or an adjudicating panel, which deals with*

more serious cases. The proposal that the Minister of the Environment is supporting is that investigation and adjudication will be undertaken by the Commissioner for Complaints. That represents another saving to the public purse, but it also represents a more complex model than that originally envisaged. That would mean a degree of structural realignment around decision, investigator and decision-maker in the office. That represents part of the initial set-up costs.

209. On the costs of the proposal the Dr Frawley stated:

*'My only caveat is that part of the challenge is that this is not without costs ..... I think [the Department of the Environment] should be central to making available those resources. I find it worrying that the potential for it to be in this office equals, "Well, you go and negotiate the funds for it now." It is very important that, when we take on these responsibilities, those who ask us to fulfil that purpose should also have a critical role in agreeing and taking on the costs, and in making funds available to fulfil the roles.'*

210. Dr Frawley highlighted the anticipated speed of progress on this issue. The anticipated creation of shadow councils in 2015 meant that those considering standing for election and current council members needed to understand the new code of conduct. Dr Frawley reported that his office has been in discussions with the DoE regarding the resources needed to deliver training and information and gear up for the envisaged responsibilities.

211. He also highlighted the costs savings from the envisaged model as against the £800,000 cost of the original proposal for a separate infrastructure in each council:

*'The new arrangements that are being proposed by DOE, however, will put the whole core of this activity — the actual management delivery of the standards agenda — through the office of the reconstituted Public Services Ombudsman. We are estimating that at around £373,000. That is a huge saving out of this model. I have no misgiving about that.'*

212. Ms Anderson clarified that "local government standards complaints" constitute around 15% of the Welsh Ombudsman's total complaints, 'ranging from 1,000 to about 1,300 cases a year but more than doubling at election time. Dr Frawley highlighted that Wales, like England, had decided to have Parish Councils – unlike Northern Ireland – which contributed to the total volume of complaints.

213. The Committee understands that the Committee for the Environment has not had a detailed briefing on the Minister's proposals for local government standards.

#### **NIPSO's relationship with the Assembly**

214. The Committee will continue to engage with the Committee for Justice and the Committee for the Environment to ensure that the proposals in relation to the NIJAO and local government standards respectively are developed in a manner consistent with the model for establishing and holding the NIPSO to account.

215. Consideration will be given to what implications the above developments have for the Bill when further advice has been received and specific final proposals are available.

## Equality Considerations

216. The Committee noted concerns raised by the Equality Commission in relation to the removal of the public sector employment remit. The Equality Commission recognised the significant developments that have been made in relation to opportunities for employees to have complaints and grievances addressed on a statutory and contractual basis.
217. The Committee also noted the example cited by the Equality Commission of a non-employee whose application for a job was mislaid and who lost out on the opportunity. The Committee did not consider that such circumstances were likely to be so frequent as to have a significant equality impact and, should these or other circumstances give rise to a suspicion of unlawful discrimination, they would be capable of interrogation by serving a statutory questionnaire under the appropriate anti-discrimination legislation.
218. The Committee considers that extending the NIPSO's remit to include the exercise of professional judgment in the field of social care (in conjunction with the existing remit in relation to clinical judgment in respect of health care) is likely to have a positive equality impact for more vulnerable citizens (whether through age, disability or social deprivation) who are more likely to avail of social care services.
219. The Committee considers that the new power of own initiative systemic investigation may have a positive equality impact as it may well be used to investigate areas of public service where the recipients are less likely or less able to bring and sustain complaints in their own right.
220. The reduction in the time limit for bringing a complaint from 12 months to 6 months might be thought to disadvantage the more vulnerable in society who may be less able to bring a complaint. However, the Committee considers that the mandatory, written '*sign-posting*' requirements on public bodies will make it more likely that vulnerable members of society are made aware of their rights and informed about how to contact the NIPSO. The Committee also considers that the exercise of the NIPSO's discretion to accept complaints outside the 6 month period will offset any risk of the more vulnerable members of society being disadvantaged.
221. The Committee considers that the proposal to allow the NIPSO to accept oral complaints and to reduce these to writing and agree them with a complainant will have a positive equality impact for those who may find it difficult to submit a written complaint – for example, as a result of age, disability or because English is not their first language.
222. The Committee does not consider that removal of the residency requirement will have a significant equality impact (bearing in mind the need for the person to have been accessing or seeking to access services in Northern Ireland for a complaint to arise) but believes that any impact will be positive.
223. Given the rarity with which the County Court Enforcement mechanism is used it is unlikely that the extension of this facility to complaints against government departments will have any significant equality impact. However, Dr Frawley did highlight the risk that some bodies might be tempted to refuse to comply with NIPSO recommendations for redress where they thought that a complainant would be deterred by the formality, stress and expense of court proceedings to obtain an order for damages – which may discourage, for example, older people, people with disabilities and those for whom English is not their first language. However, this risk may be mitigated by the power of the NIPSO to make a special report to an Assembly Committee and the potential for the public bodies' representatives to be brought before that Committee to give a public explanation of why it did not comply with the NIPSO's recommendation.
224. The Committee considers that the sharing of information between the NIPSO and bodies such as the Equality Commission, Northern Ireland Commissioner for Children and Young People and the Commissioner for Older People, should have a positive equality impact by avoiding duplication of effort/resources and identifying issues affecting public service delivery to protected groups.

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## Financial Implications

225. The Committee has agreed that Assembly Research and Information Service (RaISe) should, with the cooperation of the Assembly Ombudsman/Commissioner for Complaints, prepare an assessment of the financial implications of the Committee's proposals now that these have been developed. Subject to further policy development this work would also form the basis for the financial section of the Explanatory and Financial Memorandum which would accompany the NIPSO Bill.
226. At this stage it is anticipated that savings will result from some of the proposals, including:
- Removal of the public sector employment remit;
  - The power to take action to resolve a complaint prior to investigation;
  - Proposed removal of right to formal hearing with legal representation.
227. At this stage it is anticipated that some additional resources will be required by some proposals including:
- Schools, Further Education and Higher Educations coming within remit;
  - Extension of public procurement remit;
  - Own initiative systemic investigations;
  - Professional judgement in social care – including professional advice to inform the NIPSO's decision;
  - Increased reporting and financial accountability to Assembly Committees as determined by Standing Orders;
  - NIAO and Assembly Commission coming within remit;
  - Costs of merging offices/rebranding.
228. Non-Committee initiatives will also require additional resources:
- NIJAO remit;
  - Local Government Standards remit.
229. **Committee thanks** - The Committee would like to acknowledge the cooperation and assistance provided by the current Assembly Ombudsman and Commissioner for Complaints, Dr Tom Frawley; his deputy, Mrs Marie Anderson; legal advisor Ms Andrea McIlroy and their colleagues, both in formal evidence to the Committee and in assistance to the Assembly staff supporting the Committee.







Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings Relating to the Report



## Wednesday 1 June 2011

### Room 30, Parliament Buildings

**Present:** 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

**Apologies:** Ms Caitríona Ruane

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.03 p.m.** The meeting opened in public session

#### **7. Proposals to Update and Reform the Office of the Ombudsman**

**3.55 p.m.** Mr Spratt left the meeting

A Researcher from the Assembly's Research and Library Service briefed the Committee on their Research paper on issues raised during the previous Committee's consultation on proposals to update and reform the Office of the Ombudsman. The Chairperson advised Members that the Ombudsmen from Scotland, Wales and the Republic of Ireland will be briefing the Committee at its meeting on 15 June 2011.

**4.10 p.m.** The Chairperson adjourned the meeting

## Wednesday 15 June 2011

### Room 30, Parliament Buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Alex Maskey  
Mrs Sandra Overend  
Mr George Robinson  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**Apologies:** Mr Colum Eastwood  
Mr Francie Molloy

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.03 p.m.** The meeting opened in public session

#### **6. Proposals to Update and Reform the Office of the Northern Ireland Ombudsman**

Ms Emily O'Reilly, the Irish Ombudsman, Mr Jim Martin, the Scottish Public Services Ombudsman and Mr Peter Tyndall, the Public Services Ombudsman for Wales joined the meeting at 2.20 p.m.

Ms Emily O'Reilly, the Irish Ombudsman, Mr Jim Martin, the Scottish Public Services Ombudsman and Mr Peter Tyndall, the Public Services Ombudsman for Wales briefed the Committee on the work of their offices and on the Committee's proposals to update and reform the Office of the Northern Ireland Ombudsman. A question and answer session followed.

**3.26 p.m.** Mr Clarke left the meeting

**3.35 p.m.** Ms O'Reilly, the Irish Ombudsman left the meeting

**3.44 p.m.** Mr Humphrey left the meeting

**3.52 p.m.** Mr Maskey left the meeting

**3.56 p.m.** Mr Jim Martin, the Scottish Public Services Ombudsman and Mr Peter Tyndall, the Public Services Ombudsman for Wales left the meeting

**4.01 p.m.** Mr Robinson left the meeting

Proposals to Update and Reform the Office of the Ombudsman

*Agreed:* The Committee agreed to write to the Ombudsmen to request further information on how they promote the work of their office and what form of media they use. The Committee also requested a research paper on what provision there is on the educational curriculum to inform of the work of the Ombudsman.

#### **Press Release**

*Agreed:* The Committee agreed a press release in relation to the evidence session from the Irish, Scottish and Welsh Ombudsmen.

**4.14 p.m.** The Chairperson adjourned the meeting

# Wednesday 22 June 2011

## Room 30, Parliament Buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Francie Molloy  
Mr George Robinson

**Apologies:** Mrs Sandra Overend  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Ray McCaffrey (Research Officer) Item 2 only

**2.14 p.m.** The meeting opened in closed session

### **2. Proposals to Update and Reform the Office of the Northern Ireland Ombudsman**

The Committee discussed a number of policy issues in relation to proposals to reform and update the Office of the Northern Ireland Ombudsman.

**2.17 p.m.** Mr Lyttle joined the meeting

**2.26 p.m.** Mr Molloy joined the meeting

**3.29 p.m.** Mr Humphrey left the meeting

**3.37 p.m.** The meeting moved into public session

#### **Practical Arrangements and Accountability**

1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?

*Agreed:* The Committee agreed in principle to the merger of the current roles occupied by the NI Ombudsman.

2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?

*Agreed:* The Committee agreed in principle that the new office should be the Northern Ireland Public Service Ombudsman (NIPSO).

28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?

*Agreed:* The Committee agreed in principle that the Ombudsman would be appointed by the Assembly and would therefore become an Officer of the Assembly. Members also agreed in principle to investigate the idea of a public hearing with respect to the appointment. The Committee agreed that, in principle, the recruitment of the Ombudsman would be carried out by the Assembly Commission with

an Assembly vote to confirm. The appointment would remain subject to Royal Assent.

29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?

*Agreed:* The Committee agreed in principle that the Ombudsman would serve a fixed term of seven years.

30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?

*Agreed:* The Committee agreed to defer this decision until further discussion with the NI Ombudsman at the next Committee meeting.

31. Should the current link with the judicial salary scale be maintained?

*Agreed:* The Committee agreed to request further research to be undertaken on this issue.

32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?

*Agreed:* The Committee agreed in principle that the OFMDFM Committee would act in this role.

**3.40 p.m.** Mr Eastwood left the meeting

#### **Acquisition of Cases**

11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?

*Agreed:* The Committee agreed in principle to this suggestion.

12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?

*Agreed:* The Committee agreed in principle that this should be the case, but with the caveat that the Ombudsman should set down his understanding of the complaint in writing for the consideration and agreement of the complainant. This should be received by the complainant within 10 working days and would allow a complaint to be agreed by both Ombudsman and complainant.

13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?

*Agreed:* The Committee agreed to discuss this with the Ombudsman at the next Committee meeting.

14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?

*Agreed:* The Committee agreed in principle that this should be the case.

15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?

*Agreed:* The Committee agreed to discuss this issue further with the Ombudsman and seek further detail.

16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?

*Agreed:* The Committee agreed in principle that this issue should fall within the discretion of the Ombudsman.

#### **Reporting, Sharing of Information**

21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?

*Agreed:* The Committee agreed in principle that the Ombudsman would lay an annual report before the Assembly and would brief the Committee on its contents. That the Ombudsman would have the power to make special reports and these again would be laid before the Assembly and the Committee would be briefed. In addition, the Committee should have the discretion to seek briefing from the Ombudsman as and when it sees fit.

22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?

*Agreed:* The Committee agreed in principle not to pursue this issue any further.

23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?

*Agreed:* The Committee agreed in principle not to pursue this issue any further.

26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?

*Agreed:* The Committee agreed in principle that this should be the case.

27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?

*Agreed:* The Committee agreed to defer a decision on this issue until further information had been sought.

**3.43 p.m.** Mr Eastwood re-joined the meeting

#### **Powers**

3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?

*Agreed:* The Committee agreed that the Ombudsman's priority must be the caseload of complaints before him. The Committee considers that this function should be intrinsic to the recommendations made by the Ombudsman regarding each complaint that he considers. Members agreed to seek more detail on how this might work before coming to a decision.

4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?

- Agreed:* The Committee agreed in principle that the Ombudsman should have this power, but with the caveat of Members considering further how this would work in practice.
5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?
- Agreed:* The Committee agreed in principle that the Ombudsman's recommendations contained in his adjudication of complaints should serve this function.
6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?
- Agreed:* The Committee agreed not to pursue this issue further.
7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?
- Agreed:* The Committee discussed this issue at length and agreed to hear from the Ombudsman at the next Committee meeting.
8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?
- Agreed:* The Committee will consider the list separately and Members have linked this question with Q7.
9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?
- Agreed:* The Committee agreed in principle that these issues should be excluded.
10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?
- Agreed:* The Committee agreed in principle that this issue should be excluded.
17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?
- Agreed:* The Committee agreed to this suggestion in principle, but with the caveat that the detail needs to be worked out and considered.
18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?
- Agreed:* The Committee agreed to consider the Welsh model regarding this issue.
19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?
- Agreed:* The Committee agreed in principle to this power being incorporated in the legislation.



20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?

*Agreed:* The Committee agreed this in principle, but Members wish to consider the detail of how this would be presented in legislation.

24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?

*Agreed:* The Committee agreed in principle, but the detail must be considered further.

25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?

*Agreed:* The Committee agreed in principle.

**5.17 p.m.** The Chairperson adjourned the meeting

## Wednesday 29 June 2011

### Room 29, Parliament Buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr Alex Maskey  
Mr Francie Molloy  
Mrs Sandra Overend  
Mr George Robinson  
Ms Caitríona Ruane

**Apologies:** Mr William Humphrey  
Mr Jimmy Spratt  
In Attendance: Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Michael Potter (Research Officer) Item 7 only

**2.04 p.m.** The meeting opened in public session

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

**2.28 p.m.** Dr Tom Frawley CBE, the Northern Ireland Ombudsman and Mrs Marie Anderson the Deputy Northern Ireland Ombudsman joined the meeting

**2.35 p.m.** Mr Clarke joined the meeting

Dr Tom Frawley CBE, the Northern Ireland Ombudsman and Mrs Marie Anderson the Deputy Northern Ireland Ombudsman briefed the Committee on issues which arose following the Committee's consideration of the policy proposals to reform the Office of the Northern Ireland Ombudsman. A question and answer session followed.

Dr Tom Frawley CBE, the Northern Ireland Ombudsman and Mrs Marie Anderson the Deputy Northern Ireland Ombudsman left the meeting at 3.03 p.m.

**4.20 p.m.** The Chairperson adjourned the meeting

## Wednesday 14 September 2011

### Room 30, Parliament Buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Alex Maskey  
Mr Francie Molloy  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**Apologies:** Mrs Sandra Overend  
Mr George Robinson

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Ray McCaffrey (Research Officer) Item 2 only

**2.12 p.m.** The meeting opened in closed session

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

**2.16 p.m.** Mr Maskey joined the meeting

**2.17 p.m.** Mr Clarke joined the meeting

The Committee considered a number of issues in relation to proposals to reform the Office of the Northern Ireland Ombudsman.

*Agreed:* The Committee agreed to schedule briefing sessions in relation to the health and social care remit of the Ombudsman. The Committee also agreed to request further information in relation to the appointment and salary of the Ombudsman.

**2.46 p.m.** The meeting moved into open session

**3.12 p.m.** Mr Lyttle joined the meeting

**4.26 p.m.** The Chairperson adjourned the meeting

## Wednesday 21 September 2011

### Room 30, Parliament Buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Alex Maskey  
Mr Francie Molloy  
Mrs Sandra Overend

**Apologies:** Mr Colum Eastwood  
Mr George Robinson  
Ms Caitriona Ruane  
Mr Jimmy Spratt

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.08 p.m.** The meeting opened in public session

#### **7. Proposal to Update Legislation to Reform the Office of the Northern Ireland Ombudsman**

Members further considered issues around the reform of the Office of the Ombudsman.

**2.58 p.m.** Mr Humphrey joined the meeting

*Agreed:* Members agreed in principle to an appointment process for the Northern Ireland Ombudsman.

*Agreed:* Members agreed to request further research in relation to the mechanisms for setting salary scales and in relation the list of bodies identified in the Deloitte report, which fall outside the Ombudsman's remit.

**3.45 p.m.** The Chairperson adjourned the meeting

## Wednesday 5 October 2011

### Room 30, Parliament buildings

**Present:** Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Alex Maskey  
Mr Mike Nesbitt  
Mr Jimmy Spratt

**Apologies:** Mr Tom Elliott (Chairperson)  
Mr Colum Eastwood  
Mr Francie Molloy  
Mr George Robinson  
Ms Caitriona Ruane

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.05 p.m.** The meeting opened in public session

### **3. Proposal to Update Legislation to Reform the office of the Northern Ireland Ombudsman**

**2.10 p.m.** Representatives from the General Medical Council joined the meeting

**2.10 p.m.** Mr Clarke joined the meeting

Mr Paul Philip and Mr Alan Walker from the General Medical Council briefed the Committee on their role in investigating complaints and their relationship with the Northern Ireland Ombudsman. A question and answer session followed.

**2.22 p.m.** Representatives from the General Medical Council left the meeting

**2.22 p.m.** Representatives from the Nursing and Midwifery Council joined the meeting

Ms Jackie Smith and Ms Sarah Page from the Nursing and Midwifery Council briefed the Committee on their role in investigating complaints and their relationship with the Northern Ireland Ombudsman. A question and answer session followed.

**2.29 p.m.** Representatives from the Nursing and Midwifery Council left the meeting

**2.30 p.m.** Mr Spratt left the meeting

**4.23 p.m.** The Chairperson adjourned the meeting

## Wednesday 19 October 2011

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Francie Molloy  
Mr Mike Nesbitt  
Ms Cairtriona Ruane

**Apologies:** Mr Colum Eastwood  
Mr Alex Maskey  
Mr George Robinson  
Mr Jimmy Spratt

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Assembly Bursary Scheme student)  
Mr Ray McCaffrey (Researcher) Item 6 only  
Mr Tim Moore (Senior Researcher) Item 8 only  
Mr Michael Potter (Researcher) Item 8 only  
Mr Mark Allen (Researcher) Item 8 only

**2.05 p.m.** The meeting opened in public session

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

A Researcher from the Assembly's Research and Information Service briefed the Committee on the bodies highlighted in the Deloitte report of 2004 as falling outside the remit of the Northern Ireland Ombudsman. A question and answer session followed.

*Agreed:* Members agreed to request further information in relation to those bodies and the work being undertaken by the Department of Justice in relation to gaps in administrative justice.

**4.36 p.m.** The Chairperson adjourned the meeting

## Wednesday 9 November 2011

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Colum Eastwood  
Mr Francie Molloy  
Mr Mike Nesbitt  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**Apologies:** Mr Trevor Clarke  
Mr William Humphrey  
Mr Alex Maskey  
Mr George Robinson

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Assembly Bursary Scheme student)

**2.10 p.m.** The meeting opened in public session

**3.31 p.m.** Mr Eastwood left the meeting

**3.41 p.m.** Ms Ruane left the meeting

**3.41 p.m.** Mr Spratt left the meeting

Only four Members were present and therefore the Committee was unable to make decisions.

#### **5. Proposals to Update Legislation to Reform the office of the Northern Ireland Ombudsman**

**3.42 p.m.** Representatives from the National Union of Students – Union of Students (NUS-USI) joined the meeting

Ms Adrienne Peltz, President of NUS-USI, Mr Usman Ali, NUS Higher Education Officer, Ms Claire Flanagan University of Ulster Students Union President and Mr Adam McGibbon Queen's University Students Union Vice-President briefed the Committee on whether to include Further Education and Higher Education within the Northern Ireland Ombudsman's jurisdiction. A question and answer session followed.

**4.27 p.m.** Representatives from the National Union of Students – Union of Students left the meeting

**4.27 p.m.** Representatives from the Northern Ireland Social Care Council joined the meeting

Mr Brendan Johnston and Mrs Patricia Higgins from the Northern Ireland Social Care Council briefed the Committee on their role in investigating complaints and their relationship with the Northern Ireland Ombudsman. A question and answer session followed.

**4.41 p.m.** Representatives from the Northern Ireland Social Care Council left the meeting

**4.41 p.m.** Representatives from the Regulation and Quality Improvement Authority joined the meeting

Mr Glenn Houston, Mr Phelim Quinn and Ms Theresa Nixon from the Regulation and Quality Improvement Authority briefed the Committee on their role in investigating complaints and

their relationship with the Northern Ireland Ombudsman. A question and answer session followed.

**5.00 p.m.** Representatives from the Regulation and Quality Improvement Authority left the meeting

**5.07 p.m.** The Chairperson adjourned the meeting



## Wednesday 30 November 2011

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Mike Nesbitt  
Mr Jimmy Spratt

**Apologies:** Mr Colum Eastwood  
Mr Alex Maskey  
Mr Francie Molloy  
Ms Cairtriona Ruane  
Mr George Robinson

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.14 p.m.** The meeting opened in public session

**3.51 p.m.** Mr Humphrey left the meeting

**4.36 p.m.** Mr Clarke left the meeting

**4.47 p.m.** The meeting moved into closed session

#### **10. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee had a discussion in relation to the proposals to reform the Office of the Ombudsman. Members will consider this issue at next week's meeting.

**4.54 p.m.** The Chairperson adjourned the meeting

## Wednesday 7 December 2011

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Alex Maskey  
Mr Francie Molloy  
Ms Caitríona Ruane

**Apologies:** Mr Mike Nesbitt  
Mr George Robinson  
Mr Jimmy Spratt

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.07 p.m.** The meeting opened in public session

**2.42 p.m.** Mr Eastwood left the meeting

**3.03 p.m.** The meeting moved into closed session

#### **8. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee had a discussion in relation to the proposals to reform the Office of the Ombudsman.

*Agreed:* The Committee agreed to write to the Minister for Employment and Learning, the Universities and Colleges NI to seek their views in relation to the inclusion of further and higher education within the Ombudsman's remit. The Committee also agreed to write to the Minister for Education concerning inclusion of schools within the Ombudsman's remit.

**3.45 p.m.** The Chairperson adjourned the meeting

## Wednesday 14 December 2011

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Alex Maskey  
Mr Mike Nesbitt  
Ms Caitríona Ruane

**Apologies:** Mr Trevor Clarke  
Mr Francie Molloy  
Mr George Robinson  
Mr Jimmy Spratt

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.01 p.m.** The meeting opened in public session

**3.55 p.m.** Ms Ruane left the meeting

**4.15 p.m.** Mr Eastwood left the meeting

**4.28 p.m.** Mr Humphrey left the meeting

**5.16 p.m.** The meeting moved into closed session

#### **10. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee had a discussion in relation to the proposals to reform the Office of the Ombudsman.

**5.26 p.m.** The Chairperson adjourned the meeting

## Wednesday 18 January 2012

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Alex Maskey  
Mr Francie Molloy  
Mr Mike Nesbitt  
Mr George Robinson  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**Apologies:**

**In Attendance:** Mr Peter Hall (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.05 p.m.** The meeting opened in public session

**3.44 p.m.** Mr Eastwood left the meeting

**4.05 p.m.** The meeting moved into closed session

**9. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee had a discussion in relation to the proposals to reform the Office of the Ombudsman.

*Agreed:* The Committee agreed to use inclusive language in the papers in relation to the Ombudsman.

**4.41 p.m.** The Chairperson adjourned the meeting

## Wednesday 25 January 2012

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Alex Maskey  
Mr Francie Molloy  
Mr Mike Nesbitt  
Mr George Robinson  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**Apologies:** Mr Colum Eastwood

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.05 p.m.** The meeting opened in public session

**3.27 p.m.** Mr Elliott left the meeting

**3.27 p.m.** Mr Lyttle took the Chair

**3.34 p.m.** The meeting moved into closed session

#### **8. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee had a discussion in relation to the proposals to reform the Office of the Ombudsman and agreed to request further information on a number of issues.

**5.10 p.m.** The Deputy Chairperson adjourned the meeting

## Wednesday 22 February 2012

### Room 30, Parliament buildings

**Present:** Mr Tom Elliott (Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Alex Maskey  
Mr Francie Molloy  
Mr Mike Nesbitt  
Mr George Robinson  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**Apologies:** None

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.03 p.m.** The meeting opened in closed session

#### **1. Ombudsman Proposals**

The Committee considered a number of policy issues in relation to the proposals to bring forward legislation to reform the Office of the Northern Ireland Ombudsman.

*Agreed:* The Committee agreed a number of policy issues and agreed to seek legal advice in relation to some options.

**3.44 p.m.** The meeting moved into open session

**5.05 p.m.** The Chairperson adjourned the meeting

## Wednesday 9 May 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Danny Kinahan  
Mr Alex Maskey  
Mr George Robinson

**Apologies:** Mr Francie Molloy  
Ms Caitríona Ruane  
Mr Jimmy Spratt

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.09 p.m.** The meeting opened in closed session

**1. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee considered legal advice in relation to proposals to update legislation to reform the Office of the Ombudsman.

**2.40 p.m.** Mr Eastwood joined the meeting

**3.02 p.m.** Mr Lyttle joined the meeting

**3.10 p.m.** Mr Maskey left the meeting

**3.16 p.m.** Mr Humphrey left the meeting

*Agreed:* The Committee agreed a number of policy issues and agreed to seek further information in relation to some options.

**3.29 p.m.** The meeting moved into public session

**4.15 p.m.** The Chairperson adjourned the meeting

## Wednesday 23 May 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Tom Buchanan  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Danny Kinahan  
Mr Alex Maskey  
Mr George Robinson  
Ms Caitríona Ruane

**Apologies:** None

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.02 p.m.** The meeting opened in public session

**3.43 p.m.** Mr Kinahan left the meeting

#### **6. Northern Ireland Ombudsman**

**3.44 p.m.** The Northern Ireland Ombudsman and Deputy Ombudsman joined the meeting

The Northern Ireland Ombudsman, Dr Tom Frawley CBE and Deputy Ombudsman, Mrs Marie Anderson briefed the Committee on the implications of the possible options for county court enforcement procedures. A question and answer session followed.

**3.06 p.m.** Mr Humphrey left the meeting

**3.06 p.m.** Mr Clarke left the meeting

**4.35 p.m.** The Northern Ireland Ombudsman and Deputy Ombudsman left the meeting

**4.46 p.m.** Mr Humphrey left the meeting

**5.05 p.m.** The meeting moved into closed session

#### **8. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee considered proposals to update legislation to reform the Office of the Ombudsman in light of the briefing by the Ombudsman and Deputy Ombudsman.

*Agreed:* The Committee agreed a policy issue in relation to the proposals.

**5.23 p.m.** The Chairperson adjourned the meeting



## Wednesday 30 May 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Danny Kinahan  
Mr Alex Maskey  
Mr Francie Molloy  
Mr George Robinson  
Ms Caitríona Ruane

**Apologies:** Mr Colum Eastwood

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Gary Cocker (Bursary Student)

**2.04 p.m.** The meeting opened in closed session

#### **1. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee considered proposals to update legislation to reform the Office of the Ombudsman.

**2.09 p.m.** Mr Robinson joined the meeting

**2.13 p.m.** Mr Clarke joined the meeting

**2.27 p.m.** Mr Kinahan joined the meeting

**2.43 p.m.** Mr Buchanan joined the meeting

**2.44 p.m.** Ms Ruane left the meeting

*Agreed:* The Committee agreed a number of policy issues and agreed to seek further information in relation to some options.

**2.49 p.m.** The meeting moved into public session

**4.50 p.m.** The Chairperson adjourned the meeting

## Wednesday 13 June 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr William Humphrey  
Mr Danny Kinahan  
Mr Alex Maskey  
Mr Francie Molloy  
Mr George Robinson

**Apologies:** Mr Thomas Buchanan  
Ms Cairtriona Ruane  
In Attendance: Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.07 p.m.** The meeting opened in closed session

#### **1. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee considered proposals to update legislation to reform the Office of the Ombudsman.

**2.15 p.m.** Mr Robinson joined the meeting

*Agreed:* The Committee agreed a number of policy issues and agreed to consider all the decisions the Committee has made at its 20 June 2012 meeting.

*Agreed:* The Committee would consult with other statutory committees, the Public Accounts Committee, the Audit Committee, the Assembly Commission, the Office of the Ombudsman, OFMDFM, the Equality Commission and the Human Rights Commission on the agreed policy decisions.

**2.33 p.m.** The meeting moved into public session

**2.41 p.m.** Mr Lyttle joined the meeting

**3.04 p.m.** Mr Eastwood joined the meeting

**5.04 p.m.** The Chairperson adjourned the meeting

## Wednesday 20 June 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr William Humphrey  
Mr Danny Kinahan  
Mr Alex Maskey  
Mr Francie Molloy  
Mr George Robinson  
Ms Caitríona Ruane

**Apologies:** None

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Aidan Stennett (Researcher) Item 6 only

**2.04 p.m.** The meeting opened in public session

#### **4. Proposals to update and Reform the Office of the Ombudsman**

The Committee reviewed the policy decisions that it has made to date in relation to proposals to update and reform the office of the Northern Ireland Ombudsman.

**2.11 p.m.** Mr Robinson joined the meeting

**2.13 p.m.** Mr Eastwood joined the meeting

**2.23 p.m.** Mr Lyttle joined the meeting

**2.26 p.m.** Mr Clarke joined the meeting

*Agreed:* The Committee agreed to seek further clarification in relation to some issues.

**4.44 p.m.** The Chairperson adjourned the meeting

## Wednesday 4 July 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr William Humphrey  
Mr Danny Kinahan  
Mr George Robinson  
Ms Caitriona Ruane

**Apologies:** Mr Colum Eastwood  
Mr Alex Maskey

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.05 p.m.** The meeting opened in public session

#### **Ombudsman Legislative Proposals**

The Committee considered and agreed a list of policy decisions in relation to the proposals to update and reform the Office of the Ombudsman.

*Agreed:* The Committee agreed to consult with a number of key stakeholders on the proposals.

**2.15 p.m.** Mr Lyttle joined the meeting

**4.46 p.m.** The Chairperson adjourned the meeting

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## Wednesday 5 September 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr Danny Kinahan  
Mr Alex Maskey  
Mr Francie Molloy  
Mr George Robinson  
Ms Caitríona Ruane

**Apologies:** Mr Thomas Buchanan  
Mr William Humphrey

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.05 p.m.** The meeting opened in public session

### 3. **Matters Arising**

#### **Ombudsman Proposals**

The Committee considered a response from the Minister for Education in relation to the inclusion of schools and Boards of Governors in the Ombudsman's remit.

*Agreed:* The Committee agreed to write to the Northern Ireland Ombudsman to seek his views on the issues arising.

**2.22 p.m.** Mr Clarke joined the meeting

**2.45 p.m.** Ms Ruane joined the meeting

**4.05 p.m.** The Chairperson adjourned the meeting

## Wednesday 10 October 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Colum Eastwood  
Miss Megan Fearon  
Mr Paul Givan  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr George Robinson

**Apologies:** Mrs Brenda Hale  
Mr Danny Kinahan  
Mr Stephen Moutray

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Ms Eilis Haughey (Bill Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.07 p.m.** The meeting opened in public session

#### **Ombudsman Legislative Proposals**

*Agreed:* The Committee agreed to schedule in consideration of responses to the Committee's Ombudsman legislative proposals at its meeting of 24 October 2012. The Committee agreed to write to the Department to advise that the Committee is considering this issue on 24 October and to request that a response is issued in advance of that meeting.

**2.13 p.m.** Mr Robinson joined the meeting

**2.21 p.m.** Mr Maskey joined the meeting

**4.28 p.m.** The Chairperson adjourned the meeting

## Wednesday 24 October 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Colum Eastwood  
Mr Paul Givan  
Mr John McCallister  
Ms Bronwyn McGahan  
Mr George Robinson

**Apologies:** Miss Megan Fearon  
Mrs Brenda Hale  
Mr Alex Maskey  
Mr Stephen Moutray

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Tim Moore (Senior Researcher) Item 6 only

**2.07 p.m.** The meeting opened in public session

**3.00 p.m.** Mr Eastwood left the meeting

**3.01 p.m.** The meeting moved into closed session

#### **7. Proposals to Update Legislation to Reform the Office of the Ombudsman**

The Committee considered legal advice and advice from the Parliamentary Drafter on issues arising from Committee's legislative proposals.

The Committee considered responses to its current policy proposals for legislation.

*Agreed:* The Committee agreed to write to the Assembly Commission to seek its view on the inclusion of the Assembly Commission within the jurisdiction of the Ombudsman's Office.

**4.26 p.m.** The Chairperson adjourned the meeting

## Wednesday 21 November 2012

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Miss Megan Fearon  
Mrs Brenda Hale  
Mr John McCallister  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:** Mr Colum Eastwood  
Mr Paul Givan  
Mr Alex Maskey

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.08 p.m.** The meeting opened in public session

#### **5. Matters Arising**

##### **NI Ombudsman**

The Committee considered a response from the Office of the NI Ombudsman in relation to proposals to extend the Ombudsman's jurisdiction to Board of Governors of Schools.

*Agreed:* The Committee agreed to forward the response to the Minister for Education.

**4.39 p.m.** The Chairperson adjourned the meeting



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## Wednesday 23 January 2013

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle  
Mr Colum Eastwood  
Miss Megan Fearon  
Mr Paul Givan  
Mrs Brenda Hale  
Mr Alex Maskey  
Mr John McCallister  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:** None

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Tim Moore (Senior Researcher) Item 5 only  
Mr Michael Potter (Researcher) Item 5 only

**2.10 p.m.** The meeting opened in public session

#### **Ombudsman Legislative Proposals**

The Committee noted a response from the Department to the Committee's proposals to update and reform the Office of the Ombudsman.

*Agreed:* The Committee agreed to consider the response in detail when the Committee next considers the proposals.

**2.53 p.m.** Mr Givan joined the meeting

**2.56 p.m.** Mr McCallister joined the meeting

**3.23 p.m.** Mr Lyttle joined the meeting

**4.59 p.m.** The Chairperson adjourned the meeting

## Wednesday 13 February 2013

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Colum Eastwood  
Miss Megan Fearon  
Mr Paul Givan  
Mr Alex Maskey  
Mr John McCallister  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:**

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.05 p.m.** The meeting opened in public session

**3.00 p.m.** Mr Eastwood left the meeting

**3.19 p.m.** Miss Fearon left the meeting

**3.26 p.m.** Mr Maskey left the meeting

**3.26 p.m.** Mr Lyttle left the meeting

**3.28 p.m.** The meeting moved into closed session

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

**3.29 p.m.** Mr Lyttle re-joined the meeting

**3.34 p.m.** Miss Fearon re-joined the meeting

**3.35 p.m.** Mr Maskey re-joined the meeting

**3.57 p.m.** Mr McCallister left the meeting

**4.06 p.m.** Mr Robinson left the meeting

**4.30 p.m.** Mr Givan left the meeting

The Committee considered responses from stakeholders to the Committee's policy proposals in relation to reforming the office of the Ombudsman.

*Agreed:* The Committee agreed a number of policy issues, agreed that Members would take soundings on some outstanding issues and agreed that the Committee would request a briefing from the Ombudsman on some of the issues raised.

**5.07 p.m.** The Chairperson adjourned the meeting

## Wednesday 20 February 2013

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Miss Megan Fearon  
Mr Paul Givan  
Mrs Brenda Hale  
Mr Alex Maskey  
Mr John McCallister  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:** Mr Colum Eastwood

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Michael Potter (Researcher) Item 8 only

**2.06 p.m.** The meeting opened in public session

#### **Northern Ireland Ombudsman**

The Chairperson advised Members that the Northern Ireland Ombudsman will brief the Committee at next week's meeting on issues raised during last week's consideration of proposals to update the Office of the Ombudsman.

*Agreed:* The Committee agreed to share its summary of responses document with the Ombudsman in advance of the briefing.

**2.28 p.m.** Mr Lyttle joined the meeting

**2.35 p.m.** Mr McCallister joined the meeting

**3.50 p.m.** Mr Givan joined the meeting

**4.00 p.m.** The Chairperson adjourned the meeting

## Wednesday 27 February 2013

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Colum Eastwood  
Miss Megan Fearon  
Mr Paul Givan  
Mrs Brenda Hale  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:** Mr Robin Swann

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Colin Pidgeon (Researcher) Item 5 only  
Mr Tim Moore (Senior Researcher) Item 6 only  
Mr Des McKibbin (Researcher) Item 6 only

**2.06 p.m.** The meeting opened in public session

**2.46 p.m.** Mr Givan left the meeting

**3.08 p.m.** Miss Fearon left the meeting

**3.14 p.m.** The meeting moved into closed session

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

**3.15 p.m.** The NI Ombudsman and Deputy Ombudsman joined the meeting

**3.19 p.m.** Mr Lyttle joined the meeting

**3.24 p.m.** Mr Maskey joined the meeting

**3.33 p.m.** Mr Givan re-joined the meeting

**3.37 p.m.** Miss Fearon re-joined the meeting

**4.03 p.m.** Mr Eastwood left the meeting

**4.04 p.m.** Mr Givan left the meeting

The Committee discussed with Dr Tom Frawley, Ombudsman and Mrs Marie Anderson, Deputy Ombudsman a range of issues in relation to the Committee's policy proposals.

**4.18 p.m.** The NI Ombudsman and Deputy Ombudsman joined the meeting

The Committee had a further discussion regarding its policy proposals.

**Agreed:** The Committee agreed a number of policy issues and agreed that it would consider the outstanding issues on 20 March for final decisions.

**4.40 p.m.** The Chairperson adjourned the meeting

## Wednesday 13 March 2013

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Miss Megan Fearon  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:** Mr Leslie Cree  
Mr Colum Eastwood  
Mr Paul Givan  
Mrs Brenda Hale

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Damien Martin (Clerk Assistant) Item 1 only

**2.12 p.m.** The meeting opened in closed session

**1. Proposals for Legislation to Reform the Office of the Ombudsman**

The Committee discussed the process for taking forward the Committee's final proposals for legislation to reform the Office of the Ombudsman.

**2.19 p.m.** The meeting moved into public session

**2.30 p.m.** Mr Lyttle joined the meeting

**4.43 p.m.** The Chairperson adjourned the meeting

## Wednesday 20 March 2013

### Room 30, Parliament Buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Leslie Cree  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:** Mr Colum Eastwood  
Mrs Brenda Hale  
Miss Megan Fearon  
Mr Paul Givan

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Ms Kate McCullough (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Ms Jane Campbell (Research Officer) (Item 6 only)

**2.05 pm** The meeting began in public session.

**2.34 pm** The Committee went into closed session

#### **1. Ombudsman Legislative Proposals**

Members considered and agreed a number of its draft legislative proposals by consensus. The Committee divided on two issues.

The first issue was on point one of the summary schedule, four options relating to the appointment mechanism.

Mr Moutray proposed that we adopt second option – that the Bill would provide for the appointment of the NIPSO by Her Majesty on the nomination of the Assembly, Mr Robinson seconded the proposal.

The Committee divided:

**Ayes:** Mr Cree, Mr Lyttle, Mr Moutray, Mr Nesbitt, Mr Robinson

**Noes:** Mr Maskey, Ms McGahan

The Committee agreed the proposal.

The second issue was on point fourteen of the summary schedule – the power for notices to be issued prohibiting the disclosure of information.

Mr Maskey proposed the removal of any power to issue notices prohibiting the disclosure of information, Ms McGahan seconded the proposal.

The Committee divided:

**Ayes:** Mr Maskey, Ms McGahan

**Noes:** Mr Cree, Mr Lyttle, Mr Moutray, Mr Nesbitt, Mr Robinson

The proposal fell.

Mr Moutray proposed that that the Bill should provide that the Secretary of State or a Northern Ireland Minister (in place of “head of department”) may issue notices prohibiting disclosure of information provided to the NIPSO on the same basis as in the current Orders.

The Committee divided:

**Ayes:** Mr Cree, Mr Lyttle, Mr Moutray, Mr Nesbitt, Mr Robinson

**Noes:** Mr Maskey, Ms McGahan

The Committee agreed the proposal.

*Agreed:* The Committee Clerk would prepare a draft Report reflecting the Committee’s development of its legislative proposals with a view to a debate on the floor of the Assembly.

*Agreed:* The Bill Clerk would prepare draft instructions to the Parliamentary Drafter reflecting the Committee’s legislative proposals and policy decisions.

**3.00 pm** The Chairperson adjourned the meeting

## Wednesday 10 April 2013

### Room 30, Parliament buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Leslie Cree  
Mr Colum Eastwood  
Miss Megan Fearon  
Mr Paul Givan  
Mrs Brenda Hale  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Christopher McNickle (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.03 p.m.** The meeting opened in closed session

#### 4. **Correspondence**

##### **Committee for Justice**

The Committee considered correspondence from the Committee for Justice advising that the Department of Justice has produced proposals for the rationalisation of the functions of the Office of the Northern Ireland Judicial Appointments Ombudsman. The correspondence also advised that the Committee for Justice was content with the proposal to retain the current duties and powers of the Judicial Appointments Ombudsman, but combine the role with the Public Services Ombudsman.

*Agreed:* The Committee agreed that it would consider this proposal within the Committee's proposals to reform the Office of the Ombudsman.

**3.04 p.m.** Mr Givan joined the meeting

**4.03 p.m.** The Chairperson adjourned the meeting



## Wednesday 22 May 2013

### Room 30, Parliament Buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Leslie Cree  
Mr Colum Eastwood  
Miss Megan Fearon  
Mrs Brenda Hale  
Ms Bronwyn McGahan  
Mr Alex Maskey  
Mr Stephen Moutray  
Mr George Robinson  
Mr Jimmy Spratt

**In Attendance:** Mr Alyn Hicks (Assembly Clerk)  
Mr Oliver Bellew (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.02 pm** The meeting began in public session.

**3.21 p.m.** Ms Fearon and Mr Maskey left the meeting

**3.25 p.m.** Mr Eastwood left the meeting

**3.35 p.m.** Ms McGahan left the meeting

#### **7. Proposal to update legislation to reform the Office of the NI Ombudsman**

**3.37 p.m.** Officials from the Department of Justice joined the meeting

Department of Justice Officials Ms Geraldine Fee; Mr David A Lavery; and Mr Martin Moore briefed the Committee on the Department of Justice's proposal that the office of NI Judicial Appointments Ombudsman would be held by the person holding office as NI Public Service Ombudsman. Questions and discussion followed.

**3.52 p.m.** Mr Spratt left the meeting

**3.53 p.m.** The Officials left the meeting

#### **8. Proposal to update legislation to reform the Office of the NI Ombudsman**

**3.54 p.m.** The NI Ombudsman and the Deputy NI Ombudsman joined the meeting

Dr Tom Frawley, NI Ombudsman, and Ms Marie Anderson, Deputy NI Ombudsman, briefed the Committee on the Department of Justice's proposals regarding the NI Judicial Appointments Ombudsman, the Department of the Environment's proposals in relation to local government standards and related financial implications.

**4.14 p.m.** Mrs Hale left the meeting

**4.18 p.m.** The Officials left the meeting

**4.29 pm** The Chairperson adjourned the meeting

## Wednesday 5 June 2013

### Room 30, Parliament Buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Leslie Cree  
Miss Megan Fearon  
Mrs Brenda Hale  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr Jimmy Spratt

**Apologies:** Mr Colum Eastwood  
Mr George Robinson

**In Attendance:** Mrs Shauna Mageean (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.01 pm** The meeting began in public session.

#### **2. Chairperson's Business**

##### **Ombudsman Bill Proposals**

*Agreed:* The Committee agreed to seek legal advice from the Assembly's Legal Services in relation to the Department of Justice's proposal that the Judicial Appointments Ombudsman role would be undertaken by the Committee's proposed Public Services Ombudsman.

**2.11 pm** The Chairperson adjourned the meeting

## Wednesday 19 June 2013

### Room 30, Parliament Buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Leslie Cree  
Mr Colum Eastwood  
Miss Megan Fearon  
Mrs Brenda Hale  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson

**Apologies:** Mr Jimmy Spratt

**In Attendance:** Mrs Shauna Mageean (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)

**2.06 pm** The meeting began in public session.

#### **Northern Ireland Public Services Ombudsman**

The Committee noted a copy of the Committee report into the Northern Ireland Public Services Ombudsman. The Committee also noted a response from the Department of Justice in relation to the Northern Ireland Judicial Appointments Ombudsman.

*Agreed:* The Committee agreed that it would consider the Report in detail at next week's meeting and that Members would notify the Clerk if they had any proposed amendments to the Report.

**2.24 p.m.** Mr Maskey joined the meeting

**2.40 p.m.** Mrs Hale joined the meeting

**2.47 p.m.** Mr Eastwood joined the meeting

**2.53 p.m.** Mr Lyttle joined the meeting

**4.57 pm** The Chairperson adjourned the meeting

## Wednesday 26 June 2013

### Room 30, Parliament Buildings

**Present:** Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Leslie Cree  
Mr Colum Eastwood  
Miss Megan Fearon  
Mrs Brenda Hale  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr George Robinson  
Mr Jimmy Spratt

**Apologies:** Mr Stephen Moutray

**In Attendance:** Mrs Shauna Mageean (Assembly Clerk)  
Mrs Cathie White (Assembly Clerk)  
Mr Keith McBride (Assistant Assembly Clerk)  
Mr Stephen Magee (Clerical Supervisor)  
Mrs Marion Johnson (Clerical Officer)  
Mr Alyn Hicks (Assistant Assembly Clerk) Item 10 only  
Mr Jonathan McMillen (Assembly Legal Services) Item 10 only

**2.01 pm** The meeting began in public session.

**4.06 p.m.** Mr Cree left the meeting

**4.45 p.m.** The meeting moved into closed session

**4.45 p.m.** Mr Spratt left the meeting

#### **10. Draft Committee Report – Northern Ireland Public Services Ombudsman**

The Committee considered legal advice in relation to the Department of Justice's proposals in relation to the Northern Ireland Judicial Appointments Ombudsman.

**4.50 p.m.** Mrs Hale left the meeting

The Committee considered its Report on Proposals for a Northern Ireland Public Services Ombudsman Bill.

*Agreed:* The Committee read and agreed the Executive Summary.

*Agreed:* The Committee read and agreed paragraphs 1-12: Introduction and background.

*Agreed:* The Committee read and agreed paragraphs 13-15: Merger of existing offices and Title of new office.

*Agreed:* The Committee read and agreed paragraphs 16-21: Term of appointment and Recruitment and selection.

*Agreed:* The Committee read and agreed paragraphs 22-30: Formal appointment and Assembly competence to alter appointment mechanism.

*Agreed:* The Committee read and agreed paragraphs 31-43: Removal from office and Restrictions on appointment and on leaving office.

- 
- Agreed:* The Committee read and agreed paragraphs 44-53: Temporary vacancies in office, Salary and pension, and Transfer of staff.
- Agreed:* The Committee read and agreed paragraphs 54-58: Relationship with the Assembly and Financial accountability.
- Agreed:* The Committee read and agreed paragraphs 59-70: Remit of NIPSO, Bodies within remit, NI Assembly Commission and NI Audit Office, and Schools.
- Agreed:* The Committee read and agreed paragraphs 71-85: Institutions of Further and Higher Education and Public Procurement.
- Agreed:* The Committee read and agreed paragraphs 86-99: Public Sector Employment and Social Care – professional judgement
- Agreed:* The Committee read and agreed paragraphs 100-110: Complaints to the NIPSO, Rights of appeal or legal redress – a bar to investigation, Role of MLAs, Aggrieved person’s representative, Complaints referred by public bodies .
- Agreed:* The Committee read and agreed paragraphs 111-120: Oral and written complaints, Residency requirement.
- Agreed:* The Committee read and agreed paragraphs 121-134: Time limit and ‘signposting’ duty on public bodies and Reports on investigations - publication in the public interest.
- Agreed:* The Committee read and agreed paragraphs 135-149: Enforcement, Enforcement/compensation in the County Court.
- Agreed:* The Committee read and agreed paragraphs 150-153: Application to the Attorney General for NI.
- Agreed:* The Committee read and agreed paragraphs 154-159: Special reports to the Assembly.
- Agreed:* The Committee read and agreed paragraphs 160-165: Further proposals, Notices prohibiting disclosure of information.
- Agreed:* The Committee read and agreed, subject to confirmation, paragraph 166 as amended.\*
- Agreed:* The Committee read and agreed paragraphs 167-170: Obligations of confidentiality and secrecy.
- Agreed:* The Committee read and agreed paragraphs 171-177: Legal privilege.
- Agreed:* The Committee read and agreed paragraphs 178-180: Information sharing and cooperation.
- Agreed:* The Committee read and agreed paragraphs 181-182: Provision of facilities to the NIPSO.
- Agreed:* The Committee read and agreed paragraphs 183-186: Action to resolve complaints short of full investigation.
- Agreed:* The Committee read and agreed paragraphs 187-195: Own initiative investigations.
- Agreed:* The Committee read and agreed paragraphs 196-204: Ministers’ proposals, Northern Ireland Judicial Appointments Ombudsman.
- Agreed:* The Committee read and agreed paragraphs 205-213: Local Government Standards.
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- Agreed:* The Committee read and agreed paragraphs 214-215: NIPSO's relationship with the Assembly.
- Agreed:* The Committee read and agreed paragraphs 216-224: Equality considerations.
- Agreed:* The Committee read and agreed paragraphs 225-229: Financial implications.
- Agreed:* The Committee agreed that appendices 1-6 be included in the Report.
- Agreed:* The Committee agreed the Report to be printed, subject to confirmation of agreement to Paragraph 166 as amended.\*
- Agreed:* The Committee agreed that an extract from the Minutes of Proceedings of today's meeting should be included in Appendix 1 of the report and that the Chairperson approve that extract for inclusion.
- Agreed:* The Committee agreed that the Report be embargoed until commencement of the debate in plenary.

**5.08 pm** The Chairperson adjourned the meeting

\*Agreement to paragraph 166 as amended confirmed on Thursday 27 June 2013



Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence





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29 June 2011	Assembly Ombudsman/Commissioner for Complaints <b>Witnesses:</b> Dr Tom Frawley – Assembly Ombudsman Ms Marie Anderson – Deputy Assembly Ombudsman	115
23 May 2012	Assembly Ombudsman/Commissioner for Complaints <b>Witnesses:</b> Dr Tom Frawley – Assembly Ombudsman Ms Marie Anderson – Deputy Assembly Ombudsman	125
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Minutes of Evidence from the 2007-2011 mandate can be accessed via the Committee's webpages at [http://archive.niassembly.gov.uk/record/committees2010/hansard\\_ofmdfm.htm](http://archive.niassembly.gov.uk/record/committees2010/hansard_ofmdfm.htm).



# 1 June 2011

## 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*

1.     **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.
2.     **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.
3.     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.
4.     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.
5.     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.
6.     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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. I am happy to take questions.
17. **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?
18. **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.

19. **The Chairperson:** No other members wish to ask questions. You are getting off very lightly. Thank you very much.

# 15 June 2011

## 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  
 Ms Caitriona Ruane  
 Mr Jimmy Spratt

## Witnesses:

Mr Jim Martin	<i>Scottish Public Service Ombudsman</i>
Ms Emily O'Reilly	<i>Office of the Ombudsman</i>
Mr Peter Tyndall	<i>Public Service Ombudsman for Wales</i>

20. **The Chairperson:** I welcome Jim Martin, Emily O'Reilly and Peter Tyndall. I will ask each of you to give a 10-minute presentation and then make yourselves available for questions and answers. I know that Emily is under pressure to be away by 3.30 pm. Therefore, I ask members to deal with their questions for Emily first.

21. **Ms Emily O'Reilly (Office of the Ombudsman):** Thank you very much, Chairman and Committee members, for the invitation to address you and for your hospitality over lunch. The Office of the Ombudsman was established under the Ombudsman Act, 1980. It began its work in October 1984. The ombudsman is appointed by the President following a resolution passed by both Houses of the Oireachtas. He or she serves for a six-year period, which is renewable. The ombudsman's salary is linked to that of a judge of the High Court.

22. I also hold a separate statutory post of information commissioner. The Office

of the Information Commissioner was established in 1998. I am also an ex-officio member of the Standards in Public Office Commission and the Commission for Public Service Appointments. The secretariats of both commissions are provided by the Office of the Ombudsman. The staffing, finance and information technology requirements of the four functions are managed in accordance with a shared services arrangement which respects the statutory independence of each function. The director general of my office is the accounting officer.

23. The Office of the Ombudsman deals with complaints that relate to the administrative actions of Government Departments and offices, the Health Service Executive, local authorities and the postal service An Post. Under the Disability Act 2005, I am also empowered to examine complaints about accessibility to public bodies and the services they provide. Furthermore, both my office and the Northern Ireland Ombudsman's Office have jurisdiction over the implementation bodies that were established following the Good Friday Agreement of 1998. The arrangement has legal effect and provides for liaison and co-operation between the two offices in dealing with complaints against those bodies. The jurisdiction of my office covers actions that are taken in the state by or on behalf of those bodies and the parallel provision that relates to actions that are taken in Northern Ireland applies in the case of the Northern Ireland Ombudsman.

24. In 2010, 3,727 valid complaints were received by my office, which was a 30% increase on the figure for the previous year — a year in which the number of complaints received had been the highest in over 10 years. I put that increase down to the economic downturn, which has meant that more

- and more members of the public have had to engage with state agencies for benefits and other supports, particularly in the area of social welfare.
25. In recognition of the independence of the office, its staff are civil servants of the state as opposed to civil servants of the Government. There is provision for public open recruitment at senior management level and at investigator level. Civil servants generally may compete for posts in the office, but, on assignment, they become permanent staff members as opposed to being seconded from their parent organisation. Similarly, office staff may compete for posts in the wider Civil Service.
26. It is open to anyone to submit a complaint to my office, and many are submitted by representatives of complainants, such as public representatives, solicitors, residents' associations and so on. There is no parliamentary filter process as is the case, for instance, with the Assembly Ombudsman for Northern Ireland.
27. The service is free. Generally speaking, before taking a complaint, my office has to satisfy itself that it is within jurisdiction; that the action complained of has, or may have caused, adverse effect; that the complainant has already sought to resolve the matter with the public body and has exhausted any local appeals processes available. We normally ask that complainants put their complaints in writing, but that is not an absolute requirement. Complaints can be made at our office in person or through our annual outreach programme, where members of the public can meet our staff at regional centres to make a complaint. There is also a facility whereby complaints may be made online.
28. I am legally obliged to report annually to the Houses of the Oireachtas on the carrying out of my functions. I may also lay investigation reports or special reports before the Houses of the Oireachtas from time to time as I see fit. The Ombudsman (Amendment) Bill 2008 was before the Houses of
- the Oireachtas immediately prior to the fall of the previous Government, but it had not been enacted. Among other things, the Bill provided for an extension of my office's remit to some 95 additional public bodies in the non-commercial state sector and the third-level education sector, including universities and other third-level colleges. The new Government's programme for national recovery includes a commitment to extending the remit of the ombudsman, and, indeed, of FOI legislation, to all publicly funded bodies. I look forward to early progress on both fronts. It also promises a new Oireachtas Committee, which is the Committee on Investigations, Oversight and Petitions, which will provide a much-needed formal channel of consultation and collaboration between the Oireachtas and the ombudsman. Among other things, the Committee will be responsible for receiving and debating my annual and special reports and for ensuring that my criticisms and recommendations as ombudsman are acted on. Just last week, the Government announced the membership of that and other Committees. I look forward to working with them.
29. The latter was one of the issues that I called for in a paper entitled 'Developing and Optimising the Role of Ombudsman', which I sent to all the political parties before the recent general election. I also made the case for constitutional status for the office so as to keep it safe from political attack and partisanship. Constitutional status would also further recognise the office as a viable alternative to the courts in securing access to justice and in an informal and cost-free manner. I sought more transparent procedures for appointing ombudsmen, adding that there is a strong case for having a prospective ombudsman attend some kind of confirmation hearing before the Oireachtas Committee that is charged with monitoring and supporting the work of the ombudsman.
30. Finally, I sought to have my office's remit extended to the prisons and all



- issues relating to asylum, refugees and naturalisation. My office is one of the few ombudsman offices in Europe whose jurisdiction is restricted in that way. I have repeatedly expressed the view that those restrictions are unwarranted and should be subject to investigation by my office in accordance with the terms of the Ombudsman Act, 1980. Although they not specifically covered in the programme for national recovery, I am asking the new Government to give those important matters their early attention.
31. My office has the power to carry out own-initiative investigations. Normally, investigations are commenced on foot of a complaint that alleges maladministration that has or may have adversely affected a person. Own-initiative investigations enable the ombudsman to commence an investigation without having received a specific complaint. With over 3,700 complaints received in 2010, the power, of necessity, is used sparingly. Nonetheless, it is an indispensable power and has been used to great effect by my office. It has proved particularly useful in the local government sector, where a complaint received against one local authority can be used as the basis for an investigation against all local authorities. For example, in October 2008, I published an own-initiative investigation report into the operation by local authorities of waiver schemes for refuse collection charges. That investigation was prompted following a complaint to my office by a public representative on behalf of a number of low-income householders who had been refused waivers by Waterford County Council. I subsequently decided to carry out an own-initiative investigation into waste charges waiver schemes as operated in a representative sample of 23 local authorities, following which I made a series of recommendations for improvement to the Department of the Environment, Heritage and Local Government.
32. I have also used my own-initiative power to investigate and make recommendations about inconsistencies in local authority charges for photocopying planning documents.
33. My report entitled 'Who Cares?', which was published in 2010, was an own-initiative investigation that looked at the actions of the Department of Health and Children and the Health Service Executive. It was based on 1,200 complaints that had been received by my office over 25 years which related to the failure of health boards to provide for older people in public nursing homes with the result that many had to avail themselves of expensive private nursing home care. In addition to enabling trends in maladministration across a particular sector to be addressed in a single investigation, own-initiative investigations also allow the ombudsman to bring to public attention matters of significant public interest, such as in the case of the 'Who Cares?' report. In that way, the ombudsman can facilitate improvements to the overall standard of public administration and enhance public perception of the effectiveness of the office by addressing public interest issues.
34. In addition to its complaint-handing role, from time to time my office issues guidance to, and holds training seminars for, staff of public bodies. Although they are not provided for in the Ombudsman Act, 1980, those initiatives are very much appreciated by public bodies and are an important part of the office's strategy to reduce the number of premature complaints that it receives. Among the office's guidance publications are a guide for public servants in how to deal properly, fairly, openly and impartially with clients; a guide to internal complaints systems; and guidance on redress. There is no proposal to grant a design authority role to the office.
35. Recent years have seen the creation of a number of specialist and private sector ombudsmen, which include the Ombudsman for Children; the Pensions Ombudsman; the Ombudsman for the Defence Forces; the Garda Síochána Ombudsman Commission; and the

- Financial Services Ombudsman Bureau of Ireland. Other statutory independent bodies with complaint-handling functions include the language commissioner, An Coimisinéir Teanga, and the Equality Tribunal. Other bodies exercise promotional, advocacy and enforcement roles; for example, the Equality Authority, the Irish Human Rights Commission, the National Employment Rights Authority, and the National Consumer Agency. There are also several regulators.
36. My office has a dedicated enquiries unit, which, among other things, advises and redirects members of the public who complain to my office about matters that are proper to other ombudsmen's offices or complaint-handling bodies. Separately, my office is working with health and social care providers, complaint handlers and regulators to develop a website to assist members of the public who wish to make a complaint about health and social care issues. During 2010 and in early 2011, my office implemented a significant structural and process transformation; perhaps, the most radical change management project since the office was established in 1984.
37. A number of factors were driving that move to reform. My office's strategic plan identified improved and speedier complaint handling as central to the future effectiveness of the office. It also aimed to increase the number of systemic investigations undertaken so as to heighten the public impact of the office's work. Systemic investigations focus on redress for groups of complainants and/or on the need for better administration. The plan was drafted against the backdrop of Exchequer resource constraints, the requirements of the public service agreement, the significant increase in the number of complaints to the office, and the proposed extension of the ombudsman's remit by means of the Ombudsman (Amendment) Bill 2008.
38. In order to deliver on those objectives, the strategic plan seeks to ensure that the office's structure, systems and processes properly support an organisation that is fit for purpose and delivers its services fairly, efficiently and effectively to its customers. With that in mind and with external professional advice and assistance, the office began an assessment of its existing organisational structure and business processes in October 2010. The new structure and process went live on 1 March 2011 and signifies a move away from what heretofore were specialised complaint-handling units that were dedicated to particular sectors, Government Departments, and so on. In its place, we have put a more fluid model where those divisions have been removed and the organisation simplified to optimise complaint throughput, increase flexibility and allow rapid deployment of staff resources to areas of rising demand.
39. Early results are very encouraging. Case closures are up by more than 30% on previous years. The percentage of cases that have been closed within three months has risen from 50% to 60%.
40. **The Chairperson:** Thank you very much, Emily, for that comprehensive presentation.
41. **Mr Jim Martin (Scottish Public Services Ombudsman):** I want to echo Emily's thanks for the invitation to come to the Committee and for your hospitality over lunch. It is much appreciated. I have watched the Committee's progress with some interest. It is quite clear that you are engaged in a valuable piece of work. If you do not mind, I may have a piece of advice for you later. It is important that the positions of all ombudsmen's offices are allowed to evolve as well as to have what I call a "statutory bump" into a different position every now and again.
42. It is very important that the legislature takes ownership of how the ombudsman's office works in any jurisdiction. It is important that we not only reflect the will of the community, but that we are seen to do so. That is the job of elected Members, and not of ombudsmen. It is also a role for you to provide appropriate safeguards, not only for complainants but for public bodies

- and for the role of Parliament. A piece of advice that I offer you is that “One size does not fit all”. It is very important that, as we have done in Scotland, you emerge at the end of this with the best possible system for Northern Ireland.
43. We have been through five years of significant review. In 2006-07, the previous Government set up a review under Professor Lorne Crerar of the scrutiny agenda in Scotland, which included complaints. When his report stated that the scrutiny landscape was crowded, a group was set up under Douglas Sinclair, a former secretary of the Convention of Scottish Local Authorities, to look at complaint handling in general in Scotland. Five years on from that, we have not yet fully implemented the matters addressed by Crerar and Sinclair.
44. For the Scottish Public Services Ombudsman there are two main areas of change. One is about our jurisdiction and its range, the second is to fundamentally alter our role. With respect to jurisdiction, last October, I took ownership of all prison complaints in Scotland, with the exception of health complaints from prisoners, which will come to me through the National Health Service — I think — in the middle of next year. In the next few weeks, I will take over all complaints to do with the provision of water, both to households and businesses in Scotland. That will set a new area for us: looking at commercial complaints about Scottish Water.
45. I was the first Police Complaints Commissioner for Scotland, and I am in discussions with the Government about their proposition that the office be abandoned and its function brought within the remit of the Scottish Public Services Ombudsman. That has yet to be debated in Parliament. However, as people look at scrutiny in Scotland, it is clear that we are moving to an uncluttered landscape. That has real implications for the jurisdiction of my office.
46. The second major change for my office is in its role. My office was created by the Scottish Public Services Ombudsman Act 2002, which in many ways is a reflection of the Act that applies in Northern Ireland to the Parliamentary and Health Service Ombudsman and which also brought together three ombudsman offices in Scotland: health, parliamentary and housing. The Public Services Reform (Scotland) Act 2010 gives us a new role, and that is to set up a “design authority”. I think that it is a terrible term, because no one understands what it means, least of all those who drafted the Bill. I do not think they knew what it meant. We changed that term to the complaints standards authority, a small department within my office, the role of which is to ensure that in each sector of the public service in Scotland there is a standardised procedure for dealing with complaints.
47. In Scotland, we have 32 local authorities, each of which is able to determine its own complaints-handling structure. The scrutiny review and the review under Douglas Sinclair came to the view that Scotland is probably too small a country to have too much variation and that its citizens have a right to expect equality of treatment. This “design authority” or complaint standards authority is underpinned by complaint-handling principles which, the Act says, have to be devised and designed by the ombudsman and approved by Parliament. That has happened. It is then for me to apply the new legislation. An ombudsman must always be careful, I think, to understand the difference between being an ombudsman and being a regulator.
48. It is not my intention to be a regulator, so the approach that I have taken, although it is out of fashion now in a lot of areas, is to be high-level light touch. My approach is based on partnership with each sector of the public service. I have engaged with, for example, local authorities, universities and others, and I set out the principles and the model complaint handling guidelines.

- I tell them to go away and come back with their own proposals that they are prepared to work to. If those proposals meet my principles and the spirit of the legislation, we will go forward with their plan rather than mine. We have yet to see whether that approach works.
49. I am wary of taking the role of regulator because, in the legislation that requires me to set up the complaint standards authority, I also have a sanction that I can bring against any body under my jurisdiction that does not apply complaint handling principles that I have set. The aim of that design authority role is to have far more efficient complaint-handling services, to give the citizen better access and to make sure that we have transparent and even-handed complaint-handling procedures in each of our sectors.
50. Those are the two areas on which I thought that it might be of interest for the Committee to hear from me because I am aware that you have had a large number of papers and a lot of research done. It may be better if I end my remarks here and wait for questions from the Committee.
51. **The Chairperson:** OK. Thank you very much, Jim. It was very interesting.
52. **Mr Peter Tyndall (Public Services Ombudsman for Wales):** I echo the thanks for the opportunity to be here today and also for the warmth of the welcome that we received. I speak as Public Services Ombudsman for Wales, but with regard to my role as chair of the British and Irish Ombudsman Association at the moment. I separately submitted a response to the consultation. I have also been involved with the Law Commission on the proposals to reform the law governing ombudsmen in England and Wales. I greatly welcome the fact that this Committee and the Assembly are bringing forward legislation. It speaks very much of the importance that the ombudsman, ultimately, is the Assembly's ombudsman, and to bring forward legislation in this way reflects that essential principle.
53. Many features of the legislation reflect the Welsh legislation, which, in turn, was derived from the Scottish legislation. To some extent, each has built on the experience of the other. The legislation that governs my office dates from 2005, and the office has been in place since 2006. It brought together former separate offices for local government; the Health Service, which was undertaken by the UK Parliamentary Ombudsman in her role as Health Service Commissioner at the time; for the bodies and services provided by the Welsh Assembly Government and for housing associations. The remit was not dissimilar to the existing remit of the Northern Ireland Ombudsman.
54. My appointment is a fixed term for seven years. It is by nomination of the Assembly following a recruitment process run by the Assembly Commission, so the appointment process is with the Assembly rather than the Administration. My salary is linked to the judicial scale, which I think is another of the proposals that you have been considering.
55. My jurisdiction covers virtually all of the services that are devolved to Wales: health, and services that are provided by local government, including housing, planning, social care, environmental protection, leisure, highways and so on. I also consider complaints about members of local authorities, communities, town councils, and of police and fire authorities in Wales if they have broken their codes of conduct. As you can imagine, that activity sometimes generates a disproportionate amount of heat for a surprisingly small quantity of light. It can be a lively part of my office, and I would be very happy to contribute my thoughts. There is a separate consultation going on regarding how that issue might be dealt with, because there are pitfalls. Nonetheless, however, it is a worthwhile part of my activities.
56. My office is an integrated service. It is one office, and members of the public can complain directly to me. I have also been resourced to signpost

- complainants to other public bodies, so I run a separate service called Complaints Wales, which helps anybody who wants to make a complaint about any public service, even if it is not within my jurisdiction or is a premature complaint. That is an additional service to members of the public who sometimes get lost in the complexities of the public sector. For instance, some people do not know that their electricity supplier is not part of the public sector anymore, and rather than telling them that it is not our responsibility we help them to make their complaints.
57. I have discretion about whether to accept complaints. The legislation says that complaints must be in writing, but I have discretion about whether to accept them in a form other than in writing. Increasingly, we are accepting complaints by phone, e-mail, via the website and so on. People tell us that they want to communicate with the office by telephone as first preference, with e-mail a close second. I suspect that that will change over time. I support the notion that there should not be a requirement for a complaint to be in writing, because writing is becoming a less-common skill as people are becoming more used to using electronic means of communication.
58. Before I accept a complaint, I have discretion on whether to investigate directly. I almost never investigate complaints that have not exhausted the process. In very rare circumstances, such as when someone is urgently awaiting access to a drug for cancer care, it would not be appropriate to say that a person must complain through the formal process. The same would apply in cases where relationships have broken down, but generally I ask people to go through the full complaints process with the body with which they have a difficulty.
59. I have jurisdiction to consider the clinical judgement of doctors within the NHS in Wales as well as the professional judgement of social care workers. Most complaints engaging social care or the Health Service, or many of them, have an element of professional discretion. I use professional advice, clinical advice or advice from experienced social care workers in forming opinions. However, in reality, people expect to be able to complain about those aspects of the service and, given the two are essentially integrated here, it would be sensible to have the same discretion in both fields and would give complainants a degree of reassurance that they can get an independent view on issues that are really important to them. Often, the decisions being taken by social care professionals are of fundamental importance to families.
60. I can widen the scope of an investigation to cover systemic issues. If it is obvious that the cause of a particular injustice did not just arise in the circumstances of the individual complaint but had a wider application — perhaps it is easier if I give an example. A gentleman came to us recently with prostate cancer. He had a treatable cancer and needed to be recalled regularly for monitoring to ensure that if the cancer started to spread it could be addressed with more aggressive treatment. Had that happened, his prognosis today would be good; sadly, it is very poor, because he was not recalled.
61. When we started to investigate that complaint, we discovered that the systems for recalling patients did not work, that there was no communication between the clinicians running the outpatients clinic and the medical records staff and that the computer system that they were using did not automatically recall people.
62. The thing that struck us immediately was that it was certain to be happening to other people if it was happening to this gentleman, so we widened the investigation at that point to identify all patients at that clinic. We identified two other patients in that situation. Then, it became obvious that the same appointments facilities was being used across that health board, so other clinics were also suffering from the same failings.

63. We were then able to engage with the regulator, Healthcare Inspectorate Wales, to broaden the scope of that and ensure that they followed it up. Systemic investigation is really important. When you are investigating, you will find that some problems are caused by somebody making a mistake on the day. However, many failings that you see are actually inherent in systems, processes or guidance. Clearly, if you cannot investigate those, you are unable to deal with issues that affect individuals. I do not have own-initiative investigation powers of the kind that Emily has. If there are to be changes to the legislation in Wales, I would be seeking those powers for my office, which would be used sparingly for the reasons that Emily described.
64. I have the opportunity to work with regulators. I do so sparingly because they are in my jurisdiction. I work with professional regulators, such as the General Medical Council and the Nursing and Midwifery Council, and those that deal with the Health Service, social care, housing, planning and so on, to ensure that recommendations are followed. I have the power to resolve cases without going to a full investigation. If somebody complains that his or her housing-association-property boiler is broken and the association will not send somebody round to fix it, it is much better for someone from my office to ring the provider and say, "Get somebody out there", than to launch an investigation. Quite often, phone calls from my office can be pretty persuasive. I am sure that in your role as Members, you can also be persuasive in such situations.
65. You have suggested that the ombudsman should be able to issue reports similar to those that I can issue. I can issue two types of report. One is a public report, which is issued when there is wider public interest in the subject. In 2010, I issued 13 such reports, six of which dealt with health cases. Health tends to predominate in public reports. I also issue other reports that can take the form of a letter. They are available to the public and the press. However, they are not specifically publicised. To ensure that learning from my reports stretches beyond those in the public domain, I produce digests. Summaries are included in all of my reports and in digests, which have a wide circulation throughout the public sector. For instance, Committees that scrutinise the Health Service at Assembly level can take advantage of digests of health cases that I have produced.
66. I do not close cases until I have evidence of compliance. Again, that fits in with some of your proposals. I should say that my role in investigating complaints about councillors is different. I reach a conclusion as to whether evidence suggests that the code has been breached and investigate that. However, it is not for me to determine an outcome. That is a matter for the council's standards committee or a tribunal, which considers my report on the subject. As I said, I would be happy to feed into any suggestions that a similar system be developed in Northern Ireland.
67. I have the capacity to issue guidance. I do so sparingly. Examples of guidance would be the same as those of other colleagues. I will not labour them here. I do not have a design authority role. However, in conjunction with the Welsh Assembly Government, I have developed a common complaints process for the public sector in Wales. Although it is more prescriptive than the approach that Jim has used, it was developed in collaboration with public sector bodies, such as local government and so on. The intention is that there is a model that people will be asked to adopt. Our experience with guidance is that although many people say that they comply with it, they, in fact, come up with different things that are unrecognisable. Similarly, we have not found that the variation that we see adds value. Things are different because they are different; not because each body has adapted the guidance to their particular local circumstances.

68. I do not have a direct relationship with an Assembly Committee. However, I hope to have one after discussions that are under way following the election. The proposal to have a relationship with a Committee, similar to that described by Emily, is extremely important so that the work of the office is available for scrutiny and that the office can be held to account.
69. As you know, we have a Children's Commissioner for Wales and an Older People's Commissioner for Wales. I have memorandums of understanding (MOUs) with both of those offices. Broadly speaking, they conduct wide-ranging inquiries into, for example, the education of children leaving care. I also conduct investigations that are driven by individual complaints. The two roles are complementary. The memorandums of understanding are designed to ensure that we work in support of each other rather than at cross purposes. I hope that some of what I have said has been helpful.
70. **The Chairperson:** Thank you very much, Peter. I thank all three of you for attending and for giving us your presentations.
71. The issue of systemic reviews was dealt with in your presentations to some degree. Emily, I know that you have much more power than the other authorities in that respect, and you dealt with that in your presentation. Peter also touched on it and said that he would like more power. What are your thoughts on how defined and streamlined such reviews should be? I assume that it might not be helpful for such reviews to get into wide-ranging issues. I would like to hear more of your thoughts on systemic reviews.
72. **Ms O'Reilly:** As my colleagues have said, a systemic review can be a very important part of the armoury of a public service ombudsman. If you see the overarching aim, goal or remit of ombudsmen as being to improve public administration for the sake of the people in their particular jurisdiction it would be wrong not to allow them that particular power. That way, instead of simply dealing with individual complaints, they would be able to get to the root cause of a particular piece of maladministration and deal with it at a systemic level.
73. It is helpful to Administrations for ombudsmen to do that, because we have a bird's-eye view of what is going on in the organisation. People who are feeling the impact of particular laws or regulations come to us and describe their effects.
74. I will talk about the particular investigation that I did into nursing home charges. That was the second investigation of that kind that had been carried out by my office, another one having been done approximately 10 years ago. We pointed out irregularities and illegalities in the system in a comprehensive and painstaking way. I will not go into the entire story that arose from the first investigation, but suffice to say that had the ombudsman's investigation and recommendations been taken seriously by the Administration at the time, it would have saved the country approximately €500 million to date, because when the illegality of certain charges that were being raised for nursing home residents eventually made its way to the courts, all the way to the Supreme Court, the Government and the taxpayer had to give redress to the people who had been affected. At an early stage, my office had been able to point out to the Administration that they were making a mistake and that what they were doing was irregular and possibly illegal. That was ignored, arguably for political reasons, because it was such a big issue and people were afraid to go there because of the potential difficulties it might cause. Eventually, it went to the courts, and the Administration could not ignore the courts.
75. In one sense, the ombudsman can act like a canary in a coalmine; it can see particular things and draw the attention of the Administration to problems that exist. If you limit ombudsmen to single complaints and do not allow them a wider reach across a systemic problem

- or something that they see as wider than the individual complaint, you are really hampering the potential beneficial effect on public administration and, as we saw in the Republic in relation to nursing home charges, the ability to save the Administration and taxpayer a lot of money as well.
76. **Mr Martin:** Own-initiative reviews are different from systemic reviews. Own-initiative reviews are where an ombudsman determines that he wants to investigate something, and a systemic review can be something that emerges from individual complaints and leads you into looking at the whole system. When Members of the Scottish Parliament looked at the powers, their worry was having an ombudsman who might go fishing and decide that he wanted to look at something, and that it would be difficult to hold him to account given his power and independence. There are ways round that, which have to do with the accountability of the ombudsman to Parliament, how that accountability is recognised and how an ombudsman is held to account for his or her actions in determining to do something.
77. Peter and Emily have had systemic reviews, and so have I. For example, a little girl who suffered from a peanut allergy died recently. One thing that became very clear was that, across Scotland, there was not a policy on the prescription of EpiPens. That is quite a simple thing. I was able to go to the National Health Service in Scotland and the Health Minister and say that that must be addressed quickly because my research told me that there was no policy. We now have a policy. That is the difference between a systemic review, which arises out of complaints, and an own-initiative review.
78. I favour an own-initiative review power, provided that my successor — I trust myself, but I do not necessarily trust my successor — can be held to account for his or her decision to embark on that review. That is a very important check and balance on the power of the ombudsman.
79. **Mr Tyndall:** Historically, many of the earlier ombudsmen bodies in Scandinavia, and so on, had own-initiative review as a built-in part of their jurisdiction. That was the norm. However, in those environments, there was probably rather less regulation than we are used to. For instance, there could have been an issue about whether to have a separate prison complaints body or a body with oversight of prisons in those jurisdictions. Often, the ombudsman's office had that jurisdiction, so that office would have to have an own-initiative investigation power to make sure that there was scrutiny.
80. We operate in a different environment. My sense is that you would very rarely want to be engaged in own-initiative investigations, but that there are times when you know that people are constrained in coming forward. There are other times when you realise that you need to have an investigation because there are things that urgently need looking despite not having received a complaint directly on the topic. I agree with Jim's point: we are all very conscious of how scarce resources are at the moment, so engaging in a way that takes on a lot of own-initiative investigations is never going to be practical. I do not think that it would be desirable, but there are occasions when, as a power to be used sparingly, it would be very helpful.
81. **The Chairperson:** OK. I do not whether we got total agreement, but I think that there is a combined approach. Do any of you find a significant overlap in any of the investigative powers between yourselves and other bodies? I think that Emily listed quite a number of other investigative bodies.
82. **Ms O'Reilly:** Not in relation to the other ombudsmen, who are quite discrete. They are sectoral ombudsmen. The children's ombudsman deals with complaints when there has been an incidence of maladministration the impact of which has been felt by the child rather than the adult. We rarely get into a tangle on those issues because,



- very often, the separation of the remit is very clear. Obviously, we do not deal with complaints against the Garda; the Garda Ombudsman deals with those. The same is true with the Pensions Ombudsman, the Financial Services Ombudsman and so on.
83. The one area in which there could be the potential for a little bit of confusion among the public is health. If you have a complaint about health, who do you go to? I deal with health complaints. However, unlike my colleagues, I do not have clinical judgement as part of my remit. There is also the Medical Council, and the Health Information and Quality Authority, which deals with standards and regulations and so on. People are very confused by that. In order to sort out that confusion, my office has begun an initiative with all of those organisations, as well as with lobby groups for patients, and so on. We have come together and are creating a website called, I think, healthcomplaints.ie, so that if you have a health complaint, you can go to it and get guidance. We are co-operating in that way because we are conscious of the potential for overlap and room for confusion.
84. However, I can honestly say that there is seldom or ever any confusion about the roles or any overlap with other regulators and ombudsmen. When people come to us and their complaint is not within our remit, we advise them where they can go to have their complaint looked at. We are always on the lookout for that. However, we barely have MOUs with any of the other ombudsmen, simply because they are not needed. Our remits are clear.
85. **Mr Tyndall:** I mentioned the commissioners. When their offices were created, there was scope for an overlap because they have powers of investigation. We moved quickly to put the MOUs in place. You can form an agreement with individuals, and we did so, but it is sometimes helpful to capture that agreement so that successors are also bound into the process. That is why we formalised it.
- Commissioners may well undertake reviews — and they do — into areas where we would deal with complaints, but we are always dealing with complaints from individuals, whereas they are looking at much broader issues.
86. For example, the Older People's Commissioner for Wales recently produced a review of dignity in care. As it happened, I had issued a series of reports on failures in the care of older people. The two reinforce each other. The agreement we have is that the commissioners, in publishing wider reports, can use examples from my work to give the human dimension.
87. **The Chairperson:** What you are saying is that your work is about individual-specific complaints, whereas the work of the other bodies is more strategic?
88. **Mr Tyndall:** Yes.
89. **Mr Martin:** I have a number of MOUs and they are gathering dust in a drawer. In practical terms, they are not something I look at on a daily basis. They are there in case we ever get to a point where there is discussion or dispute about how things were handled. My backstop is always: "What does the Scottish Public Services Ombudsman Act 2002 say that my powers are?" I act on those powers and expect bodies to comply. I have very good relationships with bodies such as the General Medical Council and the Scottish Housing Regulator. However, I do not think any of us see those relationships being affected that much by the fact that we have an MOU.
90. **Mr Humphrey:** Thank you all for your presentations today. I want to take up some of the points you have made.
91. Jim, I am much taken by your phrase "uncluttered landscape". From my perspective, and that of my Committee colleagues, it is music to our ears. You said that Scotland is too small a country for the administration and red tape that goes on. Given that Northern Ireland has only 1.7 million inhabitants, I very much hear what you say. Peter is quite right: resources are scarce and

- we must ensure that people's rights are protected and that there is transparency and advocacy. However, there must be a balance. Peter said that his work complements that of the Children's Commissioner for Wales and the Older People's Commissioner for Wales. It is very important that there is no overlap, duplication or waste of resource.
92. Given all of that, do you think that the people of Northern Ireland would be better served if a single ombudsman's office were established that had powers to investigate complaints about Departments and, indeed, public bodies?
93. **Mr Martin:** I would like to comment on the "uncluttered landscape" and see what my colleagues think. It is for you to determine what is best for the people of Northern Ireland. I can only reflect on the experience that we have had in Scotland during the past five or six years. One problem that we have is that since we started looking at the cluttered landscape in 2005 and 2006, we spent an awful lot of time talking about it, and an even longer period of time trying to implement those discussions, to the point that it could actually be 2012 before we begin to implement the outcome of discussions that began in 2006-07.
94. One thing I would urge you not to do is to fall into the trap that we did in Scotland of allowing your energies to be diverted into discussions on what a perfect structure might be rather than look at powers that you currently have. One impact of that is that my remit is ever-widening. There is always a temptation to say that if we put everything under one roof, we will achieve economies of scale; we will be able to provide a more efficient and effective service; and, in these days of increasing interdependence on shared services, that we will be able to get joined-up outcomes. All of those things can be true. However, you have to be careful that the complexities that you have here and those that we have in Scotland are recognised, and that what the community sees as the correct route is recognised. Sometimes, something that looks very good on paper is not very good for the individual citizen. Therefore, I caution you against going into any long exercise to look at cluttered landscapes and suggest that you work with what you have. You have a very effective Office of the Ombudsman for Northern Ireland. It is one that we look to for advice. I urge you to be very careful that you do not do too much too quickly with the office that takes it too far off course.
95. **Ms O'Reilly:** In the Republic of Ireland, the original ombudsman's office became quite successful and was viewed well by the Administration generally and by the general public. In a way, it almost became a victim of its own success. The term "ombudsman" became popular and populace, in a sense. When groups of people and individuals had particular needs that they wanted to see addressed or championed, the response from the Administration tended to be, "Well, why do we not have an ombudsman for this and an ombudsman for that?" That has stopped now because of the economic recession. In fact, since the McCarthy report of 2009, there has been talk of bringing offices together.
96. Every jurisdiction struggles with whether to have sectoral ombudsmen or to pile all of those functions into one office. What do we do? The simple answer is to do whatever works and is easiest and most effective for the individual, the member of the public who wants his or her complaint to be dealt with. Sometimes, the argument against having too many individual sectoral ombudsmen is that there is inconsistency in how different offices do their business, their authority, their effectiveness, and so on, which causes confusion for public bodies; whereas a bigger office that deals on the same basis with the same methodologies, and so on, right across the particular office is a better system. Generally, there is a feeling that when it splits too much, the public is short-changed.
97. **Mr Tyndall:** There are distinctive roles for regulators, advocates and

- ombudsmen. As Jim said, each country's Assembly needs to find its own arrangements and what fits it best. When roles start to be confused, none of their purposes are best served.
98. For instance, to my mind, commissioners are primarily advocacy rather than investigatory bodies. If you want someone to investigate complaints and to be part of your justice system, to hold government and public service providers to account on behalf of the individual citizen, then you need an ombudsman. Once that decision is made, you can start to think about how many ombudsmen you need. That is for you to decide. What you are hearing from this side is that fewer is probably the better way to go.
99. **Ms Ruane:** Go raibh maith agaibh, agus tá fáilte romhaibh chuig an Choiste seo. On behalf of our party, you are very welcome to the Committee. I have had a chance to talk to some of you. We are at a very interesting time in the North and I think that we can learn and share a lot with you. This is also very timely because we have been discussing prisons. This morning, we have been talking about a young lad who died in prison. He was locked up for 22 hours a day even though he had drug dependency and alcohol problems. Following on from the stuff in Rathgar, I know some of what is happening to older people in the South of Ireland. I come from a rights background, and I like to see people have access to taking on public bodies because there is far too much imbalance in power.
100. I want to say a couple of things. First, I thought your signposting issue was very interesting. I understand that you are all doing very good work, but to act as devil's advocate, if I went out and asked the public, most people would probably not even know that you exist. I think that is an issue that we need to look at. Signposting is good, because one of the complaints that we get as politicians is that there is no point in complaining because you are just thrown from Billy to Jack to Mary. People just give up in despair in the end.
101. Secondly, I think that we in the North have to make it as simple and easy as possible for people to complain, otherwise they will not do so. I take the point you made about accessibility. The biggest impediment to people complaining is that they have to write it down. Sometimes, they do not know how to write down their complaints. They know how it affects them, but they have to get somebody else to write it. That is an important point.
102. Emily, you mentioned the economic downturn and said that you suspect that is why your complaints are increasing. I would also say that it is probably because you have good PR, and I think that is an important part of the job. Maybe there are lessons you can share with us.
103. Finally, two of you mentioned commercial roles. I think that commercial bodies, whether they are banks, big business or private landlords, get away with a lot that they should not be getting away with. Some of you have, or are looking to get, commercial roles and others did not mention it. Where do we draw the line there?
104. **Ms O'Reilly:** I agree with you about signposting. We all tend to think that we are the centre of the universe because we know all about our jobs and we expect that everyone else does as well. We talk about them when we are at work and sometimes when we are at home, and we expect that this great knowledge about ourselves goes further. I often find that that is not the case. I sometimes deal with politicians who are unsure about my remit, and sometimes I deal with members of the public that I meet socially who will ask exactly what I do because they have never used an ombudsman and they do not know what one does. That brings you back down to earth.
105. One way in which we need to get our message out is for the public bodies that are under our remit to make it clear that, if people are not happy or satisfied with the way in which they have been dealt with, there is an

- avenue of complaint. In the annual report that I launched just last week, I had a naming and shaming page of significant Government Departments that did not put a signpost to the Office of the Ombudsman on their websites or literature in case of complaints. So, it is a two-way thing. I see the ombudsman's role as being not quite a partnership with the public administration, but not as enemies; not with daggers drawn, and not at opposite ends of anything. I think we should be partners in the sense that we need to keep in mind the focus that everything we do is in the public interest. Therefore, there is an onus on the public administrators to advertise us as well.
106. Part of the reason why we received so many complaints last year was that there were two particularly high-profile cases that I dealt with. One was called 'Lost at Sea', which eventually became lost at Committee. To my shame, it was the only complaint in the history of the Office of the Ombudsman that was not accepted. It became a big political mess for reasons that I will not go into, and then went before a Committee, which split down party lines. That must be avoided at all costs. However, there was a lot of argy-bargy and publicity during that time and I suppose it got people thinking about the ombudsman. The other case was the 'Who Cares?' report, in which I had quite a confrontation with the Health Service Executive (HSE) and the Minister for Health and Children at the time, Mary Harney. That was high profile as well. I do not advocate that as a means of doing PR, but there is an onus on the office to advertise itself and so on. There is also an onus on the public administration to make sure that people are aware that they have an avenue of complaint and potential redress in the Office of the Ombudsman.
107. **Mr Tyndall:** We try to take the complaint in whichever form it comes to us — by phone, in writing; it does not matter. We pass it to the body concerned and get it to treat it as though the complaint had been made directly to it. We have found that if people have to keep restating
- their complaint, they will give up very quickly. That was the point. We wanted to make sure that we were transferring the complaint, not the complainant. That seems to work.
108. **Mr Martin:** One of the principal underpinnings of the complaint standards authority will be to try to remove complainant fatigue. It becomes really difficult for a lot of people to have the patience to get to me. We try to make it as easy as possible for everyone to be guaranteed quick access. We use signposting as well. One difficulty in promoting the office of the ombudsman is that people believe that that is the place you complain to in the first instance. I find that a significant number of housing complaints, sometimes 40% or 50%, come to us prematurely. To the complainant, it seems to be another bounce-off point, because they went to someone and were sent somewhere else, and all the rest of it. We have to be very careful that we do not promote the ombudsman as being a substitute for subsidiarity and complaint handling and making sure that decisions are taken at the most appropriate local level. It is a balance that we all have to strike.
109. Peter's point is a very good one: an awful lot of people, certainly in Scotland, do not know who provides their public services or to whom they should complain. For example, people complain to me about a health board or a GP practice in Scotland. A GP practice is contracted to a health board, so the complaint is against the practice, not the board. That is a fine technicality. If someone close to you is going through something very difficult with very urgent need, you are unlikely to take account of that technicality. We have to get better at explaining to people where to go. That is something that all the legislatures need to take into account.
110. **The Chairperson:** Peter, you said that you are very flexible in how you receive complaints. Are the other two equally as flexible?

111. **Mr Martin:** Yes. Once we have received a complaint from someone, we will write back to them, outline the heads of complaint that we are about to investigate and ask whether they agree. People sometimes say something over the telephone and remember that they said something different or did not quite get in all the nuances. They also may have heard something differently; so, we have to be certain that we are all looking at the same thing.
112. **The Chairperson:** So, you almost write back as a feedback to ask whether something is accurate?
113. **Mr Martin:** We outline the complaint that we are investigating on their behalf.
114. **Ms O'Reilly:** We start from the fact that, for many people, coming to our office is the last chance saloon for them. Therefore, they have to be enabled as fully and easily as possible to access the office. We take complaints in whatever way people want to deliver them. They can walk into our office in Dublin. We carry out regional visits throughout the year. We advertise those visits in the local media, and people can come to the local hotel and talk to investigators. People can e-mail us. We have a complaint form, but it is not compulsory for people to put their complaint in writing.
115. We also do a lot of work with elected representatives. A few years ago, I surveyed elected representatives — TDs, Senators and so on — and asked them about their knowledge of the office, their usage of it and their experience of it. Based on that, I put together a digest of complaints that had come to us from members of the public via elected representatives. I hosted a seminar with the former Ceann Comhairle in Leinster House, and I developed a telephone line, which was like a hotline or direct line, for elected representatives to talk to us about complaints that they had.
116. Also, when people's complaints go into the system and are being investigated, they can be given the direct line number of an investigator. So, we do as much as we can to make our office as accessible and open as possible.
117. **The Chairperson:** I can see less work for MLAs coming out of this.
118. **Mr A Maskey:** Thank you for your presentation. I apologise for not making it to the lunch; I was on other Committee business, but it seems that I missed a good opportunity for networking.
119. You have referred to a couple of things that are of great interest. From all three presentations, I hear that you are looking for the ability to widen the scope for investigations or inquiries as matters arise, possibly during the course of your investigation into an individual complaint. As in all walks of life, we very often keep doing things until someone draws our attention to them, or something happens that makes you ask why you are doing things in a certain way. Very often, you find that there is a systemic problem, so that the individual being blamed is really a symptom of that.
120. I am interested in whether you have any greater understanding of the 30% spike in complaints, which Emily mentioned and put down to the recession. I am not sure whether you said 30%, but I thought that you had.
121. There is a key issue on which I am looking to you for a steer. When you have a complaint referred to you, which happens to all regulatory bodies or ombudsmen, the frustration for most people is that you might do a report and make recommendations but, sometimes, and that that is the end of the story. Emily, you gave a worst-case scenario for the negative consequences of a Government Department not dealing with the recommendations to which you had drawn their attention. We all do things, sometimes habitually, without realising that they are a problem. However, once that problem is brought to our attention, the accountability for not acting is much greater. Therefore, is

- there an argument for overturning the role?
122. For instance, when you have recommendations and conclusions in a report on a particular investigation and hand them to the relevant authority; if that organisation, Department or agency does not want to embrace your recommendations it needs to have a rationale for not doing so. In other words, if you say to a body that there has been a complaint, that you have investigated it and that you are presenting the authority with recommendations for change to prevent the same thing happening again, unless that organisation has a very strong rationale and justification for not embracing those recommendations it should have to come back to you with a report telling you that they accept the recommendations and outlining how and when they will implement them. If not, they need to say that they do not accept the recommendations and argue the toss.
123. I think that reports go on people's desks and, invariably, in public life, people do not act as they should. They are slower to embrace the need for change, which is human nature. I am glad that we are in a dispensation in which there is a much greater ethos of public accountability developing. That is a good thing, but it means that we all have to respond much more quickly and effectively. I am just looking at the authority of the reports from ombudsmen that go to organisations.
124. **Ms O'Reilly:** The word "authority" is the key one. Obviously we make recommendations, but no public body is legally obliged to implement them. The "lost at sea" case that I mentioned is the only case in 27 years in which my recommendations were not accepted, and there was a political overlay in relation to that.
125. Our recommendations do not have to be accepted. Therefore, in order to get them accepted, they have to be rational, fair and seen to have been arrived at independently and impartially. Unless a public body is being particularly obdurate, it will accept our recommendations. There will be lots of toing and froing, arguing the toss, and so on. However, eventually, in virtually 100% of cases, bodies will accept our recommendations.
126. Then we follow that up. Bodies have to show us, over a period of weeks and months, that they have implemented our recommendations. As Peter said, he will not sign off on an investigation until the recommendations have been accepted and implemented. We, certainly, do a follow-up. In my experience, public bodies take the office very seriously. One thing that they do not want to happen is to appear in our annual report. They do not want to get a black mark against them. They see it as a badge of honour if they have not been slapped on the wrist by the ombudsman.
127. The ultimate weapon in the armoury of the classic public service ombudsman is to make a report to Parliament. That has been done only twice in the history of my office. The second time, the report fell down; it did not happen. The first time, it was accepted. I do not think that we can emphasise enough the important role that Parliament and parliamentary Committees play to assist us in our work. We need Committees to get what we do; understand it, question it and, ultimately, support it unless it is completely irrational. Therefore, my colleagues and Tom Frawley are probably the same; we do not just make recommendations and then go away. We always see that they are followed up. If that does not happen, our complainants will come back to us.
128. **Mr A Maskey:** My recent experience of public bodies is that they accept all the recommendations in the world that you give them because those recommendations are rational, simple and usually modest. However, bodies fall down massively in implementing recommendations.
129. **Mr Tyndall:** I would like to follow up on that briefly. Recently, I issued a report into the death of a terminally ill

- individual who had received dreadful treatment. The health board agreed to my recommendations and said that it would ensure that the same thing did not happen to anyone again. My difficulty with that was that it was the fourth report that I had issued about that hospital. On each of the previous three occasions, I was told that the health board would ensure that nothing similar ever happened again.
130. In such circumstances, I will take the case to the Government and the regulators and will also call in the chairpersons of health boards to tell them that they represent the people of their areas and that they are lay members. I will explain that I do not know what they think their managers are telling them but that they need to hold those managers to account. There are two issues. I have never had a recommendation not be accepted, and, in the graduated reporting process, my reports have to be made public if the recommendation is not accepted.
131. **The Chairperson:** Your recommendations have been accepted, but have they been implemented?
132. **Mr Tyndall:** Most have been implemented. I was making that important distinction. Although, generally, they have been implemented, there needs to be much more engagement with regulators and, as Emily said, with the Assembly, to ensure that they are followed up. You will find out if your recommendations are not implemented, because you will get another complaint. You may not find out quickly, but you will find out. When you know, you have got to upgrade.
133. **The Chairperson:** Perhaps, another process has to be put in place to ensure that recommendations are implemented. That might be a separate issue.
134. **Mr A Maskey:** In my book, the case that you have just given by way of illustration is an example of criminal neglect by some public servant or manager.
135. **Mr Martin:** I would like to make two points. When I produce a decision that contains a recommendation for anybody under my jurisdiction, it has to cross my desk. I have 50 staff, but they are not simply allowed to put out a recommendation. Therefore, all bodies under my jurisdiction are aware that I know of, and have approved of, that recommendation personally. It is not just an administrative thing.
136. The second point is that we put at the end of each recommendation the date by which we expect it to be implemented. We will then look for evidence to be provided that implementation has been carried out within that timescale. We recently started visiting bodies under jurisdiction without warning, asking them to show us what they have done. Those bodies know that we are going to do that.
137. **The Chairperson:** Do you have the power to do that, Jim?
138. **Mr Martin:** No, this says I have got the power not to do that. *[Laughter.]*
139. I take issue with you in that the ombudsman has to be the final point of decision-making. If you do not get to that point, there would be a never-ending appeal process. If a body does not accept my recommendation, I would ask for its rationale so that we could discuss it before I issue a report. I will not have a post-report discussion with anyone. Once my report goes out, that is my decision; those are my recommendations and they will be implemented.
140. Some of our complainants, and you will have them as well, do not accept decisions and want to go to another body to appeal, and then to another body and another body. There has to be an end point. If you imbue your ombudsman with the status and power to make recommendations that the Assembly says are rational, and if Parliament are seen to support their ombudsman, that will give strength to ensuring that the recommendations are implemented. If you cut your ombudsman adrift — and say that that person over there is making

- decisions — it will be easier for bodies under jurisdiction not to carry out recommendations. That is where the accountability and partnership with Parliament must work.
141. **The Chairperson:** Emily, thank you very much for your attendance. It is very much appreciated. We wish you a safe journey home.
142. **Ms O'Reilly:** Thank you very much.
143. **The Chairperson:** We will move on.
144. **Mr Spratt:** I was chairing my Committee today, which met outside the Building, so I am sorry that I could not join you for lunch.
145. I will take up where Alex Maskey left off. It is an important area. I am not always sure that recommendations are properly implemented even when people say that they have accepted and will implement them. Those of us who may bring a complaint on behalf of somebody else are not sure that those things have happened until we go back after another complaint, which might be 12 or 24 months down the line.
146. Jim, you spoke about evidence of implementation: how important would it be now, given the process that we are undertaking with respect to legislation, and what have you, to tie down a process and make sure that recommendations by the ombudsman have to be implemented and reported on? Perhaps a report that those things have been implemented would go back to a Department and very clear evidence given in support.
147. **Mr Martin:** You should trust the ombudsman to do and report —
148. **Mr Spratt:** I am not mistrusting anyone; I am just wondering how we can tie it down.
149. **Mr Martin:** My annual report for this year will, for the first time, I think, detail the recommendations that were made; those that have been implemented on time; those that are outstanding; and who still has to implement them. If I felt that a local authority, health board and any other board under my jurisdiction were not implementing recommendations, or were implying that they had when they had not, I would have no hesitation in issuing a special report to Parliament and bringing that local authority or health board or whatever to their attention. I think that that is where Parliament's ombudsman becomes true.
150. I do not think that Parliament should take the matter to Departments or whatever, because I do not think that Parliament should become involved in the administration of recommendations. I think that Parliament should be involved in the principle of why a body under jurisdiction has not carried out a recommendation. In my case, if a body believes that I have come to a recommendation that is inappropriate for it to put in place, or that my judgement is wrong, the remedy is judicial review. It is not non-compliance; it is judicial review. We should hold to that.
151. **Mr Tyndall:** We do not close a case until we have heard the evidence. If the requirement were that the staff had to be trained, I would want details of the dates on which the training took place, who carried it out, and so on. The problem, as you will know, is that some issues are about culture within services. Those are the hardest ones on which to get change. People can carry out an action plan, but it may not prove effective in dealing with things. Jim is right about access to the Assembly being critical. It is also about the subject Committee having sight. If it is a health issue, it is important that the Health Committee has an oversight of the recommendations that have been made and what impact the implementation of those recommendations has had.
152. **The Chairperson:** So, there should be a reporting structure back to Committees?
153. **Mr Tyndall:** The annual reports, or special reports, need to go not just to the Committee that has oversight of the ombudsman's office but to where they can do some good.



154. **Mr Lyttle:** Thank you very much for your presentation and for being here today. It was enjoyable to spend lunch together as well. There seems to be a key theme emerging in respect of engagement with elected representatives, as regards awareness raising and making sure that elected representatives are aware of your functions so that they can help channel that information to the public, and also reporting to the Committees and oversight of implementation. It might be interesting to consider whether some formal structures need to be put in place to help with that process. I am fascinated to see just how essential that engagement with elected representatives could be to really taking on the role and improving how the public benefit from it.
155. We are at an interesting time for the Assembly in Northern Ireland. We are at a tipping point where the public expect to see and understand more about the point of us being here. This could be a useful way for us to engage properly. People, through no fault of the ombudsman offices, may not be fully aware of their potential. I will not embarrass him too much as he is here today, but I think that I right in saying that the Northern Ireland Ombudsman's Office has done recent surveys and information events at the Assembly. It may be that we need to develop that even further to ensure that we contribute to each crucial stage of the process.
156. In Northern Ireland, a complaint is referred through an MLA. Is that a useful stage of the process to ensure that there is a degree of order to how members of the public are informed about the process and to ensure that it has a last-resort nature to it, as has been mentioned? To whom should ombudsman offices report and by whom should they be scrutinised if it came to that report structure facility? I would be keen to hear from you on both of those aspects.
157. **Mr Tyndall:** As regards access to ombudsman offices, neither Wales nor Scotland has a filter arrangement.
- People can come to us directly. Often, they are supported by their Assembly Member. The twin-track approach is the best one. I think that it exists in any event with complaints about health. From our perspective, there are no difficulties. Assembly Members can still be involved, but the direct approach makes it quicker. With a lot of complaints, particularly health complaints, the fresher the case is when it reaches our office, the easier it is to investigate and come to a sound conclusion. The more stages — and I think that Jim alluded to this — put in, the more likely it is that somebody will give up before a resolution and the more likely that, when we conduct an investigation, the events and incidents will not be fresh in the minds of the people to whom we are asking questions. The simpler the process is the better. Direct access is —
158. **The Chairperson:** There is an issue over who is least approachable, the ombudsman or the MLA.
159. **Mr Lyttle:** Or who is most unknown.
160. **The Chairperson:** Some people take some comfort in going through an MLA because they feel that they can put their case over better, whereas others feel that going directly to make their complaint inhibits them. There is a combination, and we do not want to rule out either option, certainly at this stage.
161. **Mr Martin:** I do not have a filter, but MPs, MSPs and councillors will come to me with complaints on behalf of people in their areas, and we take them all. Putting an extra tier into the system in Scotland would worry me, because it would be ineffective and would take us backwards. I am trying to cut the number of levels in local authorities from three and four to two, with the next level being the ombudsman, so that a person can get quick justice.
162. One issue for all of us who are involved in devolved administrations is that, although we have tackled the democratic deficit, we still have an administrative surplus in some areas. If we can

- cut that down for the citizen — the complainant in the complaints field — their faith and confidence in the public services will rise. If someone said that they were going to implement a filter in Scotland, I would be opposed to it.
163. **The Chairperson:** We are in the opposite position: we have a filter but are looking to move away from having one.
164. How do you deal with the list of bodies that you can investigate? I am wondering whether it is better to have a list of bodies that you can investigate or a list of bodies that you cannot investigate. Such a system would have negative connotations.
165. **Mr Martin:** We have received a number of new bodies in a very short period of time. One of the good things about our system is that every decision on a body will have been discussed in Parliament. So, the Government's proposition to put the Police Complaints Commissioner for Scotland under the auspices of the ombudsman will be debated in Parliament. A motion has already been tabled by the Conservatives who say that they are unhappy with that, and it has been put on the agenda of at least one Committee for discussion.
166. Therefore, a positive decision to put something in is a good thing, because it means that elected members have weighed the pros and cons and taken a conscious decision. The negative debate does not feel right to me somehow. Maybe it is because I am used to having a list and having additions made to it by agreement. Somehow, it would not feel right.
167. **Mr Tyndall:** I followed your logic and your discussions on following the public pound with a great deal of interest. The more that I thought about it, the more I thought that it was the right thing to do but was not easy.
168. The UK Parliament's equality legislation shows an approach that is quite interesting in that there is a list and a description of the types of bodies that are permitted. Essentially, it says all public bodies are in the jurisdiction and provides a list. However, you can be within jurisdiction if you are not on the list but fit the description of the type of body permitted. That is quite an interesting way of getting over the changes that happen over time. So, something could come into the jurisdiction and you could formally confirm it. That is an approach that seems good.
169. The issue about the public pound really interests me, because if you choose a 50% approach, and I can understand why you would do so, there could be issues with bodies that have sections that provide a public service. Even though only part of a body provides that service, you will still want that public service to be in the jurisdiction of the ombudsman. That is easy in cases where the service is contracted out. For example, a bin collection managed by a private company is still done on behalf of a public body and is still therefore within jurisdiction. However, there are instances in which part of the work of voluntary bodies and independent third-sector organisations is purely public service and is entirely publicly funded, but other parts of their work have nothing to do with public service.
170. So, the principle is right, and I will be very interested to see how you work it through. I am not sure that a crude 50% is right. You gave the example of Edinburgh University.
171. **The Chairperson:** I was hoping that you would come here and tell us, Peter. *[Laughter.]*
172. **Mr Tyndall:** I will drop you a line.
173. **Mr Martin:** A number of universities in my jurisdiction have got less than 50% funding from the public purse, but they are all in my jurisdiction.
174. **Mr Tyndall:** I would have thought that saying something such as "providing a public service that is funded by the state" is probably the thing to do. The issue that we had with hospices in that although an element of their work is funded and is, clearly, part of the Health Service, they are not in jurisdiction.

- What has happened now is that the Health Service in Wales will contract with them for the service rather than give them a grant, which would bring them into my jurisdiction. However, that is a kludge, if you like. To find a way of expressing that in legislation would be much more helpful.
175. **The Chairperson:** Jim, is a complaint from a third party permissible in Scotland?
176. **Mr Martin:** Do you mean when someone complains on behalf of someone else?
177. **The Chairperson:** Yes.
178. **Mr Martin:** Yes. We will take those complaints. However, we will always ensure that the person on whose behalf the complaint has been made has given their consent, if they can, for that to happen. The classic case, which I am sure that we have all seen, is when someone believes that the person next door to them is suffering from antisocial behaviour. One case that I can remember is when someone was consistently parking their car in front of someone else's driveway. The person's neighbour felt that they should complain. Of course, the person concerned was perfectly happy with the arrangement. Therefore, you have to be careful. We definitely require consent in third-party complaints. That includes complaints from an MSP.
179. **The Chairperson:** Are you in the same position, Peter?
180. **Mr Tyndall:** Yes. Often, complaints that we receive are on behalf of deceased relatives, when somebody feels that their parent, typically, was not treated well in hospital. We will accept those complaints, obviously, without the individual's consent, where the person has clear locus standi to act on their behalf.
181. **Mr G Robinson:** How many staff do you employ? Do you have full responsibility for employing those staff?
182. **Mr Martin:** Yes. I have 47 full-time equivalent staff, which equates to around 51 or 52 people. We will get another two or three staff during the next few months. They are all employed by me. The Act gives me the right to employ people as I see fit. I am also the organisation's accountable officer. I know that things are different here.
183. When I established the office of the Police Complaints Commissioner for Scotland, the most common question that we were asked on the telephone was, "Are you or have you ever been a police officer?" My people were able to say no. That went a long way. Often, we are asked if we work for the National Health Service or whether we are civil servants. The answer is those cases is no.
184. **Mr Tyndall:** My staff are employed directly by my office. They are not civil servants.
185. **Mr G Robinson:** I have one other question. Perhaps you answered it at the beginning. What is the length of your term?
186. **Mr Martin:** My initial term was for two years, because Parliament wanted to look at all of their office holders and determine what they thought should happen. Parliament have determined that in normal circumstances, an ombudsman will be appointed in Scotland for eight years. Therefore, I have been given an extension of six years. The thinking behind that is that it takes you roughly through two Parliaments. Furthermore, the last thing that an ombudsman needs is to be looking over his shoulder when it comes to reappointment time. I believe that John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, said that in debate. We certainly do not want someone to believe that a decision that they take may affect whether or not they can be reappointed.
187. **The Chairperson:** There is a fine line there; a fine line both ways.
188. **Mr Tyndall:** My appointment is for a single term of seven years.

189. **The Chairperson:** Peter, with regard to the Welsh ombudsman, no provision is made for a person who has been commented upon negatively in a report to put their side of the story. Can you explain that any further?
190. **Mr Tyndall:** All reports that we produce are anonymous. Individuals are not named in reports. Although it is fine to say that; if it is a GP practice, anonymity cannot be protected. We issue drafts of all reports, both to the complainant and to the person about whom the complaint was made. We take account of their comments in finalising the report. Therefore, there is an opportunity for somebody to say that it is not a fair representation. Issuing a draft report also ensures that there is much greater prospect of recommendations being implemented because you have an opportunity to deal with questions that you may have misinterpreted or about which you were not aware of all of the facts.
191. **The Chairperson:** OK. Finally, perhaps one of the most important aspects for the Committee is the power to scrutinise the ombudsman's work. Where do you feel that it should lie?
192. **Mr Martin:** That is quite clear. In my most recent annual report, I asked for a Committee of Parliament to scrutinise my annual report and work. At present, I am audited. The corporate body of the Scottish Parliament has some checks and balances in how I spend money. I am nominated by Parliament for Royal Appointment. Therefore, it is important that a Committee of elected Members has the ability to question me on my report. I believe fundamentally that if a single person is an office holder, such as an ombudsman, you require that person to be held to account publicly. That is why I agree with Emily's point. When an ombudsman has been reappointed or has been selected by a Committee, it should go to a public hearing so that it can be seen to be an open and transparent appointment. I believe strongly that elected Members have a role to play.
193. **Mr Tyndall:** We all envy the link between the UK Parliamentary and Health Service Ombudsman and the Public Administration Select Committee. That provides a forum for the ombudsman's work. It does so in two ways; to hold the ombudsman to account and also to take on issues that arise from that work and use them in the work of the Parliament. Like Jim, I have made requests that there should be a Committee for that purpose. I am hopeful that that will be resolved as the new Committee structure is established during the next few weeks.
194. **The Chairperson:** OK. Jim and Peter, thank you very much for your attendance, help and support. It has been an interesting afternoon. Thank you and safe journey home.

## 22 June 2011

### 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 Francie Molloy  
 Mr George Robinson

195. **The Committee Clerk:** I will return to the issues and go through the questions as they are grouped. The first group deals with practical arrangements and accountability.
196. Question 1 asked:  
*“Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman’s office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?”*
197. That was just about the merging of the existing offices, and the Committee agreed to it in principle.
198. Question 2 asked what the office should be called. The Committee agreed in principle that it should be called the “Northern Ireland Public Services Ombudsman”.
199. Question 28 asked:  
*“What do you think about the proposed appointment process?”*
200. Committee members agreed in principle that the appointment process would involve the Assembly and the Committee. Members agreed that the Committee would have specific roles, which will be assigned as those details are worked out in future, but that the process should be very much Assembly- and Committee-owned.
201. Question 29 was:  
*“Should the ombudsman be appointed for a single fixed term of seven years or what length of term should it be?”*
202. Members agreed in principle that it should be seven years.
203. Question 30 asked:  
*“Should the ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?”*
204. Members decided that it would be useful to talk to the ombudsman about how he sees that working. There may well be resource or other implications. Further detail will be required.
205. Question 31 asked:  
*“Should the current link with the judicial salary scale be maintained?”*
206. Members agreed to seek further detail on that and look at other models before making any decision.
207. Question 32 asked:  
*“Should there be arrangements for the ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?”*
208. Members agreed that that Committee should be the Committee for the Office of the First Minister and deputy First Minister.
209. The second group deals with acquisition of cases. Question 11 asked:  
*“Should the legislation ensure that complaints to the ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?”*
210. Members agreed in principle that the MLA route would still be available but that it would be opened up now so that complainants could move directly to contact the ombudsman.

211. Question 12 asked:  
*“Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?”*
212. Members were considering the detail on what methods should be used, and there is still some discussion to have on that, but members did agree that, whatever methods of getting a complaint to the ombudsman are used, there should be a caveat attached that the ombudsman must write back to set down what the complaint actually is, which would then be agreed with the complainant, just so that everyone had a clear idea of what was being complained about. It was agreed that that should be done in a timely way, probably within 10 working days.
213. Question 13 asked:  
*“Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?”*
214. Members again are still keen to look at detail on that and will discuss the issue with the ombudsman when he comes before the Committee next week.
215. Question 14 asked:  
*“Should the definition of a person’s aggrieved representative be amended to match that in the Scottish and Welsh legislation?”*
216. Members agreed in principle that it should.
217. Question 15 asked:  
*“Should bodies within jurisdiction be able to refer a complaint to the ombudsman and if so under what circumstances?”*
218. Again, members agreed in principle that they would discuss that with the ombudsman and seek further detail.
219. Question 16 asked:  
*“In Scotland the ombudsman legislation allows for a listed authority to refer a case to the ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority’s part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?”*
220. Members agreed in principle that that would be at the discretion of the ombudsman.
221. The third group deals with reporting and sharing of information. Question 21 asked:  
*“Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?”*
222. Members specified that they wished to see an annual report from the ombudsman made directly to the Committee, and obviously laid before the Assembly; that they also saw special reports being made on a basis that is required by the ombudsman; and that those again should be presented to the Committee, with a briefing given to members. Moreover, the Committee wished to put into the legislation in principle that they would like to be able to call the ombudsman to the Committee to brief it whenever required or whenever members wanted that to happen.
223. Question 22 asked:  
*“Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?”*
224. Members agreed in principle that that would not happen. Members did not want to pursue that model.
225. Question 23 asked:  
*“Should the ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?”*
226. That question was withdrawn, and the issue effectively is dealt with in question 21.

227. Question 26 asked:  
*“Should the ombudsman make and publicise a special report to deal with the situation where the ombudsman is not satisfied with a body’s response to his recommendations on redress following a finding of maladministration that has caused injustice?”*
228. Again, the Committee agreed to that in principle.
229. Question 27 asked:  
*“Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?”*
230. Members agreed to defer that question, subject to advice from a variety of sources, and are open to retaining it if the advice suggests that that is the best mode of practice.
231. The final group deals with powers. Question 3 asked:  
*“Do you think that the ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?”*
232. Members want to attach a caveat to that and will provide detail on how the caveat will work, whether there will be specific areas or whether it will be on top of caseload. Members are looking to obtain more detail on that before a decision is made.
233. Question 4 asked:  
*“Should the ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?”*
234. Members agreed in principle, but again there would be a caveat applied to the details of how that would work in practice.
235. Question 5 asked:  
*“Do you want the ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?”*
236. Again, members considered what was said in ombudsman’s reports should go a long way to indicating what should be best practice, but, again, they have not come to a final consideration on that and will be looking for more detail.
237. Question 6 asked:  
*“Do you think that the ombudsman should play a ‘design authority’ role in public sector complaints processes?”*
238. The Committee agreed that that should no longer be under consideration and should be out of the consultation’s set of questions.
239. Question 7 asked:  
*“Should the broad principle of ‘following the public pound’ be the basis on which bodies will be included within the ombudsman’s jurisdiction?”*
240. Again, members were seeking further detail on that before further consideration.
241. That also applies to question 8, which asked:  
*“Is it necessary to list the bodies within the ombudsman’s jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the ombudsman’s jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?”*
242. Further detail is required.
243. Question 9 asked:  
*“Do you think that public sector employment issues should be excluded from the ombudsman’s jurisdiction?”*
244. Members agreed in principle that those issues should be excluded.
245. Question 17 asked:  
*“Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power*

- enabling the ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?"*
246. Members agreed in principle but very much stressed that the detail on that absolutely needs to worked out.
247. Question 18 asked:  
*"Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?"*
248. Members have agreed to consider the Welsh model and look at any further detail.
249. Question 19 asked:  
*"Do you want the ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?"*
250. In principle, members saw that as a useful thing for the ombudsman to have and agreed with it, subject to further detail.
251. Question 20 asked:  
*"Do you think that the ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?"*
252. Members agreed to that in principle and will look at legislation to consider the matter rather than at memoranda of understanding.
253. Question 24 asked:  
*"Should the ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?"*
254. Again, in principle, that seems to be OK, but further detail is required, and it is also subject to other law, such as data protection legislation.
255. Question 25 asked:
- "Should the ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?"*
256. Members agreed to that in principle, 7.8 being:  
*"The ombudsman would seek to co-operate with other public sector Ombudsman in the UK and ROI and with the C&AG in relation to specific investigations or indeed systemic investigations. If these powers were granted in the proposed legislation then it would be necessary to include an information sharing power for the ombudsman similar to that enjoyed with the Information Commissioner."*
257. That is those so far, Chairperson.
258. **Mr T Clarke:** For recording purposes, I believe that we left out question 10.
259. **The Committee Clerk:** Did we? Sorry. Question 10 asked: "Do you believe that professional judgement in social care should be included in the ombudsman's jurisdiction?"
260. Members agreed that it should be excluded. Thanks for that, Mr Clarke; I appreciate it.
261. Chairperson, as I said at the outset, that is all in principle and is subject to consideration again by the Committee.
262. **The Chairperson:** OK, members? Thank you very much for your patience.



## 29 June 2011

### 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 Alex Maskey  
 Mr Francie Molloy  
 Mrs Sandra Overend  
 Mr George Robinson  
 Ms Caitríona Ruane

### Witnesses:

Dr Tom Frawley	<i>Northern Ireland Ombudsman</i>
Mrs Marie Anderson	<i>Office of the Northern Ireland Ombudsman</i>

263. **The Chairperson:** The Committee discussed a number of issues coming out of the consultation on the reform of the Office of the Northern Ireland Ombudsman and subsequent research papers at last week's meeting in closed session. You will find a preliminary readout paper listing the decisions made. That paper will be superseded by the Hansard record of the decisions made, when that record is available. The session moved on a number of issues and the ombudsman's office has been made aware of the decisions made in principle. I stress again that the Committee has not signed off on anything and the process is still in its early stages. In addition, the ombudsman has provided the Committee with papers on public awareness of his office and his outreach strategy, as requested by members.
264. The Committee has asked the ombudsman and deputy ombudsman to come to today's meeting to discuss specific issues, which are highlighted in the decisions paper in green. They are questions 7, 13, 15 and 30. I ask the ombudsman to deal directly with those questions. I believe that Dr Frawley wishes to touch on another couple of issues, but I stress that discussion outside the four questions highlighted will be limited, as the Committee has already indicated its thinking, and the purpose of this session is not to provide an opportunity to revisit those other areas. I remind members that the session will be recorded by Hansard.
265. Dr Frawley and Mrs Anderson, you are welcome here today. I note that you smiled at some of the comments, but we are trying to move this process along as swiftly but as reasonably as possible. We are trying to make progress. I know that you have a number of issues to address. Please give an outline of your thoughts on the four questions.
266. **Dr Tom Frawley (Northern Ireland Ombudsman):** Thank you for that. I am conscious of your potential reprimand if I vary from your position. *[Laughter.]* I am grateful for the opportunity to respond to the questions that you have asked me to comment on. Before moving to those questions, I will make a couple of points. I am very conscious that the Committee had a very detailed and extended discussion last Wednesday; therefore, I am conscious that you are beginning the process of finalising your thinking before briefing the legislative draftsmen.
267. For my part, therefore, I ask you to consider two issues: first, the implications of not including, alongside my current authority to examine professional decisions of doctors and nurses, the authority to examine the professional decisions of social workers. Such a limitation would work against the interests of older people, children, people with learning difficulties, people with physical disabilities and, in particular, the mentally ill. They are the most vulnerable and marginalised, and their care is directly affected by social work decisions. Secondly,

- although I completely acknowledge that my core business is investigating citizens' complaints, it would be a wasted opportunity and a waste of scarce resources if the learning and insights developed out of individual investigations were not distilled and organised to facilitate the development of guidance and advice that could improve the wider public service. I am conscious that you are pressed for time today, so, with your permission, I will make a number of other points available to you in writing over the next few days, before you reach your final decisions.
268. The first question that I was asked to address relates to staffing:
- "Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?"*
269. There are 30 staff in my office, in addition to me.
270. **The Chairperson:** For members' information, that is question 30 in our paper.
271. **Dr Frawley:** There are 30 staff in my office. In Wales, there are 50 staff, as is the case in Scotland. Twenty staff here deal directly with investigations; in other words, casework and complaints. In addition to my deputy, I have nine staff who provide a range of skills and services covering finance, legal advice and administrative support for the office. When the office was first established it was considered that there was a need to staff it quickly and efficiently, because of the circumstances and context in which that was done. That was done through secondments from the Civil Service. That practice has continued, and, currently, most of the staff I have described are secondees from the Civil Service, but there are also a number from the wider public service.
272. Although I recognise that it is important to ensure independence, I ask that that be balanced with practicality. In its review, Deloitte envisaged a workforce of secondees and permanent staff, offering flexibility and the ability to access a range of skills. In a small organisation such as the ombudsman's office, it is essential to have that flexibility, to achieve value for money and effectiveness. That is my overall response to question 30. Do you want me to go on, or do you want to take questions?
273. **The Chairperson:** While it is fresh in our minds, do members have specific questions on the employment issue?
274. **Mr A Maskey:** I have seen the same mix in other organisations, and I understand the need to get access to other skills and the need for flexibility; however, it can also lead to difficulties, because you end up with people in the same office with different terms and conditions. Has that impacted in any way on your office, or do you see potential problems in the future?
275. **Mrs Marie Anderson (Office of the Northern Ireland Ombudsman):** We recognise that, and equality issues could arise from differentials in pay and terms and conditions. Therefore, we set up a HR strategy group to actively look at those issues. At one point, the question of whether we could employ directly was posed. We have now received legal advice that confirms our view that, under existing legislation, we can employ directly. I can reassure you that we are working through the other issues to do with terms and conditions.
276. **Dr Frawley:** The next question is on the acquisition of cases:
- "Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?"*
- From my 11 years of dealing with complaints, I consider it essential for the ombudsman to retain discretion in relation to the form of submission, because, as I think members will acknowledge, unfortunately, some individuals have literacy difficulties and, indeed, many complainants have problems expressing themselves. At present, there is a requirement for

- complaints to be submitted in writing. However, my office operates flexibly, accepting complaints over the phone, which are then followed up with face-to-face interviews with investigating officers to establish the facts of the complaint and to record them in a way that is consistent with our templates and guidance.
277. An issue has arisen about the use of electronic media, particularly with the use of text messaging to submit complaints to my office. I do accept complaints that are submitted online via the office's website. In principle, complaints submitted in the form of text messages should be accepted, particularly if we are to facilitate access to the office by younger people. We all realise that that is the way in which young people communicate today. They do not pick up a pen and write a letter, and, if we expect them to do that, they will just not contact or connect with us.
278. To follow up on a text message, a written record of the specifics of the complaint is agreed by my staff, in the same way as it would be had the complaint been made by phone. However — I emphasise this to members — I recognise that care needs to be taken to ensure that there is no leading in the design or description of complaints. In my view, it is essential that the office proactively addresses the accessibility issue in a way that recognises the different circumstances and literacy levels of a wide and diverse range of complainants. Therefore, I put it on record that I believe that it is vital to have discretion in relation to the manner in which a complainant may contact the office.
279. **The Chairperson:** Last week, this matter caused quite a bit of discussion, particularly around text messaging. There was a concern that a complainant could not get into the detail of a subject by text, because it would take too long and some phones send only a limited amount of text. Will you explain how that will work in practice? I would not dare to try to lead you, but, for example, would a simple text saying, "I have a complaint about the Health Department" suffice, and would you then follow that up with a phone call or message?
280. **Mrs Marie Anderson:** There would be some data protection concerns around the submission of information, particularly with more sensitive complaints containing health information. Therefore, it is important that any text should be brief, perhaps with some contact details to allow follow-on contact with that individual, to allow our staff to establish their identity and the full nature of their complaint.
281. I thought about this question yesterday when I was at a GP's surgery to arrange an appointment for my son. I noticed that GPs now invite patients to indicate whether they want text alerts in relation to appointments. As you will appreciate, a cancelled or failed appointment is an opportunity missed. Already, in the health sector, this medium is used. However, I accept that it is of limited use, and the detail has to be followed up at a later stage.
282. The paper on communication and electronic media goes into some detail on this. We have been fortunate to receive additional funds to improve our existing case management system. We envisage a system that allows — if individuals choose — for text alerts on the achievement of milestones in relation to their complaints and online tracking of the case. I appreciate that that will not suit everyone, but it is just to let you know that, in this respect, we seek to be innovative and look for continual improvement.
283. **The Chairperson:** I assume that you would follow up, as you do with e-mail, with a phone call to arrange a meeting, or possibly write to the person if an address is given. I guess that is the way you would do it.
284. The second point, the one that started the debate, was the issue of the wording of the legislation. Will the wording specify certain areas? Will it say that complaints may be made by telephone, letter, e-mail or text? Or would you use a broad wording, to the effect that one

- could contact you by any acceptable form? I cannot remember the exact wording that we talked about.
285. **Mr Eastwood:** To allow for technological advances.
286. **The Chairperson:** The wording was to read something like, "in an acceptable form".
287. **Mrs Marie Anderson:** We should keep the wording as broad as possible to ensure discretion and to allow for further advances, rather than having wording that is too specific. Who knows what the future will bring with technology? On that point, I have to say that some of the consultation responses, and one in particular, were very helpful. We were reminded that, under the Interpretation Act (Northern Ireland) 1954, "in writing" has a very broad meaning. I have referred to that in the paper; time is short, so I do not want to rehearse it. A broad wording in the legislation can then be captured by the provisions of the 1954 Act. However, that is a matter for the draftsmen.
288. **The Chairperson:** I am pleased to hear that some people still follow 1954 legislation so carefully.
289. My other point was that, if someone sends a text, it is your responsibility to follow that up with a telephone call, a letter or a meeting?
290. **Mrs Marie Anderson:** Absolutely. Our preference is to follow up in writing, to ensure that the contact has been captured. Nevertheless, we record telephone contacts on our systems.
291. **Dr Frawley:** I think that a whole generation of citizens, younger people, are impeded or inhibited from contacting us because they cannot do it by text. I had a conversation with some young people who said that they had lots that they wanted to comment on, complain about and indicate feelings on, but they communicate via text messaging. In a modern environment, where we are trying to get young people to articulate their experiences and be open, if they have disappointments or concerns about services, they have as legitimate a right to articulate them as anyone else. Texting, followed up exactly as you suggest, allows them to access it. I also say, to reassure you, that I am not saying that, in every case, we will accept the complaint. We will have to be satisfied. There are issues there, but it is important to recognise that medium now.
292. **Mr Eastwood:** Believe it or not, we had a very detailed discussion about this last week, and I do not intend to drag it out any further. I have just one point. You are right; it is important that people feel that they can access your service. Will you have a five-digit number that people can text? Will it be free? If you are going to do it, it is important to put the means in place.
293. **Dr Frawley:** We already have a free telephone service; that would just be extended to texting. We would have to create the facility of a standard number that they could text us on. We have a manned telephone and, out of hours, a machine with a recorded message is used. Clearly that does not have a cost to it, because we pick that up the following day or after the weekend. All of that gives us 24-hour access and seven-day-a-week access, and it complements the idea of openness.
294. **Mr Molloy:** The concern was about mentioning only text messaging, because variations may still come into operation, so the legislation has to be open enough to allow other forms of communicating messages. The important thing is that people are able to get through with their complaints.
295. **Dr Frawley:** We acknowledge that, and I think that Marie has captured that in her response to the Committee. As with phone calls, or even letters, we may need to see complainants who send us text messages. Some of our complainants have limitations, such as mental health problems, and find expressing themselves quite difficult. For example, I am very conscious of people with learning disabilities who everyone assumes do not have voices

- at all, unfortunately. They have every right to express their experience of public services. We have to find ways to connect with all of those people. Texting is a particular model that now allows us to make ourselves more accessible to younger people.
296. **The Chairperson:** OK; let us move on to the next question.
297. **Dr Frawley:** The next question is number 15 in your paper:
- “Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?”*
- In responding, I suggest that such a facility is not appropriate, except in very limited circumstances, which are helpfully outlined in the Scottish legislation referred to in question 16 of the consultation document that you have circulated. Those circumstances are where there has been a public allegation of injustice caused by a public authority and that body had unsuccessfully attempted to resolve the matter, either because it did not have sufficient authority or sufficient reach in relation to the nature of the complaint.
298. In that circumstance, I would say that acceptance of such a referral should lie within the ombudsman’s discretion. Nevertheless, if an impasse like that has been reached, you will want the individual citizen to have the right to recourse. I refer the Committee to Jim Martin’s evidence to you on 15 June, to the effect that those should be the only circumstances in which a complaint should be referred to the ombudsman by a body in jurisdiction, as it is for the body to seek to resolve the issues raised by any complaint in the first instance and not just to pass the issue to the ombudsman and say, “I really do not want to do anything more with this; you take it on from here”. That is not acceptable either. One of things that would also worry me, if it is not properly drafted, is that I do not want to be the referee in a match between two public bodies.
299. **The Chairperson:** Why not?
300. **Dr Frawley:** You get into that world of pass the parcel sometimes.
301. **The Chairperson:** But sometimes it does need an adjudicator.
302. **Dr Frawley:** I have a terrible problem with you calling me an adjudicator, and I do not want to take you there at this early hour on a Wednesday. *[Laughter.]* This is not an adjudication, Chairman; we are a decision-maker. You do this to provoke me.
303. **The Chairperson:** Not at all. *[Laughter.]*
304. For clarification, you are basically saying that, under limited circumstances, a public body could have the right to refer a complaint to you.
305. **Dr Frawley:** Absolutely.
306. **Mr A Maskey:** I presume that the context of that will be that most public bodies have a lead Department, so there is somewhere else to go if a complaint is made against that body.
307. **Dr Frawley:** Absolutely. They would have other places to go. For example, if it were a complaint regarding a health body, it would go to the Health Department. However, that is still within the arena, and, obviously, that Department is within my jurisdiction. If the complainant was not happy with that, they could still come to my office. But I do not want bodies not finalising their positions and just telling the complainant to take the matter to the ombudsman.
308. **Mr A Maskey:** They would have to exhaust all other remedies first.
309. **Dr Frawley:** Absolutely.
310. **The Chairperson:** If no other members have any questions on this matter, we will move on.
311. **Dr Frawley:** Question 7, which comes under the heading “Powers”, is important in the current context of public service delivery. The question is: “Should the broad principle of ‘following the public pound’ be the basis on

- which bodies will be included within the Ombudsman's jurisdiction?"
312. As members will know, my legislation sets out the type of bodies that may become listed in the schedules pertaining to the ombudsman or commissioner for complaints, and those can be summarised as bodies that carry out public functions. However, I am mindful that the legislation is reflective of a time when only public bodies charged with statutory functions delivered those functions. Today, it is quite common for public bodies to outsource delivery in the interests of efficiency and effectiveness and of developing local services.
313. When public services are delivered by a voluntary or private sector body, it is important that the citizen has the same rights to remedy and redress as those that apply when the service is provided by a public body. In other words, it would not be acceptable if it were just moved outside. Therefore, there is no redress if it is not an appropriate or acceptable service. A good example of that is the inclusion in my jurisdiction of housing associations, all of which are charitable organisations, but they deliver public services and were put into my jurisdiction in 2004. Therefore, in my view, voluntary bodies that deliver a public service funded from the public purse should be included in a list of bodies within the jurisdiction of the ombudsman.
314. Members might remember that the Deloitte review referred to "substantial public funding" as the litmus test for inclusion in the ombudsman's jurisdiction. The appropriate test is a matter for the Assembly, and I note the Committee's concerns that a lower threshold might extend the ombudsman's oversight to voluntary bodies in receipt of grants or limited funding.
315. One possible alternative and more easily measured test is set out in section 29(3)(c) of the Public Services Ombudsman (Wales) Act 2005, which states that a body falls within jurisdiction if at least half of its expenditure on the discharge of its functions is met from public funding. When Peter Tyndall, the Welsh Ombudsman, gave evidence to you on 15 June, he commented that he was following the Committee's debate on the issue with interest. He suggested a different approach, which is reflected in the United Kingdom equality legislation, namely that public bodies are listed in jurisdiction but can also be in jurisdiction if they are not on the list but fit the description of the type of body permitted. The Committee will probably not find that helpful, and I certainly wrestled with what was meant there, and I think that there are issues around the clarity that that would bring.
316. He further commented that the 50% approach can present difficulties where bodies have sections that provide a public service, but have a whole lot of other things that are not involved with public service at all. One suggestion was to have a formula along the lines of a public service that is funded by the state, and I commend such an approach. I will leave the challenge of how that might be phrased in legislation to the Bill team and legislative counsel, but I want to make the point that a lot of public services are provided by organisations that are not public bodies. They are voluntary or community based, and they get contracts and service level agreements: for example, meals on wheels services, domiciliary care services, night sitting services, and so on. There is a wide range, and it is a diverse and mixed economy, which is a good thing, because, in areas such as your constituency of Fermanagh, there is now a huge amount of community infrastructure. That is very helpful, and it provides localised and tailored services to individuals. Therefore, it has very much become part of the landscape.
317. **The Chairperson:** It has. However, to be fair, by and large, they all get public funds and provide a public service. The issue that we were more concerned about is the small voluntary groups that get small grants, but for which most of

- the money comes from the public purse. It may be quite difficult to legislate for them. For example, if a small welfare group or community group were getting somewhere in the region of £30,000 a year from the Community Relations Council or another organisation, they may come under that remit, particularly in light of the 50% that you mentioned.
318. We have a concern about getting the balance right. I felt from the meeting last week that we would like to encompass as much as possible of the public funds without hitting the voluntary groups that do a lot of community and voluntary work on a smaller scale than others.
319. **Dr Frawley:** We could certainly work at that. We have time to develop that thinking and the form of words. It is a tricky alignment of words to capture. The 50% is a fairly stark number, but it takes us into most of the territory that we would want to be in. You are right: if 50% of £60,000 is £30,000, it becomes very limited in its focus. I take the point: we need to qualify that a little bit. I am sure that we could work at that without taking up time today, but we understand the spirit of your concern.
320. **Mr Eastwood:** My point is brief and is probably dealt with in other areas. We need to be cognisant of other commissioners, such as the Children's Commissioner. We need to be aware of the relationships between you and them and where the boundaries are, going forward. If we are talking about taking in many more possibilities, we need to be aware of that.
321. **Mr A Maskey:** Returning to the issue of who might be defined as "within jurisdiction", I can see the tension. If you follow the logic of the example of the housing associations, there is a tension because they would argue that they are voluntary organisations as opposed to public bodies. However, most people on this side of the table probably think that the housing associations get quite a considerable amount of public money to provide a public service, and so they want to have a say in how that is done. There is no doubt that there is a tension, but you could see an avalanche if you open that up to every organisation that is in receipt of public funding. I tend to think that the balance will be about who is the parent funder. They obviously have a remit and responsibility to discharge to ensure that any moneys that they are paying out are discharged appropriately. In other words, they must ensure that whatever outcomes they were providing money for are delivered. There is a balance to be struck.
322. Most of the voluntary organisations that you are referring to, Chairman, receive a cocktail of funding. It could be a quagmire. You could get every person who may have a legitimate grievance, but where would that end? To my knowledge, even the best community or voluntary organisations do not always satisfy everybody, even in their sector or their local community. Everybody here knows that every residents' association will have critics, no matter how good they are. There would potentially be problems if we widened "within jurisdiction".
323. **Mrs Marie Anderson:** I will deal with some of that. You may recall from Jim Martin's evidence that the 50% rule did not really work for him. I think that he said that the University of Edinburgh receives 30% funding. If students have complaints or grievances, it is important that they have somewhere to go other than to seek a judicial review in court. We saw that recently when a student brought a case because he did not get a 2:1. At the end of the day, that is where having a list is beneficial. There must be some control over that list and some debate as to whether people are included. That debate or the control over that list could start with the parent Department or the funder, as you said, Alex. There will be some debate as to whether you are included in the list rather than having a formula that says that you are in. Some of that can be worked through by clarifying who is in the list, who is out of the list and who is going to have control of the list. I believe that the consultation

- document suggests that OFMDFM have control over that. There will be further information about the types of organisations that would be included in the list. Those decisions are for another day. It is about getting the formula right, and I appreciate that that is difficult.
324. **Ms Ruane:** It may be a hard one, but you could set a percentage or a ceiling amount of money because, as Tom said, you do not want small organisations getting caught in a net that they do not particularly want to be in. They have enough bureaucracy to deal with.
325. **Mrs Marie Anderson:** On an earlier point that was raised about the other commissions, the Equality Commission, in fact, looks to the existing list of bodies within our jurisdiction when designating bodies under section 75.
326. **Dr Frawley:** The list is shared across a range of agencies. This goes back to Colum Eastwood's point. It is not just our list. Once a body is on the list, it comes under the jurisdiction of a range of other bodies.
327. On Marie's point, the list is also helpful to the public, because if bodies are not on it, people cannot complain about them. So people do not waste a lot of energy pursuing something only to be told at the end of a long journey, "By the way, that body does not come under the jurisdiction of the ombudsman, so there is really nothing that can be done about it". If the list is explicit and if whoever is responsible for it maintains it and keeps it up to date, there will be a definitive list and people will know what does and does not come under the ombudsman's jurisdiction.
328. **The Chairperson:** Are members content with that?
- Members indicated assent.*
329. **The Chairperson:** Dr Frawley, before you took questions from the Floor, you mentioned the issue of social care. For members' information, I think that you were referring to question 10. Am I right in saying that?
330. **Dr Frawley:** Yes, but because that was not in your list of questions for today and because I was, as ever, accepting your direction at the outset, I just introduced it in my preliminary remarks.
331. **The Chairperson:** That is fine; there was no issue with that. I just want to make you aware that members felt strongly that, because other bodies, in particular the Regulation and Quality Improvement Authority (RQIA), normally deal with aspects of social care, and because health and social care is a much more professional business, it may not be appropriate to include those bodies. I just want to put on record the Committee's feelings. If you have any other comments, we would be happy to hear those.
332. **Dr Frawley:** Thank you for that. It is helpful to get an insight into the Committee's concerns. I would like to develop my thinking on that. Doctors and nurses are also covered within the serviced provided by the RQIA, so that would apply to them as well. I am not going to rehearse that issue now: we will commit something to paper and send it to you.
333. **The Chairperson:** That will be useful. We obviously have a pretty strong view on that.
334. **Dr Frawley:** I sense that, Chairman.
335. **Mr A Maskey:** Is there a typo in question 14 where it reads: "the definition of a person's aggrieved representative"?
336. **The Chairperson:** No, I think that that is right. Although I am not sure what the definition of a person's aggrieved representative is.
337. **The Committee Clerk:** When we approached this, we found that there was a complication around the use of the word "aggrieved". The way in which the question was set out in the consultation caused confusion about what exactly was meant. I had the opportunity to talk to the ombudsman's office about that. It draws a distinction between a complainant having someone



represent their views, and a person who is not connected to the complainant making a complaint that they feel someone else should be making. The consultation did not separate those two out entirely. So, we are going to deal with that on paper by setting out exactly what the difference is. That is something that we still need to get pinned down.

338. **The Chairperson:** One of the examples was whether, if somebody was continually parking a Department's vehicle outside your neighbour's property and you felt that it was blocking their way, you had the right to complain on their behalf if you felt that they were not going to complain.
339. **Mr A Maskey:** Thank you.
340. **The Chairperson:** Tom and Marie, thank you very much. This has been most helpful. I am sure that we will have further discussions.
341. **Dr Frawley:** Thank you. Have a good summer.



## 23 May 2012

### Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)  
 Mr Chris Lyttle (Deputy Chairperson)  
 Mr Thomas Buchanan  
 Mr Trevor Clarke  
 Mr Colum Eastwood  
 Mr William Humphrey  
 Mr Alex Maskey  
 Mr George Robinson  
 Ms Caitríona Ruane

### Witnesses:

Ms Marie Anderson      *Northern Ireland*  
 Dr Tom Frawley         *Ombudsman's Office*

342. **The Chairperson:** We are joined by Tom Frawley and Marie Anderson, the ombudsman and deputy ombudsman respectively. You are both very welcome. Tom, we have been looking at this issue, and there are three options. First, you could keep the County Court option for where it currently applies. Secondly, you could drop it, or, thirdly, you could include it for all cases under the new Northern Ireland Public Services Ombudsman (NIPSO) office. Can you give us your pitch or your thoughts, as it were?
343. **Dr Tom Frawley (Northern Ireland Ombudsman's Office):** Thank you. I prepared a brief note that might give you background and context, which will hopefully help you make your own judgement about which of those options might apply. Just to make it more complicated, there is possibly a fourth option, which I will come to.
344. You noted the three options. One is to extend the enforcement provisions of article 16 of the Commissioner for Complaints (Northern Ireland) Order 1996 to the bodies that are in the Assembly Ombudsman's jurisdiction. In other words, it currently does not exist for those bodies. As you suggest, the second option is to remove the enforcement provision for the bodies that are currently in the Commissioner for Complaints's jurisdiction. The third option is to retain the enforcement provision for bodies that are in the Commissioner for Complaints's jurisdiction but to not go any further than that.
345. As I suggested, there is one possible further opportunity, which relates to a proposal to extend the County Court mechanism to all bodies in the Commissioner for Complaints's jurisdiction. The reason that I make that point is that, currently, for example — members may not appreciate this — the general health service providers, that is, trusts and independent contractors, are not covered by the mechanism, even though they are in that jurisdiction. So, the mechanism does not cover all the bodies that are in that jurisdiction. I will speak to that a little bit more extensively later.
346. To assist the Committee in its deliberation, I remind members of the historical origins of the system, because I think that it is unique in these islands to have a recourse that allows complainants to go to the County Court. Therefore, I think that it might also be helpful to understand where it comes from. The rationale for the inclusion of that enforcement can be traced to section 7 of the original commissioner legislation. The notes on clauses for the relevant provision, which would have been prepared by civil servants in informing those who would apply the legislation, indicate that the purpose of the provision was to encompass acts of maladministration by public authorities that involved political and religious bias. To put that in its context, it was 1969 and there was a very significant issue around discrimination in the allocation of housing and in employment. There was a particular focus on local authorities where those issues were concerned.

The recourse, therefore, was that the ombudsman made a recommendation, but if the local authority refused to implement it, the complainant had the right to go to the County Court to say, "I have a finding from the ombudsman; they are not implementing it, so please look at it."

347. The original creation of the office of Commissioner for Complaints was, therefore, directed mainly at the actions of local councils. Today, however, the number of bodies in my jurisdiction as Commissioner for Complaints is much expanded and includes, for example, the Housing Executive, housing associations and a number of arm's-length justice bodies, as well as regulatory bodies such as the Equality Commission, the Northern Ireland Children's Commissioner and the Regulation and Quality Improvement Authority (RQIA). The 1969 Act predated the fair employment legislation that has come on stream since, which is another recourse that is now available to people in Northern Ireland. Indeed, it importantly predated the expansion of protection against discrimination that exists today. We also have to remember that there has been a whole expansion of protections beyond what was intended at this moment in time, so you might want to look at the total landscape now.
348. In my own experience as Commissioner for Complaints since 2000, I am aware of no reported cases heard in the County Court where the complainants have invoked the procedure under article 16 of the Commissioner for Complaints (Northern Ireland) Order 1996 to seek damages for loss of opportunity where I found injustice arising from maladministration. Indeed, the last significant case brought pursuant of the County Court enforcement mechanism was that, which some members may remember, that was brought against members of Craigavon Borough Council who refused to enter into a lease with a GAA club in 1980. The case was initially heard in the County Court, and the Court of Appeal gave its judgement in 1986.

That judgement was in favour of the complainant and was a very significant finding in terms of the fine that was levied. The councillors were made personally accountable for the payment of that fine, and they were also excluded from public office for 10 years. It was a very heavy response from the Court of Appeal in the light of the council's refusal to implement the ombudsman's decision.

349. My office has been unable, therefore, to obtain any further data from the Court Service on the number of applications that were brought under that procedure that did not precede the 1980 hearing. A possible reason for that enforcement mechanism not being invoked, in my view — I cannot assume what was in the minds of complainants — is the degree of compliance. In other words, I have had practically 100% compliance with every recommendation that I have made. I suppose the experience of Craigavon has led many to say that that is not somewhere that they want to go and that they want to stay with the outcome that was offered in the ombudsman's recommendation. For your information, I have attached an appendix to the paper, which provides you with more details on my findings across more recent years.
350. As you will note, in the period 2009-2012, there has been almost 100% compliance with the recommendations in my jurisdiction as commissioner. I made the point earlier that I am excluding general health service practitioners' complaints from my general picture of the recommendations, as there is currently a High Court challenge from a general practice to my ability to make a recommendation for financial redress. I pointed out that they are excluded from the original legislation. I do not want to make any comment on that, Chairman, and I advise the Committee on that accordingly, because that judgement is still in process and a decision has not yet emanated from the court. Further, I draw the Committee's attention to the fact that general health service providers are not covered by the County

Court mechanism. In other words, if a trust refused to implement my recommendation, the complainant would not have recourse to the court. You will note from the statistical analysis provided that, in my jurisdiction in health under the Commissioner for Complaints legislation, in only four cases where I have recommended a financial payment has this not been complied with.

Those are all cases involving general practitioners. Clearly, I cannot make a final judgement until I know what the High Court is going to say about the original one.

351. In my role as Assembly Ombudsman, I am pleased to advise the Committee that there has, to date, never been an incidence of non-compliance with my recommendations in this jurisdiction over Northern Ireland Departments and their agencies. They have all been complied with. The Committee will note that, in her consultation response to the original consultation document issued by the Committee, former Northern Ireland Ombudsman Mrs Jill McIvor refers to one instance where the Child Support Agency (CSA) had not initially accepted her recommendations. However, the threat from Mrs McIvor of a special report to Parliament — that would now be the Assembly — ensured that the matter was satisfactorily settled.

352. Moving on to the recommendations of the Welsh and Scottish ombudsmen, as far as I am aware, there has been full compliance by all public bodies in those jurisdictions of the ombudsmen's recommendations. There are, however, a number of instances where the recommendations of the Parliamentary Ombudsman, which is the ombudsman based at Westminster, have not been met by Departments. On those occasions, the ombudsman used her special report power under section 10(3) of the Parliamentary Commissioner Act 1967 to achieve compliance. The most notable of those, which the Committee may well be aware of, was the Equitable Life report, in which she found 10 instances of maladministration by the Department

of Trade and Industry (DTI), the Government Actuary's Department (GAD) and the Financial Services Authority (FSA) and recommended the introduction of a compensation scheme for those who had suffered. You may remember that that involved huge compensation; ultimately, we were talking about £5 billion for people who had been misled on pension arrangements. In all those special report cases, the Departments eventually complied. Therefore, if there were an issue of non-compliance, it is my view that the appropriate forum to deal with it would be a Committee of the Northern Ireland Assembly using the procedure for a special report, which currently exists in the Commissioner for Complaints and Assembly Ombudsman legislation. I note that it is anticipated that the special report power would be provided for under current proposals in the proposed Ombudsman Bill.

353. I made the point to the Committee previously that the office of the ombudsman, in the new model, is an office of this legislature. The purpose of this legislature is to scrutinise the performance and work of Departments. Therefore, if a Department or official refuses to comply with a recommendation of the ombudsman, the place to take that non-compliance is back into the legislature to the relevant Committee. When faced with non-compliance, it is obviously for the Committee to call the official or body before it to seek an explanation about why such a position is being adopted. However, I caution against the potential for the Committee's becoming another level of appeal for the individual. That would defeat the purpose. That is something that would work against special reports, because it would require a fairly unanimous Committee to be working, or political advantage might be taken from those sorts of issues, which is a judgement that only you can make as you decide whether that County Court mechanism should be extended. That is the downside of it that I want to acknowledge.

354. The classic public service ombudsman relies on political pressure to achieve compliance with his non-binding recommendations. I remind the Committee again that I make recommendations; I do not make conditions on courts as an enforcement mechanism. In merging the two legislative models of Assembly Ombudsman and Commissioner for Complaints, this should be at the forefront of the Committee's consideration, so there should be a merging of the fundamental role of the ombudsman and the Assembly and its Committees to ensure that the recommendation of the ombudsman and officer of the Assembly are met.
355. I have drawn the comparison previously in this forum that, on one level, the Comptroller and Auditor General (C&AG) gives the Assembly assurance that money is being spent properly and appropriately and that probity is being applied. The ombudsman is the other side of that, which is that they want to know the experience of individual citizens of those services. Are they doing the sort of things that government say they that are doing? Are they achieving the outcomes? It is about the specifics of the debate that you were having a moment ago about what a service being "provided" means to a single mother or to an elderly man living alone. However, to use common parlance, is it doing what it says on the tin? That is where the individual has the right to come to my office and say that they are not getting the service that they are entitled to or that they have not been given the eligibility that they are entitled to, and I investigate to see whether that is the case.
356. Therefore, to put it in context, as you suggest, there are two directions of travel. One is to take the County Court mechanism, which, you might argue, in some way assumes non-compliance, and to apply it across the whole landscape. I think that that is what you will need to do if you decide to bring the two offices together. Alternatively, we could leave it behind us as something that was clearly very relevant in 1969. However, with the new arena and framework of protections that are now in place, we have to ask whether it is still relevant, and, instead, whether we could bring the non-compliance, if it should arise — we should not assume that it should arise, but, if it can happen, it will happen — to a Committee. However, there is a risk of politicising that recommendation. On balance, those are the comments that we have prepared for you today.
357. **Mr A Maskey:** Thank you for coming here today to help us out on some of these issues. I am pleased to hear that there has been a high record of success in compliance. If the claimant had recourse to the courts, I would be satisfied that it would not require a large amount of money. If the level of compliance has been so successful, that tells you that it would not open the floodgates of going to court. There was a fear among members that, if we went down that route, we would open up the floodgates, meaning that the whole thing would become litigious and would involve more lawyers and therefore an awful lot of money. So, I am satisfied that if you were to go down the route of applying that access to the County Court, it would not open up the floodgates.
358. By the same token, I am not aware of the level of recommendations that have been made over the years. I do not know whether they were modest or very strong. Therefore, it could be relatively easy for somebody to accept a rap on the knuckles or to say that they will do better, but it might not make a lot of difference. I am not suggesting that that has been your record; far from it. I am simply saying that I have to satisfy myself on that.
359. I accept entirely that there have been a number of changes over the years, but you continually get higher rates of compliance because new measures have been introduced over the years. I firmly believe that we should maximise the degree to which people have redress. I know that you are making the point that you might want to revert the

- thing back into the Assembly for final redress once you have gone through the ombudsman. I have to say that that would frustrate me. By the time you have to go to the ombudsman, you have aged considerably and been greatly frustrated.
360. **Dr Frawley:** Thank you for that endorsement. *[Laughter.]*
361. **Mr A Maskey:** That is by the time that they get to your office, not even by the time that your office would have to deal with it. Someone would have to have got there via an Assembly Member and all the rest. I am working on the basis that, by the time a complaint goes to you and your office, it has already exhausted all the avenues, including local representation and going to the Department or wherever you go to. If someone has not got a result, which is why they end up on your doorstep, why the heck would they want to bring it back to the same people again? I have to say that I am against that.
362. My instincts would tell me that I want to be able to go to point zero. If someone has gone through you and got a result and then there is non-compliance, I want knuckles rapped. There was a withering Public Accounts Committee (PAC) report this morning, and I was delighted to hear it actually. However, will a head roll? Probably not, but clearly a head should roll. I want some mechanism that ultimately deals with all these things maturely and rationally. Hopefully, once someone goes to the Ombudsman's Office, you will make a determination and resolve the case. According to the figures, most of these issues are resolved satisfactorily, which is a good thing. However, in the hopefully very small minority of cases that are not resolved amicably and properly, the buck should stop somewhere, and that has to be the court. I would not want to bring someone back to travail around another Assembly Committee.
363. **Dr Frawley:** I do not want to draw the ire of the judiciary or the Justice Committee, but I think that there are certain delays in getting into the justice system as well. I do not think that the immediacy that Mr Maskey might seek is necessarily possible within the court alternative, but I take his point. Having travelled the journey through a complaints process in the public service, I accept entirely that it can become like a marathon and is torturous for many people. For some to then find themselves in the position of the recommendation not being complied with is very unacceptable. It is a judgement call for the Committee. I can live with either.
364. I am sure that the Committee Clerk will advise you of this, but we did not consult on the extension of this to the ombudsman's jurisdiction when the original document went out. Far be it from me to say, but I am sure that permanent secretaries and Departments would have expected to have been able to articulate a view on it if you decided to go that way. If you want to look at this option, you may also want to reconsider whether we need to speak to any other parties that could argue that they were not consulted about that solution originally.
365. **The Chairperson:** I think that we have discussed this at Committee before. Take somebody who has an issue with planning. After the whole process, it comes to you, and you review it and say that there has been maladministration. The planners might say sorry, but the edifice is still out the back window blocking the sun. There is no compensation or recourse.
366. **Dr Frawley:** I want to say two things. I think that this is a bigger issue than the Office of the Ombudsman, primarily because of the argument that third party appeals are the answer to the real objector issue. That is one that politicians have different views on, whereas I have a very narrow jurisdiction. I am looking at the administrative process that informs the planning decision, which is a very narrow jurisdiction.
367. In some instances, when I find failure in respect of the particular circumstance

- of an individual case, I make a consolatory payment to the person affected. However, you are absolutely right in saying that the expectation of a complainant when that happens is to say, "Knock the building down. That structure is a blight on my life that impacts on my daily quality of life and my family." That is understandable because it is not something that they can walk away from; it is with them forever. I accept entirely that there is a gap between what I offer them and what people expect to happen. Those are intractable issues that I cannot really resolve.
368. **Ms Ruane:** I want to ask about schools. I should also say that I noted your comment about the Craigavon case, which you say went on for six years between 1980 and 1986.
369. **Dr Frawley:** Yes, that was to get it to the Court of Appeal.
370. **Ms Ruane:** The way we deal with that is not to not have that remedy, but it is speedy justice. That is what we are looking at in other levels in order to ensure speedy justice. We have new PPSs. The Assembly has to make sure that that improves.
371. I want to talk to you about schools. As an Assembly Member, I find the number of letters I get about bullying in schools very frustrating. Parents know the impact of bullying. We all have to take bullying extremely seriously. In some cases, I found that schools were brilliant at dealing with it; in others, I found that schools were dreadful. There was no consistency of approach across the board, yet damage is being done to children's lives. I have seen parents who were in tears, and every Assembly Member has probably had a similar experience. I think that, as a society, we need to mature in relation to how we deal with the bullying of children. If that means taking hard decisions, I think that we need to take them. Schools need to know that there are certain things that they have to do, such as implementing anti-bullying strategies. It is grand having the lovely little thing up on the wall saying that this is an anti-bullying school. I just wanted your view on that.
372. I also note that you speculate a little bit on school transport. Again, that is another area where there are big issues, particularly when it comes to special needs children.
373. **Dr Frawley:** I will explain to the Committee, and some of the older members may remember, that one of the great Thatcher reforms — so described by those who supported Thatcher — was the local management of schools initiative, the purpose of which was to give boards of governors a lot more autonomy to manage decisions around the local situation. As a result of that, the management of schools was taken out of the jurisdiction of the ombudsman completely. Therefore, our jurisdiction in schools specifically is very narrow. It relates only to the appointment, say, of a principal where the local education and library board is involved or, in the other sectors, where the Council for Catholic Maintained Schools (CCMS) or the council for integrated schools is involved. It is quite narrow, and, therefore, this opportunity to bring it back into our jurisdiction is something that I would welcome. I think that it offers the potential for the consistency you talk about. For example, if you marry it to another part of the extension of the role of the ombudsman such as that around own initiative investigations, which is also proposed, you could look at an issue such as bullying and the management of and response to it in the round. You could look at how the different sectors or geographies deal with the same issue and why — in the very effective way in which you articulated — there is good practice out there that works extremely well and yet there is an absence of any practice in other places. We could look at how to get best practice across all schools. I would welcome that very much.
374. The second part, transport, is actually a bit of the jurisdiction that is currently with us. School transport is provided by education and library boards. It is becoming increasingly complex. It is



very difficult, primarily because you have a collision of pressure, particularly on local schools in rural communities, with children travelling further and further. Parents get a sense that somewhere is not the right location for their child, and suddenly the transport becomes nearly oppressive in that they have to travel on two or three buses to get to school and back. That is particularly true, as you highlighted, for children with learning disabilities. They can spend hours on buses and have less time in the centre of the school than they have on the bus coming and going while people are left off and so on. So, there are real issues there, and I would not, in any way, have the solution to those problems. However, there is a need for a more systematic examination of those failures, so perceived when they arise. Again, that part of the jurisdiction would be assisted.

375. I have a final point about schools, and then Marie might want to add something. The Committee may want to look at the way in which the different funding streams operate. Some schools are fully funded by the state; others are not fully funded by the state. We have had the debate before with the Committee about following the public pound. The legitimacy of the ombudsman's role is where there is public funding involved. Obviously, if there is a private school, you could question the legitimacy. However, in this situation, we commend the Welsh solution. When the Public Services Ombudsman for Wales gave evidence to you, he indicated that you do not want to be involved. I think that Mr Maskey made the point at the time about small community groups being given £100 or £200 by government, which entitled this office to then use a sledgehammer to crack a nut. In circumstances where over 50% of the running costs of a particular body or activity is sourced from public funds, then the writ of the ombudsman applies and people have the right to the protection of the ombudsman. That is just a little nuance on the schools that you might want to

look at because, as you know, there is different status across different schools.

376. Chairman, with your permission, I will ask Marie to add to that.
377. **Ms Marie Anderson (Northern Ireland Ombudsman's Office):** In respect of consistency, I will highlight a point that is in the briefing paper. The ombudsman's jurisdiction currently has the Department of Education, the Education and Training Inspectorate, the education and library boards, the Council for the Curriculum, Examinations and Assessment (CCEA) and CCMS, but then a huge chunk around the local management of schools is not there. Consistency from the departmental source right through to the delivery is an essential part of the issue — not only consistency among schools and boards of governors in how they apply policy. This is an opportunity to track and to have scrutiny right across the board with regard to education. That is my first point.
378. Secondly, picking up on what Cairíona said about special educational needs, one aspect of our legislation has probably not been brought to the fore previously. Currently, under the ombudsman legislation on both sides of the house Assembly Ombudsman and Commissioner for Complaints if an individual has a right of appeal to a tribunal, which is described as any determining body, and, having exercised that right of review, the individual still feels that he or she has sustained an injustice that remains unremedied, that individual can come back to the ombudsman. If he considers that there is reasonable ground for complaint, he can still look at it. There are a wide range of tribunals within education, dealing with expulsion, admissions and special educational needs. However, if you are a parent and you go there, it stops there. Under the proposals in the new legislation, if you retain the last resort aspect of the remedy that we currently hold, parents and children who remain dissatisfied with the outcome of an appeal tribunal can come back to the ombudsman, and I am thinking specifically of special educational

- needs. That may not have been drawn to the Committee's attention before, and I think that it is important that we draw that out.
379. We have looked at other jurisdictions, and I go back to your special educational needs point. The Local Government Ombudsman in England has a jurisdiction in relation to schools and the local management of schools. Even though there is a tribunal, it retains some scrutiny over special educational needs assessments, where, if you do not go to the assessment, you do not get. That is the aspect of having made an assessment, it is wrong, and you appeal it. The precursor to that is, if you do not assess, we do not have to make a decision in relation to resources. As regards its schools jurisdiction, that is an aspect of the Local Government Ombudsman that we know is an area of complaint and is fertile for investigation and scrutiny. I just wanted to draw out some of those examples.
380. The other area is bullying and harassment, which can be so painful for parents and children, and the consistent application of policies across the piece. The Local Government Ombudsman has told us that it also gets complaints about that and investigates them. I make that point to reassure you, in that the new proposals will give the ombudsman more comprehensive scrutiny across the education sector and individuals more rights of redress and remedy.
381. **The Chairperson:** We wrote to the Minister about that residual referral back to the ombudsman the week before last. We are seeking clarification on that.
382. **Ms Marie Anderson:** You are across that issue. Thank you for that, Chair.
383. **Mr Eastwood:** Thank you both for coming. It is very good to hear that there is such a high level of compliance — 100%, I think. If people were more comfortable having the County Court mechanism in the legislation as a last resort, do you see any downside to that other than that it might not be necessary?
384. **Dr Frawley:** I have a fundamental difficulty with two public bodies being in a court spending public money and contesting against each other. I have a real worry about that. I think that it is hard to defend in any environment, particularly when we are not able to provide fundamental services. The sums of money that are expended are just not defensible. That is the downside that I see. If it is not a circumstance that arises that often, maybe the costs will not be accrued. However, once you go into a courtroom, the costs escalate beyond all recognition. In a 1980s Craigavon sort of circumstance, in which you move to a Court of Appeal after a County Court, the costs are even more significant. There is a cost implication that one would want to be very careful about.
385. Compliance is like anything. I will tempt the Chairman's prejudices and use the sporting metaphor. If one guy on a football pitch challenges the referee and the referee does not deal with it very well, suddenly everyone on the pitch will challenge the referee. I sense that all that you would need are two or three examples of people saying, "I will not facilitate that." Therefore, it might be important to have that recourse in that moment.
386. As you can see, I am a bit schizophrenic about it. On one level, it gives me comfort to know that I can say, "You can either face me or the County Court, and you might find me more amenable." The person might not want to go through the County Court, so just having that option in the armoury may be helpful. However, I do not underestimate the problems that might arise. I am not saying that we should not lead the way, but we would be the only jurisdiction in the UK that has the County Court as the back-up position. However, it may well have merit.
387. **Mr Clarke:** I will follow on from that point. I have not really thought in depth about this County Court aspect, but

- you made a valid point about two public authorities. Can you envisage the opportunity for an individual to take a public authority to court as opposed to it being two public authorities fighting it out?
388. **Dr Frawley:** You are right: it would be the individuals. Ironically, the individuals are least well resourced to do it, whereas the big public bodies are very well resourced to do it. There is an issue there. I assume that, the expectation within the model that would develop would be that, once I had made a finding in favour of an individual, I would support that complainant in going to the County Court. It would be completely iniquitous to have an individual who did not have the means to do anything about it. I would look completely gutless if I made a finding in their favour and then sat on my hands when they said, “I wanted to go to the County Court, but they will not do anything about your recommendation,” and responded by saying, “I am afraid that I am in no position to help you. You have the consolation of my wonderful report, but there is nothing that I can do about it.”
389. **Mr Clarke:** That is where you have two public authorities, and I understand your example. However, suppose someone were coming armed with your report but you did not have the mechanism to go to court on their behalf. Surely the very fact that they have a supportive document should mean something. To be honest, I like the big stick approach to this issue. I would hope that the fear of knowing that I had a good report from the ombudsman that suggested that there had been maladministration or whatever in the Department would be enough for it to settle the case, regardless of whether or not I have the means to take them to court. If you remove that opportunity, you have nothing to beat the Department with.
390. **Ms Marie Anderson:** There is an excellent article on the County Court enforcement mechanism by Ciaran White, who is a law lecturer at the University of Ulster. There was a rash of cases in the late 1980s and early 1990s. The experience was that, once the County Court mechanism was initiated, the case was settled. I suppose that the Court of Appeal avenue in 1986 was a one-off. However, if you have the ombudsman’s report, that takes you a long way.
391. **Dr Frawley:** That is fair, and it is fair to say that, in the Craigavon case, the judge used the ombudsman’s report as his basic position to say that he found the position of the council intolerable. The council felt that it could resist and refused to comply with his direction, and that is when the case went to the Court of Appeal and escalated into a huge thing. As a result, it stands as a monument to most public bodies, who do not want to go near a County Court. That confirms the commentary that we have had from members, which is that it just sits there in the background and does not get invoked. It should not have to be invoked, but if it needs to be invoked, then it is there as the backstop for individuals, and it is a protection for the individuals.
392. **The Chairperson:** We have had that point previously. I think that students’ unions made the point that they would like the ombudsman brought in. Knowing that it was there would change the dynamic. Tom, you used the expression, “You can go to the County Court or you can deal with me”. If we extended the power across everything for NIPSO, does that change the dynamic of how it operates? Would it be judicial from the very start?
393. **Dr Frawley:** The ombudsman’s writ would still run. You cannot go until the ombudsman’s investigation is finished. What you go with is the finding of the ombudsman that says that that organisation must do a, b or c, or make a consolatory payment of whatever the sum is, and they refuse to do that. That is what goes to the court. The complainant says, “I have a finding from the ombudsman, supported by a report in favour of me, and body A is refusing to do anything about it”. That is the fundamental of the court. He is looking at the case that I have made.

- Technically, I suppose, he could find that Frawley's case is not very well made and find in favour of the body. I suppose that that is always the option in courts. However, that is not the impression, and I hope that they are robust enough to take whatever challenge comes. That is the whole point.
394. **Ms Marie Anderson:** In terms of whether you deal with the ombudsman, the question of unenforceability or non-compliance does come back to the ombudsman because it is in his gift or at his discretion whether or not to bring a special report to the Assembly. The ombudsman's decision is whether he goes to the Assembly with the case and does a separate report that we call a special report. That special report is a report on the failure of the body concerned to meet the recommendations.
395. **The Chairperson:** If you brought a special report to this Committee, what would our broad options be?
396. **Dr Frawley:** There are two things that I would say. First, I would not underestimate, and I am sure that you do not, the authority of these Committees and their effect on officials. Some people will disagree, but I think that most public officials find it an incredibly uncomfortable and challenging environment. Secondly, to be defending a decision where you have refused to accept a rational argument for a particular outcome is not a position where an accounting officer should be. Part of the commentary you get, especially from PAC reports, is this: "when is somebody going to do something about these things?" If an official arrives here having refused to implement a particular recommendation, the vulnerability of that official is hugely increased as regards career, public perception, etc. You know the coverage that some of those issues get. That is my view.
397. The other side of that is that the permanent secretary is the accounting officer, so, in a way, he is the authority. Again, you have to recognise that a political dynamic may apply in some of these situations because a Minister could have a particular view, but it will be very much the permanent secretary who is involved. However, there is that other complication once you bring it into a Committee forum. I am not unaware of the potential complexity of that either.
398. **Ms Marie Anderson:** I think that it is a bit like the County Court, in that the threat of a special report may be enough. Many bodies would not want to be the first to come before a Committee like this with a special report from the ombudsman. Jill McIvor used a powerful example in her response to the consultation document. She explains:
- "I had difficulties with the Department responsible for the Child Support Agency, now abolished, which insisted that it could not decide on a certain matter until it was known 'what London would do'."*
399. She describes her experience:
- "This was unacceptable. I had found in favour of two mothers each trying to bring up a child with no financial support from the absent fathers. I brought this to the attention of the Head of the Civil Service and said I intended to make a special report ... The matter was satisfactorily settled."*
400. So that is the power of the special report. Sometimes, the threat is enough.
401. **The Chairperson:** If I come as an individual to the Commissioner for Complaints, knowing that the endgame may be in court, do I start from the very beginning with legal advice and representation, which I would not necessarily do with the ombudsman? Are there two separate processes?
402. **Dr Frawley:** No; they are linked, Chairman. The process will start with the ombudsman. The ombudsman will follow the process to the conclusion, arrive at a series of findings and, based on that, make a series of recommendations. Those recommendations may involve, as I say, changing systems, apologising, making payments in lieu of being unable to put the person back in the position they were in originally. It is only at that point that the body concerned

- could turn round and say, “I am not implementing those” or “I am only implementing part of those”. At that point, if you retain the County Court, once they refuse to do it — obviously, I would continue to be involved — and the point was reached where I was satisfied that they were not going to do it, then the complainant would have the right to take my report and say, “The ombudsman has given me this report; he has reached these conclusions and made these recommendations; and x or y Department is refusing to do anything about it”. Then, the judgement would be made by the County Court as to what action he/she would take in that circumstance.
403. **Mr A Maskey:** Just a final point. Thanks, Tom and Marie. I think that the high level of compliance that you have outlined is good news. By the time somebody gets to your office, they have gone through a fairly difficult route. I have nominated people in the past, as I am sure that everybody else has done — or near enough — and you do not often get people coming back to you saying that they went through that and it got them nowhere. There seems to be a reasonable satisfaction rate, and I am sure that you are pleased to hear that. That is the good news.
404. The kind of threat that agencies should face if they do not comply with your report is that they could be for the high jump — the High Court. Or, they could be reported to the Assembly. Ultimately, they do not want to go there. That is proved by the fact that very few people have had to force it to go there. The Craigavon thing was a landmark because there has been no example like that since, and that is a good thing. People basically think, “Hold on a wee second; wind your neck in; you cannot go that far; you are going to go for the chop; so forget about it”. So that has modified people’s behaviour.
405. I think that the mechanism needs to be retained. In fact, I would argue that, if it goes through the ombudsman and he makes a recommendation, on the rare occasion that the agency or Department does not respond appropriately, the claimant has the right to go back. It is not to go back just to have the case heard again; it is really to chastise the offending agency. I think that we should then be dealing with a report from the ombudsman. Why does somebody from a public agency or Department force it all the way to the ombudsman and end up in court? It is obviously an extremely rare occurrence. I think that the Assembly would have a right to ask, “Where is that person? What did you do?” And to say, “Sorry, you do not belong here”. That is the route that I would go down.
406. I am encouraged by the level of compliance and the very few complaints that people make. I cannot think of anyone who has said that they went to the ombudsman and got nowhere. In my view, most people want a simple remedy, and most of the remedies are relatively simple. I am happy enough with what I have heard today. The ultimate backstop is being able to go to court — Trevor used the phrase “the big stick”. If somebody knows that this can go all the way, they are more likely to respond positively.
407. **Ms Ruane:** Especially Departments.
408. **The Chairperson:** Sorry, Tom, to be thick about this. If it is the Commissioner for Complaints, and I am not the individual but the public body, do I not come in armed with all the solicitors, barristers and legal advice in the world?
409. **Dr Frawley:** To be fair, I have to say that they do not, at this point. We have a very co-operative environment. Most public and civil servants today want to avoid legalising the issues. They know that, when they are dealing with me, there is a very open opportunity to clarify their positions. I invest great energy — some complainants would say too much energy — offering them the opportunity to look at drafts and to test for factual accuracy. I always do that; I think that that is very important. I will offer them an informal hearing, particularly if I am going to make a finding against them, so that they can come and say to me,

- “I think that you got that wrong,” “You did not understand this,” or whatever, and I will listen to that. Ultimately, I will make a judgement. At that point, I have found — again, Mr Maskey puts it well — a very high level of compliance. They accept it. I am not saying that they are delighted. I am not saying that they are pleased.
410. I say this as a final comment: we have noted that the Departments in England are now required, as part of their final accounts, to include a statement about how many complaints about their Department have gone to the Parliamentary Ombudsman, the outcome of those complaints and the action taken as result of those complaints. It takes you into a world where this is no longer something that happens under cover of darkness or privately. You now have to stand up and be accountable, not just for the financial performance of your system but for how you are performing administratively, managerially and in relation to the users of your service.
411. **Ms Marie Anderson:** Recently, Tom and I had an excellent quote from the Lord Chief Justice. An individual at the beginning of the process has to decide whether to go to court and have a legal remedy, which means that the lawyers get involved, or to go to the ombudsman. There is a choice. There is a statutory bar in the ombudsman’s legislation that bars him from looking at cases where a legal remedy is available unless it is not reasonable to expect a complainant, perhaps because of resources or the stress of court, to go to court. There is a complementarity between the roles of the courts and the ombudsman that the Lord Chief Justice has recognised on more than one occasion. He says that we are like the emergency services. People ask for the fire service, an ambulance or the police. In terms of remedy, it is whether you go to court, to the ombudsman or to a tribunal. There is a divergence at the beginning of our process. If you have a legal case, you have a legal route. If it is reasonable to go to the ombudsman, you go to the ombudsman.
412. **Dr Frawley:** In all my cases, particularly in health, one of the first questions I will ask is this: “Have you taken legal advice and do you intend to pursue this?” If someone says yes, I will then say, “I can offer you no help or support”. Secondly, in a belt-and-braces approach, there is no way in which someone can have my report and then take it to a court. It is completely excluded. They have chosen a route: it is not the adversarial courtroom; it is the inquisitorial ombudsman. That is the model. It sits well with Mr Maskey’s point.
413. Increasingly, because of their involvement and the insights that they develop from layman’s reports — some of the language may be a bit labyrinthine and not as accessible as it should be, but, increasingly, we are making it accessible — in areas such as health, people can get a much better sense of what happened to their mother or their daughter or why an elderly person in a nursing home was not being cared for properly or whatever it may be. It is an appropriate recourse for many people who do not want tens of thousands of pounds. They just want to understand what happened and what went wrong, because otherwise no one listens to them or tells them what went wrong. The model works well in that one-to-one engagement with people, as distinct from the inevitably impersonal — understandably so — courtroom where people feel that the system has taken over and they have very little influence over either the direction of travel or the conclusion.
414. **The Chairperson:** Tom and Marie, thank you both very much indeed. It has been very useful. As you say, we have a judgement call to make. We thought that it was between three options. You have made it clear that there is a fourth. It is better to find that out now, obviously, than later on.
415. **Dr Frawley:** Thank you, Chairman. Thank you for your patience with us.

## 20 June 2012

### Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)  
 Mr Chris Lyttle (Deputy Chairperson)  
 Mr Thomas Buchanan  
 Mr Trevor Clarke  
 Mr Colum Eastwood  
 Mr William Humphrey  
 Mr Danny Kinahan  
 Mr Alex Maskey  
 Mr Francie Molloy  
 Mr George Robinson  
 Ms Caitríona Ruane

416. **The Chairperson:** We will move on to our first substantive bit of business. Last week, we agreed to review the policy decisions so far on the proposed ombudsman legislation, with a view to agreeing the policy instructions to the draftsperson and producing a draft Bill for the Committee to consider.
417. Members will have a table that highlights the decisions that the Committee has made so far. If you are content, the most sensible thing to do is to run through them and double-check that we are content and to address outstanding issues. On the first page, there are three points. Does anybody want to raise anything or is everyone happy with those? The Committee Clerk will also outline some issues that we need to discuss. Points 1, 2 and 3 relate to general, appointment and removal of the ombudsman and duration of appointment. Are members content with the right hand column?

*Members indicated assent.*

418. **The Chairperson:** Point 4 on page 2 relates to the ineligibility of certain persons for appointments. It is a summary of what we agreed last week. The three time periods for disqualification are before appointment, while holding the post and after leaving office. In other words, MPs, MLAs, listed authorities, members, staff and

officers of listed authorities and those disqualified from election as MLAs will be disqualified from appointment unless they resign before taking up appointment.

419. **Ms Ruane:** Where do MEPs and TDs come in, given the North/South connection? I missed last week's session, so maybe that was discussed. For example, you could have someone who has worked in bodies in —
420. **The Chairperson:** The second paragraph, which relates to disqualifications while holding office, covers any other paid employment. There is a bit of overlap between the prior and serving categories. However, I take your point. We are specifically referencing MPs and MLAs but not other elected representatives.
421. **Mr Molloy:** You could add in "other elected office".
422. **Ms Ruane:** Does that include councillors?
423. **Mr Humphrey:** You would have to be more specific than that because councillors are paid now, but it is not a full-time position. Therefore, if you were going to use "elected office", it would have to include councillors. In relation to TDs, if someone in the Republic wanted to apply for the job and secured it, the difficulty would be that that is another jurisdiction, so you would have to tie in with whatever applies there.
424. **The Committee Clerk:** Members, staff and officers of listed authorities would include local councillors in that category. I can see the point in relation to MEPs.
425. **The Chairperson:** Shall we add MEPs?

*Members indicated assent.*

426. **The Chairperson:** I accept that you might want to come back on that, Caitríona. The second paragraph states

- that persons holding office would be disqualified from appointment to:
- “any of the above positions; family health provider,”*
427. and the key point is:
- “shall not hold any other office or employment in respect of which remuneration or expenses are payable.”*
428. That would bring in the private sector as well. Would that knock out somebody who was simply a director of a company?
429. **Mr Humphrey:** A non-executive director?
430. **The Chairperson:** Would it knock out a director who does not do any work but who maybe has an investment in a company and holds some shares? Is that too restrictive?
431. **The Committee Clerk:** We could raise that with the draftsman. I do not think that it is remuneration, necessarily, but more the sense of pay.
432. **Mr Humphrey:** Is it pay, Alyn? If someone was, for example, on a board, and getting £5,000 or £10,000 a year, that is still remuneration.
433. **The Chairperson:** I think William is right. If you are getting a dividend, that is remuneration.
434. **The Committee Clerk:** It is something we could ask the draftsman to address.
435. **The Chairperson:** How are you now, Caitríona? Do you accept the two together?
436. **Ms Ruane:** In relation to what?
437. **The Chairperson:** TDs.
438. **Ms Ruane:** I just think that you would be better naming them. It would be clearer. We had the ombudsmen here from Scotland, Wales, the South and the North. We have a North/South Ministerial Council. I think we are better being clear.
439. **Mr Humphrey:** But we do not have MSPs. We do not have Assembly Members.
440. **Ms Ruane:** No, but MSPs are a bit different. MSPs are from Wales. In Wales, they have MPs —
441. **The Chairperson:** Scotland.
442. **Ms Ruane:** Sorry, Scotland. Gabh mo leithscéal. They are from Scotland, where they would be MPs and MSPs.
443. **Mr Humphrey:** I do not see how they are different. They are from a different legislature from the House of Commons, which is what we have listed here in the Assembly. The point I am making is that, if you specify TDs, you need to be absolutely in line with what the Republic says on the appointment of the ombudsman. The point that the Chair is making is that the point about remuneration covers any elected post.
444. **Ms Ruane:** I am not going to die in a ditch over it. I just think that it would be better if it was clear.
445. **The Chairperson:** I think William's point is reasonable; you would have to put in the Welsh Assembly and Scottish Parliament. Then you would get into American Congressmen and Senators.
446. **Mr G Robinson:** It opens the flood gates.
447. **The Chairperson:** It is covered under the second category. We are happy enough.
448. Finally, we have the third category, which is what happens after the ombudsman leaves office. The idea is to put in a period in which you could not accuse the office holder of being biased or influenced in their decisions in their latter years because they knew they were going on to their next employment. It states:
- “any office which is a listed authority, membership of a listed authority, employment/office holder/staff member/ Appointment to a paid office by a listed authority”.*
449. The time period we are proposing would be the end of the financial year in which the ombudsman was to leave office plus one full financial year. So, effectively, that could be 13 to 24 months.



450. **Mr A Maskey:** It says that the:  
*“NIPSO leaving office may not, without the approval of the [Assembly].”*
451. I know what that means, having been involved in the discussion, but I thought that we took the view that it was a given that they cannot take up those positions. I thought that they may appeal to the Assembly.
452. **The Chairperson:** So, you would like it drafted to say that they “may not be appointed”. Then, as a bottom line: “An appeal may be submitted.”
453. **Mr A Maskey:** To the employer.
454. **Ms Ruane:** Otherwise the approval becomes part of the terms and conditions debate.
455. **The Chairperson:** So, it is in exceptional circumstances.
456. **The Committee Clerk:** I probably lifted that from the Scottish legislation. It has been through whatever process they had, with draftsmen and so on. However, I can certainly make sure that the point is made.
457. **The Chairperson:** I think that would be clearer. It is not a standard process; it is an exceptional process.
458. **Mr A Maskey:** That is right. What you are really doing is providing a right to appeal for the former NIPSO.
459. **The Chairperson:** I am going to a body, which is a listed body, but one with which I have never had any dealings or ruled on, so, this should not apply. There is no probity issue.
460. **Mr A Maskey:** It is exceptional rather than routine.
461. **The Chairperson:** Next, are points 5 and 6: salary and pension, and appointment of staff expenses and the transfer of property and/or staff. The one issue that the Clerk and I discussed, which is highlighted, is:  
*“budget to be submitted to Assembly (or relevant Assembly Committee).”*
462. The Comptroller and Auditor General, who is like the other half of the ombudsman, goes to the Audit Committee. Are we content?
463. **Ms Ruane:** What are the pros and cons of going to the Audit Committee? I suppose that it has experience of audits and finance. Does that give the Assembly more protection?
464. **The Committee Clerk:** Yes. It will be looking at the Assembly’s finances.
465. **Ms Ruane:** What is your advice? Are we better to go to the Audit Committee?
466. **The Chairperson:** I think that you are pushing the Clerk a wee bit there, Caitríona.
467. **The Committee Clerk:** It works for the Comptroller and Auditor General (C&AG) as well.
468. **The Chairperson:** A couple of options are coming up.
469. **The Chairperson:** Points 7, 8 and 9 are on the next page. Point 7 is about bodies subject to investigation by the proposed Northern Ireland Public Services Ombudsman (NIPSO). It states that the Bill should provide for bodies subject to NIPSO jurisdiction to be listed in a schedule, with either the Office of the First Minister and deputy First Minister (OFMDFM) or the Department of Finance and Personnel (DFP) keeping that up to date. Does anybody have any strong views on that one way or the other?
470. **Mr A Maskey:** Does all of that not eventually come back to this Committee? We will be scrutinising the role of NIPSO. That is why we were saying that somebody else should do the recruitment.
471. **The Chairperson:** We are talking about this long schedule that includes education and library boards —
472. **Mr A Maskey:** I understand that. I just think that it would be tidier if OFMDFM did that. If you give the responsibility to DFP, you are going to have the Finance and Personnel Committee saying that it

- should be looking at it, and that would confuse the issue.
473. **The Chairperson:** This is about the person who holds the list and keeps it up to date.
474. **Mr A Maskey:** Should that not be OFMDFM? Again, there is no principle for this, but I would have thought that the responsibility should be given to OFMDFM because this Committee will be dealing with this on an ongoing basis. It would make it more streamlined.
475. **The Chairperson:** It is a case of six of one, half a dozen of the other. Either OFMDFM keeps the list up to date or DFP does so on our behalf.
476. **The Committee Clerk:** I was thinking of who is best placed to know when new bodies come into existence or when other ones cease to exist. Given that it involves finances, DFP will almost certainly have to be informed when either happens and would therefore be in a position to pull together the information for the Assembly and keep the list up to date.
477. **Ms Ruane:** I think that we should bring it under the remit of this Committee. Surely we could write to all the Departments saying we want to be kept updated? This is overarching.
478. **The Chairperson:** I do not really see this as being a Committee function. It is just a list of the bodies concerned. When the Commission for Victims and Survivors was created, somebody had the responsibility of making sure that it was put on the list.
479. **Mr Molloy:** Given that this Committee will be dealing with it, the responsibility should be given to OFMDFM. If it is given to DFP, another Committee will be involved in scrutinising the role of the ombudsman. I think that it would be tidier if everything were done by one Committee.
480. **Mr Humphrey:** I think that this Committee should be the scrutiny Committee. Earlier, we talked about the appointment of staff and expenses and about the fact that the Audit Committee will come into play, which, given its role and remit, has a link to DFP. So, can we not get to a position where this Committee provides the scrutiny function and the Finance and Personnel Committee deals with the areas that you are talking about?
481. **The Chairperson:** This is not about scrutiny. It is about who compiles the up-to-date list of public bodies that will come under the purview of NIPSO. As the Clerk says, any body would have two key documents: the management statement and the financial memorandum. The financial memorandum would always involve the listed body having a relationship with DFP, or it should do in theory.
482. **The Committee Clerk:** Or it is parent Department.
483. **The Chairperson:** So, DFP is in a position to know every listed body and every change to the scheduled list of bodies. This does not impact our right to scrutinise. It just keeps us up to date. On that basis, are we content to go with DFP?
- Members indicated assent.*
484. **The Chairperson:** The other red line in this box is:  
  
*"Bill should provide for schools to be included within the NIPSO jurisdiction – subject to clarification of the Minister of Education's view".*
485. If you remember, we got a letter, and it was not entirely clear whether he was suggesting that they would run appeals processes and that would be the end of the matter, or whether he was suggesting that NIPSO would not be involved until all its internal ministry processes were run. We still have not —
486. **Mr A Maskey:** That is standard anyway.
487. **The Chairperson:** Yes, if that is the case. We are simply waiting for a reply.
488. Point 8 is about matters subject to investigation.

489. Are members content?

*Members indicated assent.*

490. **The Chairperson:** Point 9 is on the investigation of professional/clinical judgments in the area of health and social care.

491. Are members content?

*Members indicated assent.*

492. **The Chairperson:** Point 10 is about complaints mechanisms, and Point 11 is about exhausting other remedies.

493. Are members content?

*Members indicated assent.*

494. **The Chairperson:** Point 12 sets out the time limit for complaints; point 13 is on initiating investigations; and 14 is on the purposes of investigation.

495. Are members content?

*Members indicated assent.*

496. **The Chairperson:** Points 15, 16 and 17 deal with investigation procedures, evidence, and obstruction and contempt, and point 18 is about reports on investigations.

497. Are members content?

*Members indicated assent.*

498. **The Chairperson:** Point 19 is about the application for compensation by a complainant, and point 20 is the other side of the coin — application for relief by Commissioner for Complaints.

499. Are members content?

*Members indicated assent.*

500. **The Chairperson:** Point 21 is about special reports to the Assembly. It states:

*“Bill should provide for the NIPSO to lay reports before the Assembly – as currently provided for in the Ombudsman (Northern Ireland) Order 1996 - including the ability for the NIPSO to lay a special report where the Ombudsman is not satisfied with a body’s response to his or her recommendations for redress.*

*Bill should provide that the relevant Assembly Committee may request to be briefed on any report laid or other matter.”*

501. This is the area for agreement. The Committee will wish to consider which Committee the ombudsman should report to, and there are a number of options that members might want to consider: a new public administration Committee; a public accounts and administration Committee, which would consider reports from both the Comptroller and Auditor General and the NIPSO — that is PAC would become PAAC; and the Statutory Committee with responsibility for the Department under which the listed body sits. There are at least three options.

502. **Mr A Maskey:** Are we not working on the presumption that this is the Committee that scrutinises the NIPSO?

503. **Ms Ruane:** Three is not an option.

504. **Mr A Maskey:** Why does it not just come here?

505. **The Chairperson:** It could do.

506. **Mr A Maskey:** You could set up a public accounts and administration Committee, but that is going to be another Committee in the Assembly. I do not know whether there is the stomach, or even the need, for that.

507. **The Chairperson:** Can we agree that we can knock that out now? We do not want another Committee.

*Members indicated assent.*

508. **The Chairperson:** Right, so that is gone.

509. **Mr A Maskey:** We could just bring it in here.

510. **Ms Ruane:** So, it is none of those options. We need a fourth one.

511. **The Chairperson:** I have no difficulty with us having that overall scrutiny of the work of the NIPSO. However, if the NIPSO is laying a report about health service providers, would it not be good governance for the NIPSO to also go to the Committee for Health, Social Services and Public Safety?

512. **Ms Ruane:** I read that wrong. I thought:  
*“under which the listed body sits;”*
513. meant that it went under the Department of Finance and Personnel. The NIPSO office will be listed under DFP, but that is not what we are talking about here.
514. **The Chairperson:** No.
515. **Ms Ruane:** OK. That is my mistake.
516. **The Chairperson:** If the ombudsman were to take an investigation into a health service provider, we would want to have the right to scrutinise NIPSO on that report as we are the chief scrutiny body. Clerk, is that correct?
517. **The Committee Clerk:** Yes.
518. **The Chairperson:** However, it would also make sense for the Health Committee to be able to go into the nitty-gritty of that report. The same would apply to the Education Committee for reports on educational matters, etc.
519. **Ms Ruane:** Where is this Committee in that? I do not see the Committee for the Office of the First Minister and deputy First Minister. The document states:  
*“Committee will wish to consider which Committee the Ombudsman should report to”*  
 .
520. **The Chairperson:** That refers to special reports.
521. **Mr Eastwood:** We will not consider every report. Am I correct in saying that our role will be to have oversight of the ombudsman’s office generally rather than of every single report that it lays?
522. **The Chairperson:** Caitríona, we will bring in the ombudsman every six to 12 months and ask how its work is going and whether a particular area or Department, such as the Department of Education or the Department of Health, is listed. That section of the document deals with specific reports into issues between complainants and listed bodies. If that report was about health or education, would it not be better if it went to the relevant Committee rather than to us?
523. **Mr Molloy:** How does the structure work at the moment? Surely if any other Committee is looking at something that this Committee has responsibility for, it will come to this Committee. Why change the rules in this instance? There is already a procedure in place that deals with the role of Committees.
524. **The Chairperson:** If the ombudsman were to lay a special report that applied to OFMDFM, this Committee would be interested in the specifics of that report. However, if that report was about health, would you not want Members who specialise in that area and who sit on the Health Committee to have the opportunity to scrutinise it?
525. **The Committee Clerk:** With the Chair’s permission, this is a drafting process. The Assembly will take a view on which Committee it goes to. If it initially comes to this Committee, this Committee or the scrutiny Committee could decide whether it was an appropriate matter for another Committee to scrutinise in detail.
526. There is a parallel with the Public Accounts Committee. That Committee looks at reports from the C&AG before the relevant Statutory Committees get a chance to look at them. This Committee or the oversight Committee could decide whether to look at the report or send it to the relevant Committee. That is one option.
527. **Ms Ruane:** I think that is what we should do.
528. **Mr Molloy:** That is the way that it works at the minute.
529. **The Chairperson:** Are members agreed?  
*Members indicated assent.*
530. **The Chairperson:** Members, there are three points on the next page. Point 22 is about a Minister/member of the Executive making a statement with regard to public interest. Point 23 deals with legal privilege, and point 24 is on the duplication of investigation.

531. **Mr A Maskey:** Point 22 is a change. The previous position was that the Secretary of the State or the head of a Department gave notice to the ombudsman, but that responsibility will now be with the Assembly. I think that that responsibility should go to OFMDFM. It will be in our bailiwick. Until now, it has been the responsibility of the Secretary of State, but, as a result of the legislation, that will no longer be the case.
532. **Mr Clarke:** I take the point that you made. However, there is a tie-in, because the document refers to “NI or the UK” and to something that is: *“otherwise contrary to the public interest.”*
533. Therefore, that means that there is a tie-in to the UK as well. If you break that link, you cannot fix it.
534. **Mr A Maskey:** No area of jurisdiction under the NIPSO relates to the NIO.
535. **Mr Eastwood:** Does that relate to security issues?
536. **Ms Ruane:** No.
537. **The Chairperson:** That is an interesting point. None of the listed bodies is under the control of the Northern Ireland Office.
538. **Mr A Maskey:** The NIPSO has no role there. So, why would we have a role?
539. **Mr Humphrey:** We need clarification on that, Chairman.
540. **The Chairperson:** We need to seek clarification on that. If that is right, and the Secretary of State has no other role, why should they have this role?
541. **Ms Ruane:** You are cutting out OFMDFM. It is not even named there.
542. **The Chairperson:** It is there as one of the Departments. It says, “a head of department”. It does not have the primacy role that you might prefer it to have, but it is included.
543. **Ms Ruane:** I have never heard them called “head of department” before.
544. **The Committee Clerk:** It is “Minister”, effectively.
545. **Ms Ruane:** That generally refers to Departments such as Education or Health, for example.
546. **The Chairperson:** The question is: are there any circumstances under which the Secretary of State would have an input?
547. **Mr Lyttle:** The current position says that such circumstances might be in the interests of the safety or security of Northern Ireland or the UK.
548. **Mr A Maskey:** I want more clarity on what this “public interest” is about because, in the past, in our experience, that has been abused. Is it related to what is called security? Every other jurisdiction has that type of facility, and it is not all about “security”. If there is a problem in the health service or the Education Department, what has that got to do with national security? There might be some issues, but I want an understanding of what they may be. There is a legal case history. I certainly will not buy in to something that gives somebody carte blanche, under the heading of national security, to block an inquiry.
549. **The Chairperson:** If we remove it, Alex, the ombudsman will say, “I want to see those papers” and will be told, “No, you cannot see those papers”.
550. **Mr A Maskey:** I understand that, but some people might labour under the view that this is about what they call national security. I do not know too many examples of where a problem in the Health Department has anything at all to do with national security. So, what other reasons might there be to issue a public safety certificate? That is provided for in all the other jurisdictions on these islands, and it might be appropriate to have such a measure. However, I want a better understanding of that the problems might be, and there is a legal case history on that.
551. **The Committee Clerk:** I am not aware of any cases involving the ombudsman

- where that has been exercised. It is my recollection, from speaking to the ombudsman's office, that it has never had notice of that type. The power is there as a fallback so that information can be provided to the ombudsman and it can inform the decision-making process. It has not had a notice, but it could get a notice saying that it can look at this and it can inform your decision but you do not disclose it in your written decision to the parties. The ombudsman would be fairly confidential and discreet with the written decision.
552. **Mr A Maskey:** I appreciate that, and that is why I raised it earlier. Given the history of the ombudsman and the Commissioner for Complaints thus far, I do not expect there to be many, if any, problems, especially since NIPSO, in this legislation, does not have jurisdiction over any NIO-related activity. All I am saying is that I want some instances where it might be relevant.
553. **The Chairperson:** We discussed that last month, Alex.
554. **Ms Ruane:** We did, and, at the time, we raised issues. OFMDFM should be in there, because this was obviously written before the devolution of policing and justice powers. It is not just about policing or justice issues. As Alex said, it is much broader.
555. **The Chairperson:** The right-hand column is post-devolution of policing and justice powers.
556. **Ms Ruane:** I know that, but we have just taken it the way it was in the past, with the Secretary of State.
557. **The Chairperson:** Are we all happy to seek clarification on whether the Secretary of State has a role anymore?
558. **Ms Ruane:** I think we need clarification on more than whether the Secretary of State has a role. It needs to be broader. What we need to know is the pros and cons of listing OFMDFM. It is not just a simple thing about the words "Secretary of State".
559. **Mr Eastwood:** I think it is an even broader issue than that. It is about the definition of "public interest" and maybe some examples. Whoever is denying things on the basis of public interest, we would like to know what the parameters of that are.
560. **The Chairperson:** I think that that is really difficult, Colum, because there is a big public debate about the definition of public interest. Somebody has to make a judgement call and say that, in the public interest, you may see that document, but you may not disclose its contents.
561. **Mr Eastwood:** Yes, but there has to be a reason why it is the NIO rather than the Justice Minister or OFMDFM.
562. **The Chairperson:** I think that we have all agreed that we will seek clarification as to whether the Secretary of State needs to be listed. So that is one issue. Caitríona's second issue is why OFMDFM is not specified here. Yet the counterargument is that the wording includes "head of department", which would include OFMDFM and all the others.
563. **Ms Ruane:** As to your first point, I am not sure that we have all agreed that. What exact words did you use there?
564. **The Chairperson:** You were seeking clarification as to why the Secretary of State needs to be named here as having this right, because the suspicion is that he has no jurisdiction over any listed body.
565. **Ms Ruane:** Yes.
566. **The Committee Clerk:** The corollary of that is that the NIPSO would not then have the power that he or she has to require documents from listed bodies. He would not have power to require documents from the Secretary of State. I imagine that that would be the corollary of the Secretary of State not having responsibility for listed bodies.
567. **Ms Ruane:** It is not the Secretary of State that will be asking. It is the Minister.

568. **The Chairperson:** Can the Committee Clerk seek clarification of that?
569. **Mr Humphrey:** Not every power exercised in Northern Ireland is devolved to this Assembly. You have to have the Secretary of State listed here.
570. **Mr A Maskey:** If the NIPSO has no bailiwick or jurisdiction over something —
571. **Mr Humphrey:** It may be interlinked. For example, it may be something to do with the Department of Justice. That Department has no responsibility for security. Obviously, that still resides with the Secretary of State. So there may be a requirement for the Secretary of State and the Northern Ireland Office to be consulted on it. It does not take away from anything.
- “The current position in Northern Ireland is that the Secretary of State or a head of department”*
572. Alyn clarified “head of department” as being a devolved Minister. I do not think that that takes anything away from the Assembly.
573. **Mr Molloy:** I think that the listing of the Secretary of State in this belongs to the era before devolution. We now talk very clearly about the heads of Departments being the Ministers responsible. So, “head of department” is a phrase that belongs to the direct rule era.
574. **Mr Humphrey:** Then you just put “Minister”.
575. **The Chairperson:** Can we say that we are agreed to take out “head of department” and put in “Minister”?
576. **Ms Ruane:** No. I think that we need clarification. That could read as the current position. What we are saying is that we may want to change that.
577. **The Chairperson:** That is what I am asking you. Do you want the word “Minister” to replace the words “head of department”?
578. **Mr Eastwood:** I would be comfortable if we did that and just sought some clarification around the Secretary of State’s position in this, when it would arise and why it would arise. It may just be simple enough, but it is there because, as William said, there are some reserved matters.
579. **Mr Kinahan:** Just to go back to what was said about reserved matters, we should have more clarity on what the relevant reserved matters are, and then we can look at the problems that come with that.
580. **Ms Ruane:** We are agreed to get clarification. Can we have that second paragraph written in red, because we have not agreed to it yet?
581. **The Chairperson:** You want the sentence:
- “The Committee considered legal advice”*
582. to be in red?
583. **Ms Ruane:** Or maybe something at the end of it, to the effect that we will return to this and take a decision based on the new information. We need a red column there.
584. **The Chairperson:** So, we have to return to point 22.
585. Let us move on to point 23, which is about legal privilege.
- “The current position ...is that legal privilege cannot prevent the Ombudsman having access to papers.”*
586. That approach could be affected by the decision to extend the County Court enforcement mechanism to all bodies, because public bodies within the Commissioner for Complaints’ jurisdiction are currently entitled to claim privilege in respect of their legal advice and do not have to disclose it. If we extend the enforcement mechanism, it may mean that all public bodies within NIPSO jurisdiction would have the same legal entitlement not to declare their legal advice. OK?
- Members indicated assent.*
587. **The Chairperson:** Point 24 deals with duplication of investigation.

*Members indicated assent.*

588. **The Chairperson:** Point 25 deals with disclosure of information, information sharing and co-operation. Are you all content?

*Members indicated assent.*

589. **The Chairperson:** Point 26 deals with the financial accountability of the ombudsman.

*Members indicated assent.*

590. **The Chairperson:** Finally, point 27 deals with the public procurement role of the ombudsman, and point 28 deals with the requirement to provide facilities.

*Members indicated assent.*

591. **Mr Clarke:** Can we go back to point 23? I am just curious. I apologise for being late, and maybe you have covered the section about the County Court. From my reading of that, are we not tying our hands by extending the enforcement mechanism to the other bodies coming under that jurisdiction not to declare their legal advice? We are tying the ombudsman's hands. Some of the legal advice is useful for his investigation, but, if we apply that rule, my reading of it is that he is not entitled to see that. It could actually make it more difficult for him to come to a determination about how a Department arrived at a decision.

592. **The Chairperson:** My understanding is that we did discuss that, and one of the decisions that we made was to accept that we were putting it all into a more legalistic and adversarial framework.

593. **Mr A Maskey:** Potentially, but the evidence that we received was that it is actually rarely used. We had a good discussion about it, and part of our conclusion was that there has been no negative impact on any of the investigations that have been carried out so far. That is the evidence that we were given.

594. **Mr Clarke:** Yes, to take it to the next stage, but, if you apply that opportunity — which is what I thought we were agreeing — that means that, from the

outset, as part of the investigation, some of the Departments could withhold their legal advice in the knowledge that there is a possibility that someone could take a case. So, we are locked in.

595. **Mr A Maskey:** I think the problem that people were concerned about was that they would move it into full litigation. All I am saying is that the evidence that we were given was that that has not been the case. In practice, it has not happened that way at all. It has not forced people into court. It has not posed any problems for the Commissioner for Complaints. I thought that we were told that most people are actually very co-operative with the ombudsman's office and the Commissioner for Complaints, and that it rarely goes to court. Remember, we were worried that there would be a lot of money involved, but that has proved not to be the case.

596. **Mr Clarke:** Were we going to include the County Court part, which we do not have at the moment?

597. **Mr A Maskey:** As I understand it, at the moment the Commissioner for Complaints has a certain level of power and the current ombudsperson does not. When merging both offices, we were going to maximise them all.

598. **Mr Clarke:** That is my concern.

599. **Mr A Maskey:** But there have not been any negative results of all of that.

600. **Mr Clarke:** The difficulty of doing that is that, if we stay where we are, they will never foresee circumstances in which they would have to use it. We are now giving them the power to use that mechanism because we are ramping that up, in my understanding. If we do that, that enables them to withhold legal advice, which they would not have had to do before, because there was no opportunity for them to be taken to the County Court. Now, by applying the opportunity and giving them that bit more power, we are creating the possibility that some information on legal advice can be withheld from the ombudsman.



601. **The Chairperson:** We had the two. When he sits as the Commissioner for Complaints and you are going in as a public body, defending a complaint against you, you know that, at the end of it, the commissioner can rule against you and tell the complainant to pop off down to the County Court with his documents and get themselves a few quid for compensation. When he is sitting as ombudsman, that does not happen. We had to make a decision on whether we knocked out that function of the commissioner so that there was no reference to the County Courts or whether we brought it in for the NIPSO and for everyone or whether we broadened it to include health service providers. Everyone now has this recourse.
602. **Mr Clarke:** Yes, but giving that recourse gives the bodies the opportunity to withhold some of the information. It is clearly saying that.
603. **The Chairperson:** We discussed that this would potentially make public bodies and listed authorities more cautious.
604. **Mr Clarke:** I see it the opposite way around. My reading of that is that you are giving public bodies the opportunity to withhold legal advice that, initially, they could have divulged.
605. **The Chairperson:** You would be more cautious if you thought that you would end up in court.
606. **Mr Clarke:** I would not describe it as that type of caution. It would be more secretive in that they can now withhold information that they currently give to the ombudsman and which he could have used. In terms of the ombudsman making a judgement based on the information that the bodies initially would have got, there is now a possibility that they cannot even see this information to use it.
607. **Mr A Maskey:** They cannot withhold information, because that is obstructing —
608. **Mr Clarke:** Not information, but legal advice.
609. **Mr A Maskey:** That is only their legal advice. Any one of us can get legal advice tomorrow, and we do not have to tell the other person what the legal advice was. I have to make a decision on the legal advice that I get. It is not about allowing an organisation or a listed body to withhold information, because that is provided for in legislation. They cannot do that, and, if they are obstructing, they are guilty. We are all very clear about that. If we were to merge the two offices and remove that right, we would be weakening the potential for claimants to have redress against a Department that has fallen foul of them. Bear in mind that most of the complaints are dealt with, and there is an amicable enough resolution to them. This is only providing for the worst-case scenarios where there is continuing and almost serious abuse. In some recent cases, people are going through the mill, for example, families claiming negligence against hospitals. Not one head rolled anywhere.
610. **Mr Clarke:** There are also opportunities for public bodies that have gone against legal advice. If they have gone against legal advice and you do not know what the legal advice was, how can you judge that the public body was wrong?
611. **Ms Ruane:** Trevor, the document states:  
*“The current position under the Ombudsman Order is that legal privilege cannot prevent the Ombudsman having access to papers.”*
612. The extension of that is:  
*“Bill should make similar provision in relation to all bodies within the NIPSO’s jurisdiction.”*
613. **Mr Clarke:** Reading on, it states:  
*“this approach may well be affected”*
614. **The Chairperson:** We are going to change that.
615. **Ms Ruane:** The part that you read out is in red.
616. **Mr Clarke:** Yes, because we are changing it. That is why it is in red.
617. **The Chairperson:** We are proposing to change that position, Caitríona.

618. **Mr Clarke:** We have heard of councils going against legal advice. Now we are saying that we do not know whether a public authority has gone against the advice that it has been given, so you have weakened the hand of the ombudsman in how he comes to his decision.
619. **Mr A Maskey:** Some people have gone against their own legal opinion and advice and paid the price for that when they went to court.
620. **Mr Clarke:** They are protected under privilege for their legal advice, so you will not know whether or not they have gone against their advice.
621. **Mr Humphrey:** I sat on Belfast City Council when the director of legal services came in and gave legal advice, and, sometimes, we were none the wiser. Advice that you get from one lawyer will be vastly different from advice that you will get from another.
622. **The Chairperson:** Give me the name of your lawyer so that I can avoid them.
623. **Mr Humphrey:** I remember, in your time at the council, when Ciaran came in to give legal advice, no one had any idea what advice had been given.
624. **The Chairperson:** Trevor, we are talking about a situation where the ombudsman is undertaking an investigation and asks the listed body whether it had taken legal advice, and, on being told, "yes", asking what that advice was, and the body says that it is not prepared to tell the ombudsman. That does not prevent the ombudsman going on to do what he or she thinks is right.
625. **Mr Clarke:** Actually, it does, if the body were to go against the advice that it was given. If it were given legal advice to a point but was not prepared to tell the ombudsman whether the legal advice supported one direction or another —
626. **The Chairperson:** Surely, it only comes into play if you go to the next stage, where you go to the County Court. Then, the legal advice will become pretty clear.
627. **Mr A Maskey:** Which is an absolute rarity; such a provision exists for the Commissioner for Complaints, but it happens very rarely. That is the evidence that we have been —
628. **The Chairperson:** It has stopped, yes.
629. **Mr A Maskey:** I just think that it would be bad of us to produce legislation that weakens a person's rights.
630. **Mr Clarke:** The tone of caution in that is interesting. I do not know whether that was done by the Clerk or is based on the legal advice that we got, but there is caution there about what could happen if we do it.
631. **The Chairperson:** To begin with, I felt that that would take it down a more adversarial legal route. However, the ombudsman made it clear that it would happen once in blue moon.
632. **Mr Clarke:** Yes, but you are comparing apples and oranges. Previously, they were entitled to know whether or not legal advice had been sought and now they are not. So, you are not comparing like with like.
633. **The Chairperson:** But he was not when he was acting as the ombudsman.
634. **The Committee Clerk:** Acting as the ombudsman, he is entitled to see legal advice at present; acting as the Commissioner for Complaints, at present, the ombudsman regards himself as not being entitled to see legal advice, so those complaints are being investigated without the right to see legal advice. They may ask for it; the public sector body may share it voluntarily, but it is not required to do so.
635. **The Chairperson:** So, we are seeking further clarification of point 22. Do you want to reserve your position on that, Trevor?
636. **Mr Clarke:** Nobody else seems to be that frustrated about it. When a problem arises in the future, I will dig back into the Hansard report and say, "I told you so". That will do me.

637. **Mr Kinahan:** Chair, it may sound daft, but should we not take legal advice?
638. **The Chairperson:** We will, yes.
639. **The Committee Clerk:** The parliamentary draftsman will look at the legislation's fairness and compliance with human rights. The draftsman will have to decide whether, in the round, the ombudsman's investigation and the right to go to County Court amount to the determination of a civil right that will, in effect, end with a County Court judgement against you. In such circumstances, the question is what safeguards should there be in place for a public body to defend itself where a civil right is being determined. We can ask the draftsman to look at balancing those issues in the Bill.
640. **Mr Molloy:** If I understand Trevor's point correctly, it is likely that more cases will finish up in County Court. Settlements will not be reached and the ombudsman's role will be weakened because bodies will know that they can always go to the County Court; whereas, up to now, the ombudsman's office has been able to get a settlement more easily without going to court. In fact, the whole idea of the ombudsman was to avoid courts, to get complaints dealt with and decisions taken at a lower level. By bringing in the changes, you are, near enough, driving it into court.
641. **The Chairperson:** I take on board the argument 100%, Francie, but I think that we are changing our previous position.
642. **Mr Molloy:** We do that regularly, so that is not a problem. *[Laughter.]*
643. **Ms Ruane:** We asked the ombudsman that specific question. I cannot remember his exact words, but he said that, to help his position, we need to retain the threat or the fact that it could go to County Court.
644. **The Chairperson:** Help focus people?
645. **Ms Ruane:** Yes; and help make them want to reach agreement.
646. **The Chairperson:** So where are we? Do we have consensus?
647. **Mr Molloy:** Seek an opinion.
648. **The Committee Clerk:** Ask the draftsman to specifically address the balancing of those rights and the powers of the ombudsman?
649. **Mr Molloy:** He will have the answer on different issues, even some that we have not raised.
650. **The Chairperson:** So, there will be two legal washes — after the draftsman's it will go to the Speaker's Office for further legal consideration.
651. **The Committee Clerk:** It will then come back here for members to satisfy themselves about the draft Bill.
652. **The Chairperson:** OK; so, we seek clarification of points 22 and 23. Are you happy that we do that in the hope that it does not slow us down too much? Shall we send it? Clerk, will you liaise with the Bill Office to get started on the rest of it, with the proviso that 22 and 23 could change, or is that not practical?
653. **The Committee Clerk:** It is probably not practical. It is more expensive to go back and forward to the draftsman. It is probably better to arrive at a conclusion here, but we can certainly take preparatory steps in getting things moved forward.
654. **The Chairperson:** That will knock us out for two weeks, because next week we will probably not be in a position to debate the issues. We will certainly not be in a position to take a vote, if one is required.
655. **Ms Ruane:** Why is that? Were we not trying to set another meeting for Thursday?
656. **The Chairperson:** There are difficulties. Alex has a Social Development Committee to Chair, and I made the commitment that, if we were to meet next week, we would not vote.
657. **Ms Ruane:** I have a Policing Board meeting as well.
658. **The Committee Clerk:** In relation to point 23, we could ask about the

privilege attaching to legal advice at the draftsperson's stage and get them to comment on it, rather than seeking advice on it now.

659. **The Chairperson:** That just leaves paragraph 22.
660. **The Committee Clerk:** I wonder would the ombudsman's office be able to tell us in practice what interaction there is with the Secretary of State.
661. **The Chairperson:** I think we will need more than that. We need to know the circumstances, if any, when there is interaction. It will take as long as it takes. Thank you, members.

## 22 May 2013

### Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)  
 Mr Chris Lyttle (Deputy Chairperson)  
 Mr Leslie Cree  
 Mrs Brenda Hale  
 Mr Stephen Moutray  
 Mr George Robinson  
 Mr Jimmy Spratt

### Witnesses:

Ms Geraldine Fee            *Department of Justice*  
 Mr David Lavery  
 Mr Martin Moore

662. **The Chairperson:** I welcome Geraldine Fee, David Lavery and Martin Moore from the Department of Justice.
663. **Mr David Lavery (Department of Justice):** Chair, I will make some brief opening remarks, if that is all right. My colleague Geraldine Fee heads the jurisdictional redesign division in the Department of Justice. Martin Moore is one of the senior officials in that division. I am head of the access to justice directorate in the Department of Justice. I thank you and the Committee for the opportunity to address the Committee this afternoon about the future of the Office of the Northern Ireland Judicial Appointments Ombudsman. It is a matter on which we gave evidence to the Committee for Justice on 21 February.
664. I will sketch out the background to the role of the Judicial Appointments Ombudsman. The post of Judicial Appointments Ombudsman in Northern Ireland was established in 2006 as part of the new arrangements for judicial appointments that can be traced back to the report of the criminal justice review published in 2000, which flowed from the Belfast Agreement. The ombudsman is independent of government, but sponsored by the Department of Justice. The ombudsman's role is to investigate

complaints of maladministration from applicants for judicial appointments. Since 2006, there have been six complaints of alleged maladministration for the ombudsman to investigate.

665. In view of the relatively small number of complaints, we thought it timely, in the context of the Executive's review of arm's-length bodies, to reconsider the arrangements for the ombudsman's office. The costs of the office are quite modest. The ombudsman has already successfully reduced his office running costs by approximately one third, from around £90,000 in 2010-11 to just over £60,000 in 2011-12. The purpose of our review was not to question the functions of the ombudsman, but to examine options for providing administrative support for his office. The Department believes that the ombudsman function in relation to complaints about judicial appointments strengthens confidence in the process for appointing judges in Northern Ireland. Our guiding principle, therefore, has been that, in looking at alternative ways of delivering the ombudsman's functions, we ought to disturb those functions as little as possible.
666. The proposal that we have developed would involve combining the Office of the Judicial Appointments Ombudsman with the new office of public services ombudsman. We favour that course for three reasons. First, the roles of both ombudsmen are complementary, as they involve investigating complaints of maladministration. Secondly, the Northern Ireland Ombudsman has a large resource of relevant investigative skills and expertise. Thirdly, the Judicial Appointments Ombudsman would remain statutorily distinct and, thus, counter any perception that the role was being diminished. I should point out that the idea of combining judicial appointment complaints with the office of public services ombudsman is not

- new. That is the model that has been adopted for Scotland, and we think that it would be suitable for Northern Ireland. We propose to retain the Judicial Appointments Ombudsman as a distinct statutory appointment in its own right, but the appointment would be held simultaneously by the person appointed to be the public services ombudsman for Northern Ireland.
667. There are a few policy issues arising from the proposal that need to be addressed, the main one being eligibility and the current eligibility restrictions that apply to the Office of the Judicial Appointments Ombudsman. The issue here is that there are some disqualifications that currently apply to the Office of the Judicial Appointments Ombudsman that may not apply to the new post of public services ombudsman; in particular, the disqualification of lawyers, persons who have held judicial office and persons who have been engaged in political activity as a member of a political party.
668. Following consultation with the Justice Committee, our proposal is to retain the current disqualifications in relation to judicial appointment complaints. That would mean that, in the event that any of the restrictions that I have mentioned applied to the person holding the position of public services ombudsman, a particular investigation relating to a judicial appointment could be delegated to the deputy ombudsman, a director of investigations or, if necessary, to an ombudsman from an outside jurisdiction. As to the disqualification of those engaged in political activity, I understand that Dr Frawley has written recently to this Committee to suggest that that disqualification should also apply to the new post of public services ombudsman.
669. In summary, Chairman, we consider that combining the role of Judicial Appointments Ombudsman with that of the public services ombudsman would be a sensible arrangement for Northern Ireland. It is a proposal that has the support of the Committee for Justice, and we commend it to this Committee for consideration. Giving effect to the proposal would, of course, require primary legislation, and an obvious candidate for that would be the Committee's proposed public services ombudsman Bill.
670. My colleagues and I are pleased to answer any questions that the Committee has for us this afternoon.
671. **The Chairperson:** OK, David. Thank you very much for those remarks. Can we start with the eligibility restrictions? You would bar somebody who was engaged in political activity as a member of a political party. What does that mean? What are the parameters of political activity?
672. **Mr Lavery:** I think that I am right in saying that that is a current disqualification that applies to the Office of the Judicial Appointments Ombudsman. I do not think that we have ever tested it. In the past seven years, we have had only one ombudsman, who was someone from outside the political world.
673. **The Chairperson:** But, surely voting is a political activity.
674. **Mr Lavery:** With respect, I think — I am not sure if I misspoke — that it is political activity as a member of a political party. It is slightly more explicit than just being a member of the electorate.
675. **The Chairperson:** Are you saying that you should not be a member of a political party?
676. **Mr Lavery:** I am saying that, at the moment, the current criteria for appointment as Judicial Appointments Ombudsman prohibits a person from that category being appointed.
677. **The Chairperson:** Does it? I want to be really clear about this. Are you saying that, if you are a member of a political party, you cannot be the ombudsman?
678. **Mr Lavery:** You cannot, at present, be the Judicial Appointments Ombudsman.

679. **The Chairperson:** If you are a member of a political party.
680. **Mr Lavery:** Yes; that is correct. I am not saying that it is a good restriction. I am just saying that that is what the law currently provides. I think that it replicates the provision in England and Wales, where there is an equivalent office.
681. **Ms Geraldine Fee (Department of Justice):** Yes. I think that the focus in the legislation is “engaged in political activity”.
682. **The Chairperson:** Yes, but voting is a political activity. Surely there is nothing more political than voting.
683. **Mr Lavery:** I am not here to justify it but to explain it. The Justice Committee felt that rather than displace the eligibility criteria, they should be replicated.
684. **The Chairperson:** So, you do not take a view on —
685. **Mr Lavery:** I argued — obviously not very convincingly — before the Justice Committee that I am not personally convinced that disqualifying categories of people is desperately satisfactory. I would have thought that any public appointment needs to be underpinned by a strong principle of preparedness to acknowledge and step aside where a conflict of interest arises. For example, I tried to argue that the fact that lawyers are disqualified seems to be rather wide-ranging. You are disqualifying a whole category of professional people. I can immediately think of former contemporaries at law school who went off to England and have never set foot in Northern Ireland since and who are very distinguished law professors and hold other positions in England. Those sorts of people would automatically be disqualified from holding this position were they to want to return. However, all that I can do this afternoon is to report that the Justice Committee felt that the retention of those three categories of disqualification is a desirable principle.
686. **The Chairperson:** I am just trying to tease out the specific one of being engaged in political activity as a member of a political party. If I am a member of a political party and I vote, it would seem that I would disqualify myself.
687. **Mr Lavery:** It is “actively engaged”, and I am not sure whether that has been tested in any way in its legal meaning. I have to say that it did not occur to me that it applied in the way that you are suggesting, although that might be the natural construction of the words.
688. **The Chairperson:** What is voting if it is not a political activity?
689. **Mr Lavery:** It is certainly a political act, but being an active participant in the political process is really what was meant to be captured by it.
690. **Mr Spratt:** It is a democratic right to have a vote.
691. **Mr Lyttle:** No one knows how you voted either; it is a private act.
692. **Mr Spratt:** And no one knows how you voted; it is a private act. Yes.
693. **The Chairperson:** If you disbar somebody, surely they are going straight to Europe.
694. **Mr Cree:** It seems unfair to me.
695. **Mr Lavery:** As I said, I tried to persuade the Justice Committee that, whilst I could see grounds for disqualification of those who hold or have held judicial office — I just think that the optics of that could be wrong — to disqualify lawyers or other generic categories is problematic. We have a relatively shallow talent pool. We should open it up as broadly as possible in this community and underpin it with a principle that if there is an actual or perceived conflict of interest, one would stand aside.
696. **The Chairperson:** A relatively shallow talent pool?
697. **Mr Lavery:** If you disqualify whole swathes of the community, you exclude everybody — good, bad or indifferent. I think that you want the best in all public offices.

698. **The Chairperson:** Sure; you want the best for the job.
699. Let us move on to the costs. Obviously, if we go with the recommendation of bringing the Judicial Appointments Ombudsman under the Northern Ireland Public Services Ombudsman (NIPSO), there will be administrative costs and investigation costs. Members, in the paper, there is a table of recent costs. As David said, they have come down significantly. However, on the basis that there is, on average, only one investigation per annum, why does it cost somewhere between £56,000 and £95,000? Is that not a huge amount of money?
700. **Mr Lavery:** There is an irreducible minimum cost in the salary that is paid to the ombudsman and, I think, half of the salary of a member of administrative staff who supports the office. So, there are certain people costs. I am sure that, as with all such financial models, it must include national insurance and everything else. It is not just salaries; it is all the people costs.
701. What the ombudsman has managed to do, however, is to move to what might be called a virtual office. Instead of having permanent office accommodation in Belfast city centre, which is where we started when we established the office in 2006, the current incumbent has instead arranged to hire office accommodation as and when an investigation is live. Some of those costs might conceivably be absorbed into the office of the public services ombudsman, at least in part.
702. **The Chairperson:** And funded from Justice?
703. **Mr Lavery:** That is a debate to be had between the Department of Justice and the office of the public services ombudsman. I am quite sure that we could arrive at a formula, whereby, if these responsibilities were transferred to the public services ombudsman, some associated support costs would also be allocated.
704. **The Chairperson:** If we went with this, on the occasions that NIPSO was wearing the Judicial Appointments Ombudsman's hat, to whom would he or she report?
705. **Mr Lavery:** Reports on individual investigations are made to the relevant appointing authority, which, in some instances, might still be the Lord Chancellor but, in most instances, is the Judicial Appointments Commission. Geraldine has more information on that.
706. **Ms Fee:** There are two types of complaint that can be investigated. One is a departmental complaint, where the Lord Chancellor still has a role. That is in a very minor number of cases where it is still a Crown appointment. Most complaints are commission complaints, which are complaints brought against the Northern Ireland Judicial Appointments Commission (NIJAC) for maladministration in its appointment schemes. In such cases, the complaint, a copy of the draft report and then the full report go to NIJAC and OFMDFM, which is NIJAC's sponsor body. Obviously, the complainant gets a copy of the report.
707. **The Chairperson:** This is a relatively small point, David: if we go with this, there will obviously be a need to brief the parliamentary draftsmen.
708. **Mr Lavery:** Yes.
709. **The Chairperson:** That is not without cost.
710. **Mr Lavery:** No. We will not see you stuck. *[Laughter.]* In the meantime, knowing that these things take time, we have continued the appointment of the incumbent, Karamjit Singh, who has held the office since 2006. His appointment is being extended to allow time for the legislative process to run its course.
711. **The Chairperson:** I do not want to get into areas that are not core business for us, but in the responses to your consultation, I think that the Law Society was at variance with the proposal. Should we put a lot of weight to that?



712. **Mr Lavery:** You should always put weight to what the Law Society says. With respect, however, we feel that this is a proportionate approach. It is a relatively small piece of administrative activity. We have had the benefit of having someone who has been very skilful at and capable of discharging that role for the past seven years, but we think that a natural fit for it remains the public services ombudsman.

713. At the risk of reopening the issue about conflicts of interest, I will say that it is interesting that, in England and Wales, where the same restrictions on the Judicial Appointments and Conduct Ombudsman apply, conflicts of interest have still arisen, even though they disqualify the same categories of people as the legislation would do in Northern Ireland. Even with those disqualifications, conflicts of interest, or, more likely, perceived conflicts of interest, have arisen in about 10 instances. They have had to send for our ombudsman to do those investigations. I am simply making the point that, no matter who you disqualify generically, inevitably, there must be instances in which people are known to one another. That reinforces my point that some fallback principle of standing aside if there is a perceived conflict is always necessary to underpin a position like this.

714. **The Chairperson:** Are members content?

*Members indicated assent.*

715. **The Chairperson:** David, Geraldine and Martin, thank you very much.



## 22 May 2013

### Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)  
 Mr Chris Lyttle (Deputy Chairperson)  
 Mr Leslie Cree  
 Mrs Brenda Hale  
 Mr Stephen Moutray  
 Mr George Robinson

### Witnesses:

Dr Tom Frawley                      *Northern Ireland  
 Ombudsman*

Ms Marie Anderson                *Office of the Northern  
 Ireland Ombudsman*

716. **The Chairperson:** Dr Tom Frawley and Marie Anderson have joined us. Tom, I think that there are two issues that we want to discuss. The first is the Judicial Appointments Ombudsman. There is also the issue of the Minister of the Environment's proposal that local government standards might come in via the Commissioner for Complaints hat. Shall we start with what we have just heard?

717. **Dr Tom Frawley (Northern Ireland Ombudsman):** Chairman, whatever works for the Committee.

718. **The Chairperson:** Then let us stick with the Judicial Appointments Ombudsman.

719. **Dr Frawley:** I have had the benefit of hearing Mr Lavery's commentary and narrative to the proposal. There is a significant commonality in maladministration, which is the issue that one is looking at; the procedural underpinning of decisions that have been taken in the appointment processes. That is something that the ombudsman focuses on as the public services ombudsman. There is a good fit in that regard. When it comes to the processes, the expertise and the investigative resource, it is fundamentally the same thing. You have commented on the costs. At a

time when the public purse is under such intense pressure, I believe that when opportunities like this present themselves, they should be taken. Therefore, that is another strong rationale for supporting, in a broader sense, the role of the public services ombudsman by giving this important core and significant responsibility to that office.

720. The focus of the Committee's concern, as I listened to you, was around the whole issue of disqualification. There are issues there. David Lavery highlighted his concern that, in a population of 1.7 million people, a limited number of people would be interested in doing a job like this and would be considered competent and able to do it. As I have discovered, and let me say this to confirm David's point, and at the risk of embarrassing my deputy, there is a real benefit in having someone with a legal, professional perspective. I would not say that I have the forensic approach to analysis that my deputy brings to it or her legal knowledge. I think that a legal background is a strength in this sort of role. To exclude a very strong strand of the community — that is, the legal profession — is something that one would look at.

721. On the other hand, David highlighted the point of view that, even in England when you have those exclusions, there will be conflicts of interest. I see it in my day-to-day business. I live in the north-west, and the nature of the north-west is that it is more of a village than a big geographical area. I inevitably know people, so I have to exclude myself because of personal knowledge. I worked in the health service previously. A significant part of my responsibility is around health. Most of the actors have had the good sense to leave the stage, so I do not know the new faces that well. In that sense, that is not a

- problem, but I can see that it would be. Yet you, as a Committee, must balance that against the public perception. Most of the problem is a public perception issue around the aspect of lawyers and judges. They are the same people, so are they going to be sufficiently independent and objective? That is the balance of the perception, and other jurisdictions have chosen to have that exclusion.
722. From a practical perspective, it is not a problem because it is absolutely straightforward to get around such conflicts in the design of the arrangements. If I declare a conflict, Marie takes it on. Equally, if Marie declares a conflict, I can take it on. If both of us have a conflict, depending on the nature of the issue, we have very capable and competent directors who can take the delegated authority that I have and do a complaint investigation. As the paper that I have read indicates, it is possible to go beyond that. We are doing one for our Scottish colleague where he is conflicted, and we have done one in respect of a standards issue with a Welsh Minister in Cardiff. So, there is a very strong level of co-operation across these offices. Therefore, the problem can be addressed. It is not insurmountable. The judgement lies with you.
723. I was not party to the debate that went on at the Justice Committee, but I think that it becomes a little bit stretched to talk about political activism. You highlighted the issue of voting. Enough people do not vote as it is, so, suddenly, you would have an issue there as well. I assume that “active politically” means someone who is an active member of a political party currently, and, by “active”, I mean someone who participates in the party and contributes to its policy development, and so on. That, to me, is what “active politically” means. How you judge that is another question entirely.
724. **The Chairperson:** I feel that you probably need to spell that out.
725. **Dr Frawley:** Yes, I think —
726. **The Chairperson:** If we are going down that road.
727. **Dr Frawley:** Yes. One of the challenges that can be picked up is that when you come to make the appointment — were it to be decided that this would be included — the documentation and the detail that would need to be developed for and by that panel would need to elaborate on and clarify those issues so that they are explicit for everyone. As you pointed out during your exchanges with Mr Lavery, there will be challenges as to why and how persons should be excluded.
728. **The Chairperson:** On the broader issue of the entire legal profession, do you take a view beyond the principle of not narrowing an already small pool unnecessarily?
729. **Dr Frawley:** I do not see a basis for excluding lawyers as a group. I could see an issue with people who were in judicial roles previously etc, but as David Lavery said, excluding people who were just lawyers by background and who were working in other jurisdictions as academics, for example, would cause problems.
730. **Mr Cree:** I want to go back to the point about the political connection. The wording is clumsy and could be interpreted as you have just done. It is something that could be tidied up.
731. **Dr Frawley:** That can be done.
732. **The Chairperson:** The other issue is that of local government standards. We are preparing for a call from the Minister of the Environment to bring it on and, perhaps, put it in our legislation.
733. **Dr Frawley:** Chairman, you defeat me always. I spend days preparing very elegant opening remarks and you immediately take me to the chase. I have completely failed to get my very carefully crafted material on the record.
734. **The Chairperson:** Sorry, let me hit reverse gear —
735. **Dr Frawley:** I will take your leadership and move to the issue of standards

- immediately, because it is late in the day.
736. **The Chairperson:** I am so sorry, Tom.
737. **Dr Frawley:** Not at all; I am getting used to it, Chairman. *[Laughter.]* I do not mean that in any disrespectful way.
738. By way of a bit of background, Northern Ireland has been criticised by the Committee on Standards in Public Life in Westminster for not having a mandatory statutory standards code in local government. Indeed, when it came to Northern Ireland to take evidence, the then head of the Civil Service, Sir Nigel Hamilton, indicated that Northern Ireland would introduce such a mandatory code. That issue has been in play ever since.
739. Clearly, as part of the new arrangements for local government around modernisation and the review of public administration, there will be a whole new design of local government, part of which will involve a range of new statutory functions. Committee members will be more familiar with that than I am.
740. Alongside that, one of the key strands is that, particularly with the introduction of new statutory responsibilities, there should also be a mandatory code that people who are elected to local government would have to live by and be accountable to. That design is under way. The Department of the Environment was looking at different models for delivering that.
741. Initially, England had a national standards board for local government, which became a hugely expensive bureaucracy. Indeed, it was abolished by the current Government. In Wales, standards in local government were overseen by the Public Services Ombudsman, which is the model that Northern Ireland began to do some work on. That is the provenance of this particular idea: we would model the Welsh model; it made sense and was a proportionate and affordable response. Also, the work sat very reasonably with that office, particularly given the independence of the ombudsman,
- and because it is, in many senses, a quasi-judicial role. So, the design that is emerging is very clearly around those arrangements, mirroring Wales, and making it a core part of the responsibility of the ombudsman's office, if this Committee is agreeable. Therefore, it would sit alongside the NIPSO responsibilities.
742. Looking around the table, I know that members will be aware that, in the past, I was the Assembly Commissioner for Standards, so I have some background in this role. Not unlike the Judicial Appointments Ombudsman, I have found there to be a lot of common ingredients in working inside legal frameworks and having the investigative skills needed in examining witnesses, statements, preparing analyses and reaching conclusions. So, again, I think that there is a reasonable fit, and that is the Welsh experience as well. In looking at how we would engage with it, we have been taking a lot of advice from our Welsh colleagues, who have been very supportive.
743. I think that one of the issues where there are real challenges in our design, and one that I want to make sure that we get right here, is the potential for extended hearings that are legally constituted and where all parties are represented, and you end up with a hugely expensive process. What the Welsh Government did, and what we have been advised would not be a sensible and proportionate response here, was to indemnify councillors, so, of course, they immediately sought legal representation, and the costs of all these things — even those for quite straightforward issues — escalate. I think that we have managed a design that will, hopefully, limit and indeed eliminate that potential. So, I see merit in doing it this way. It is unavoidable, I think, that we have a mandatory code in local government, and, for all sorts of good reasons, that mandatory code becomes absolutely essential when you see the new statutory responsibilities around planning and so on.

744. At a time when you are redesigning the office of the Public Service Ombudsman based on the Welsh experience, it is a good fit and, therefore, one that I would be comfortable with. In many ways, I can declare an interest, or a disinterest, in that, as you know, I will not be party to any new arrangements because I will retire. When the legislation is passed, whoever takes on the post will be going into it with a clear understanding of its range of responsibilities and the division of those responsibilities across the spectrum of functions that we have discussed.
745. My only caveat is that part of the challenge is that this is not without costs. In all the things that we have looked at in the redesign of this office, this would be one that requires funding. Although, as a public servant, there is the potential for it to happen, I do not want to become a "saving" in the near future. The reality is, however, that if we are doing this, and you are designing it and looking at it in overview for DOE, I think DOE should be central to making available those resources. I find it worrying that the potential for it to be in this office equals, "Well, you go and negotiate the funds for it now." It is very important that, when we take on these responsibilities, those who ask us to fulfil that purpose should also have a critical role in agreeing and taking on the costs, and in making funds available to fulfil the roles.
746. The second thing that I ask you to note, and this is important, is that there is now a very significant time pressure on this issue, and you will see that it needs to happen sooner rather than later. If, as I understand is intended, the shadow councils are created next year, it seems to me imperative that those who are considering being elected, and those who are subsequently elected, clearly understand these ground rules, the codes under which they will have to operate, the rules that will apply and how they will be engaged, etc. It is not something that you can take some time over. In our conditional discussions with DOE, we clearly said that there is a need for money to be available upfront, purely for educational purposes. I see a need for someone, maybe me or Marie, to traverse these geographies and speak directly to people about this new mandatory code. We should probably start with the existing councils and tell them what lies ahead. There are people here, such as Mr Robinson, Mr Moutray and Mr Cree, who are much better qualified to talk about local government than I am, but, as I understand it, the reality is that some people will have to make a career decision in the near future about whether they want to be part of these new arrangements. I think that this sort of insight is important in informing that decision one way or the other. So, this is something that needs to be developed, prepared, got ready and put on the road sooner rather than later. First, and crucially, a decision is important, and then there are the resources required to do that.
747. This is a guesstimate, Chairman, I would not in any way be a prisoner of it, because it has not been done forensically, but, using some of the learning from Wales, we would say that to get all that under way and to resource it with the people and materials that will need to be developed, the cost for six months would be around £92,000. Against what will be spent in the implementation of the new local government arrangements, that is not a significant sum of money; against the very tight and finite budget that I have, it is a huge sum of money. It is very important that we put that to you.
748. I have one final point, because I know this is equally important for the Committee. In a PricewaterhouseCoopers economic appraisal on the original model for this arrangement that was done for DOE, it intended that you would put infrastructure into every one of the new councils at a cost of £50,000 each and, beyond that, the oversight of the arrangements would have a further £250,000. Again, our colleagues who have some experience of local government might confirm that. If

- you total that, Chairman, you will see that there would be a budget per annum of £800,000 to undertake this, when it is totally implemented. The new arrangements that are being proposed by DOE, however, will put the whole core of this activity — the actual management delivery of the standards agenda — through the office of the reconstituted Public Services Ombudsman. We are estimating that at around £373,000. That is a huge saving out of this model. I have no misgiving about that.
749. The other thing that I think is important, and I think would be important for this Committee, because I know that you are very conscious of the very significant additional responsibility that would be involved in this, is that any new arrangement like this needs to be reviewed. That needs to be built in as a formal commitment and not merely with an attitude of, “We’ll have a look at it in a couple of years.” The attitude should be, “We will examine whether it is working in at least three to four years, and if it needs to be changed, we will change it.” On that basis, Chairman, I am content and am happy to take your questions.
750. **The Chairperson:** Thank you, Tom. Your main points are that a mandatory code is inevitable as well as desirable; the Welsh model is sensible and affordable; there should be no indemnity for councillors; you think there should be a six-month awareness or educational campaign —
751. **Dr Frawley:** At least six months, Chair.
752. **The Chairperson:** That campaign will cost £92,000. You also say that it could be run on an annual cost of £373,000.
753. **Dr Frawley:** Yes, when it is up and running.
754. **The Chairperson:** You think it should be under NIPSO.
755. **Dr Frawley:** I think it makes sense for it to be. One of the things that struck me in the very open and transparent way in which the costs of the legal appointments ombudsman were highlighted was the fact that, once you start putting in such overheads as rent, accommodation, heat, light and power, etc, you enhance the costs significantly. I believe that no new office should be created in our jurisdiction until it can be ascertained whether it can go into some existing system. I am saying that, in this redesign, there is a sensible, coherent and already established model à la Wales that would cope with this proposal.
756. **Mr Cree:** It is nice to be mentioned in dispatches by Dr Frawley, but, for the sake of clarity and the record: I retired from the council two years ago.
757. **Dr Frawley:** I am sorry about that.
758. **Mr Cree:** It is OK. I think this afternoon has been helpful and useful; thank you very much.
759. **Mr Moutray:** I do not need to declare an interest as a sitting councillor; Tom has done that for me. Tom, I appreciate the presentation. Have you any figures around how often the office in Wales is used for local government?
760. **Ms Marie Anderson (Office of the Northern Ireland Ombudsman):** It represents about 15% of the caseload of the Public Services Ombudsman, which ranges from 1,000 to about 1,300 cases a year, but it more than doubles at election time.
761. **Dr Frawley:** The other issue in Wales, and which, I think, was a huge issue in England, is that they chose to have parish councils. In the nature of that type of very close community interaction, you get lots of complaints. So, I think it does not necessarily mirror the model.
762. **Ms M Anderson:** For clarity: the position in Wales is that the ombudsman investigates and makes recommendations, depending on the nature of the breach of the code, to either a standards committee, which can deal with minor breaches, or an adjudicating panel, which deals with more serious cases. The proposal that the Minister of the Environment

is supporting is that investigation and adjudication will be undertaken by the Commissioner for Complaints. That represents another saving to the public purse, but it also represents a more complex model than that originally envisaged. That would mean a degree of structural realignment around decision, investigator and decision-maker in the office. That represents part of the initial set-up costs.

763. **The Chairperson:** Marie, Tom, thank you very much indeed. That has been most helpful.
764. **Dr Frawley:** Thank you very much, Chairman and members.
765. **Mr G Robinson:** Chair, that was another concise presentation.
766. **The Chairperson:** It was another concise and informative presentation.





Northern Ireland  
Assembly

Appendix 3

# 2010 Consultation Paper and Responses



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## Invitation to submit written evidence 20100923

The Committee for the Office of the First Minister  
and deputy First Minister

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Tel: (028) 9052 1448

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Committee.ofmdfm@niassembly.gov.uk

Date: 17 February 2011

Dear Sir/Madam

**Proposal to update the Legislation to reform the Office of the Northern Ireland Ombudsman**

The Committee for the Office of First Minister and deputy First Minister have carried out a consultation exercise on proposals to update legislation to reform the Office of the Northern Ireland Ombudsman.

The Committee agreed at its meeting on 16 February 2011 that they would write to a number of organisations whom the legislation if enacted could affect.


Written evidence should be sent to the Committee at the above address, or by email to [Committee.ofmdfm@niassembly.gov.uk](mailto:Committee.ofmdfm@niassembly.gov.uk) by noon on Friday 25 February 2011 if at all possible.

A copy of the consultation paper can be found at the following link:

<http://bit.ly/reformniombudsman>

You should note that all evidence given by witnesses to a Committee of the Assembly, whether in oral or written form, is covered by privilege. Unless you indicate otherwise, your evidence may be placed in the public domain by the Committee.

If you have any queries or require further assistance, please feel free to contact me at the Committee Office.



**Cathie White**

Clerk to the Committee

# Committee consultation paper 20100920

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

### A Consultation Paper Issued by the Northern Ireland Assembly Committee for the Office of the First Minister and Deputy First Minister

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1. Introduction
2. Merger into a Single Office
3. Purpose of the Office
4. Remit of the Office
5. Acquisition of Cases
6. Case Handling Procedure
7. Reporting by the Ombudsman
8. Enforcement
9. Appointment of the Ombudsman
10. Staffing and Finance
11. Governance and Accountability
12. Other Issues
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## Introduction

- 1.1 The office of the Northern Ireland Ombudsman has been in operation for 40 years and is the second oldest in the UK and Republic of Ireland (ROI). There are two statutory offices of the Ombudsman: the Assembly Ombudsman for Northern Ireland (AONI)<sup>1</sup> and the Northern Ireland Commissioner for Complaints (NICC).<sup>2</sup> The former deals with complaints about services provided by the departments of the Northern Ireland Executive and the latter with local government, health and social care and other public bodies including the Northern Ireland Housing Executive.
- 1.2 The Committee is considering updating the legislation to bring it in line with Scotland and Wales.
- 1.3 A review of the two offices was commissioned by the Office of the First Minister and the deputy First Minister and published in 2004.<sup>3</sup> It made a series of recommendations, but the Office of the First Minister and deputy First Minister have not been in a position to progress the legislation necessary to implement the recommendations due to resource constraints and competing Ministerial and Departmental priorities.
- 1.4 The Northern Ireland Assembly's Committee for the Office of the First Minister and deputy First Minister (the Committee) has considered the issue of reform of the Ombudsman, taking evidence from the current Ombudsman Dr Tom Frawley and his deputy, Mrs Marie Anderson on 2 June and 27 July 2010.
- 1.5 Accordingly a consultation exercise will be conducted and it will cover issues and recommendations from the 2004 review as well as other matters which take into account subsequent developments relating to ombudsman policy and practice in the UK, ROI and further afield.

### Background

- 1.6 Before setting out the issues and questions that will be the subject of consultation, some further background information may be helpful on the ombudsman institution, the Ombudsman in Northern Ireland, the 2004 review and its recommendations and subsequent developments.
- 1.7 The first Ombudsman was established in Sweden in 1809. Its expansion was initially limited to other Scandinavian countries, Finland in the early years of the 20th century, and Denmark in the 1950s. Indeed it was the Danish version of the institution which prompted the interest of the UK legal reform group Justice, with a report recommending the introduction of the institution in 1961.<sup>4</sup> New Zealand was the first common law country to adopt the institution in 1962 and in the UK it was established with the title of Parliamentary Commissioner for Administration in 1967.
- 1.8 In Swedish, the term 'ombudsman' means 'agent' or 'authorised representative' and the common core idea of an ombudsman is:

*'An official appointed to investigate complaints against public bodies, government departments or their servants and employees, who acts as an independent referee, without*

1 Established by the Parliamentary Commissioner Act (Northern Ireland) 1969 see Ombudsman (Northern Ireland) Order 1996.

2 Established by the Commissioner for Complaints Act (Northern Ireland) 1969 see Commissioner for Complaints (Northern Ireland) Order 1996.

3 Deloitte MCS Ltd., *Review of the Offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints*, (Office of the First and Deputy First Minister, 2004).

4 Justice, *The Citizen and the Administration: The Redress of Grievances* (chair Sir John Whyatt), (Stevens, 1961).

*power of sanction or appeal, between individual citizens and their governments and its administration.*<sup>5</sup>

- 1.9 The ombudsman institution as established in the UK and ROI falls into a category known as the 'classical ombudsman' with the key characteristics of an independent officer who is equipped with significant powers of investigation to deal with complaints of maladministration which have caused injustice, and to make recommendations for redress where a complaint is upheld.
- 1.10 In Northern Ireland the office of the Ombudsman was introduced before it was developed beyond Westminster, in the rest of UK and ROI. The first Northern Ireland Ombudsman established in 1969 only dealt with the departments of the devolved government at Stormont initially. A second office, the Northern Ireland Commissioner for Complaints, was established to consider complaints about local councils, health services and other bodies soon afterwards. In ROI when the Ombudsman legislation came into force in 1983 it included all government departments and a wide range of public bodies.<sup>6</sup>
- 1.11 There may be some confusion about terminology as the initial formal title of the Ombudsman was Commissioner. In ROI the institution was formally titled the Ombudsman from its inception, however, in Northern Ireland the former Parliamentary Commissioner for Administration for Northern Ireland was renamed the Assembly Ombudsman for Northern Ireland and in Scotland and Wales the title Public Services Ombudsman was used in legislation passed in 2002 and 2005 respectively.
- 1.12 The 2004 Review of the Office was commissioned following the changes implemented after reviews in England and devolution in Scotland and Wales, (that resulted in legislation passed in 2002 and 2005 respectively). A common key feature of the reviews was the creation of a single ombudsman office or 'one-stop shop' to deal with devolved services. Some matters have not been devolved and so some complaints, for example those about defence and HMRC, must be referred to the UK Parliamentary Ombudsman at Westminster.
- 1.13 There have continued to be developments in ombudsman policy, practice and legislation in Great Britain, and in Northern Ireland. Significantly in Northern Ireland, the devolution of policing and justice on 12 April 2010 has led to the Northern Ireland Ombudsman taking over from the UK Parliamentary Ombudsman the jurisdiction to deal with complaints in these areas (including complaints about the Department of Justice and its agencies such as the Northern Ireland Prison Service and the Northern Ireland Courts and Tribunals Service).

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5 R. Gregory & P Giddings 'The Ombudsman Institution: 'Growth and Development' in R. Gregory & P Giddings, *Righting Wrongs: The Ombudsman in Six Continents*, (2000), p.2

6 The Ombudsman Act 1980

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## Proposal for a Single Office

- 2.1 The 2004 Review recommended that the two offices of AONI and NICC should be merged to create the single office of the Northern Ireland Public Services Ombudsman. It has been suggested that a merger would resolve the confusion which arises from the differences between the statutory arrangements over access for the public, jurisdictional coverage and ultimate remedy. For example, complaints to the AONI about Northern Ireland Executive departments and agencies must be referred by a MLA and the scope of grounds for complaints to the NICC about healthcare is wider as it includes decisions on clinical judgement. In the unusual event of a public body not implementing the Ombudsman's recommendation for redress in an upheld complaint, the legislation for the NICC order allows the complainant to seek compensation in the county court. This is a unique provision in ombudsman legislation, which has not been used by a complainant in 26 years. It is further complicated because it does not apply to all bodies within the NICC's jurisdiction, such as independent contractors who provide medical services including GPs, dentists and opticians. The Deloitte Review noted that the Ombudsman's preferred option would be for the centrality of the Assembly's role to be recognised in relation to any sanctions for non-compliance. This could be achieved in legislation merging the two offices by extending the AONI power to make a special report to all bodies in jurisdiction and the complete removal of the County Court mechanism. However Deloitte recommended that the Special Report option be extended to all bodies with the involvement of the court only retained in relation to local government bodies because of their elected status. This issue is explored further at section 8 of this paper. A merger would also facilitate the simplifying of (a) processes and (b) in raising awareness of the role of the Ombudsman to the general public.
- 2.2 The Ombudsman has indicated that the confusion around the two Offices adversely affects complainants as it can delay their access to the Ombudsman and a possible remedy and, more seriously, they may not proceed with a valid complaint which has caused them an injustice. There is also a difference in the perception of the two offices with some public bodies unaware that an Assembly Committee could require that body to appear before them as a result of a report by the NICC although it was recognised that this was possible in relation to the AONI.
- 2.3 The advantages which the merged offices in Scotland and Wales have brought means that where a person had reason to complain about different services provided by different bodies in relation to linked events it is not necessary to make separate complaints to two Ombudsman offices. For example, where a person has been ill and encountered problems with their health and social care (NICC) and with a claim for a social security benefit (AONI).

### Questions

1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?
2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?

## Purpose of the Office

- 3.1 The template established in the UK's Parliamentary Commissioner Act 1967, and applied in Northern Ireland, assumed that the purpose and role of the Ombudsman was to deal with complaints and that this would take the form of an investigation culminating in a report with recommendations. A person complaining about a public service must have exhausted the internal complaints procedure of the public body first before making a complaint to the Ombudsman.
- 3.2 The Committee considers this deficient in two respects. First it undervalued the role which the Ombudsman could play in improving public administration and, secondly, its narrow focus was a limited and inefficient method for resolving complaints.
- 3.3 Unlike the situation in ROI and in most other countries which have the ombudsman institution, neither the Ombudsman in Northern Ireland nor his counterparts in Great Britain, has a power to conduct an investigation or systemic review on his own initiative. The reason for conferring such a power is that the Ombudsman may have information that suggests there may be problems with a particular body, or type of service and it seems particularly limiting that intervention by the Ombudsman can only be triggered by a complaint. The impact of such an intervention might be recommendations that could have beneficial effects for a large number of people.
- 3.4 The Ombudsman has the potential not only to secure redress for those who have suffered injustice through maladministration but also to prevent recurrence and generally to assist in improving public administration. The 2004 Review suggested that a power to conduct a systemic review could be conferred upon the Ombudsman but subject to the condition that there must first be consultation with the Comptroller and Auditor General to avoid duplication. There is a shared interest in improving public administration between the two offices but they approach it from different perspectives and can bring about different outcomes, which in the Ombudsman's case includes remedying injustice through resolution of complaints in individual cases as well as improving administration through systemic reviews.
- 3.5 Ombudsmen in the UK and ROI produce guidance on good administrative practice which covers matters derived from single investigations to the distillation of precepts and principles from a number of investigations and from research on investigations into particular topics and themes. Clearly therefore such guidance could inform how public authorities undertake their roles and meet their statutory responsibilities (see 7.6).
- 3.6 Another related Review recommendation was that the Ombudsman should undertake an audit on a sample basis of public sector complaint processes. Subsequently there have been developments in complaints-handling in both Northern Ireland and Great Britain which have progressed further than a simple auditing process. Guidance and or training on complaints-handling have been provided by the Ombudsmen in the UK. In 2009 the Ombudsman in Northern Ireland produced guidance on complaints-handling and is offering training using that guidance as a focus, to public bodies in handling complaints. In Scotland and Wales the Ombudsman has been given the role of 'design authorities' and the task of producing standardised complaints procedures for public bodies.
- 3.7 The complaint resolution process in the legislation not only allows for an investigation by the Ombudsman, but also for a settlement. The legislation in Scotland and, particularly in Wales, expressly confers a wide power to resolve complaints ranging from the formal investigation to an informal intervention which can include Ombudsman staff using the telephone as opposed to a letter or report (see paragraph 6.6 below).

### Questions

3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?

4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?5.
5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?7.
6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?

## Remit of the Office

- 4.1 The remit or jurisdiction of the Ombudsman concerns the bodies and activities which may be the subject of scrutiny by the Ombudsman and this is within a particular framework.

### **Type of complaint**

- 4.2 It is an established feature of the ombudsman model that a complaint is focused on the manner in which decisions and actions have been taken. The legislative term which covers this is maladministration. It is flexible and has deliberately not been defined in legislation so as to maximise its application. The sorts of administrative failings which it includes are:

- Avoidable delay in the handling of individuals' applications, cases, etc;
- Faulty procedures or failing to follow correct procedures;
- Poor handling of complaints, or failure to inform the complainant about any rights of appeal;
- Unfairness, bias or prejudice in dealing with individuals;
- Providing misleading or inadequate advice;
- Refusing to provide information without good reason, or answer reasonable questions;
- Discourtesy, including failure to apologise properly for errors;
- Mistakes in handling claims;
- Not offering an adequate remedy where one is due;
- Reaching decisions either on the basis of irrelevant considerations or which are otherwise perverse.

- 4.3 Only if maladministration has been found may the actual substance of a decision be questioned by the Ombudsman. Although it is possible for the Ombudsman to find that a rule or policy is itself maladministrative where there has been evidence of injustice arising out of its application and for example there has been a failure to review the policy. It is not intended that the content of policy or the merits of a discretionary decision taken without maladministration should be within the jurisdiction of the Ombudsman.

- 4.4 The original Ombudsman's office was created to fill a gap in the then existing arrangements for offering redress of people's grievances with government departments and public bodies. Ordinarily, the complainant is first expected to raise the complaint with the body that caused the problem, and if there is alternative avenue of redress, then that should be pursued, unless the Ombudsman is of the view that it would be unreasonable to expect the complainant to resort to that alternative avenue.

- 4.5 The Committee considers that it is appropriate to continue to centre the work of the Ombudsman on the established concept of maladministration about the type of complaint but it does seek opinions on which bodies and activities should be within the Ombudsman's remit.

### **Bodies**

- 4.6 Those bodies currently within the Ombudsman's remit are listed in Appendix 1. The 2004 Review supported the general principle that all organisations substantially funded from public monies should be within the Ombudsman's jurisdiction unless specifically excluded. The Review identified the following bodies as those which appear to meet this criterion but were outside the current jurisdiction:

- Assembly Commission
- Northern Ireland Audit Office
- Schools

- Universities
- Colleges of Further Education
- General Teaching Council for Northern Ireland
- Northern Ireland Higher Education Council
- Northern Ireland Council for Integrated Education
- Integrated Education Fund
- Northern Ireland Water Council<sup>7</sup>
- Northern Ireland Economic Council<sup>8</sup>
- Drainage Council
- Historic Buildings Council
- Historic Monuments Council and
- Armagh Observatory and Planetarium

- 4.7 Although the Review supported the general principle of receipt of 'substantial' public funds, the Committee considers that this principle may be too narrow as there are bodies and activities which are in receipt of some public funding (although not substantial) and it may be desirable that they be included in the Ombudsman's jurisdiction. A recent example of an ombudsman acquiring jurisdiction of such bodies concerns privately arranged or funded adult social care which is now within the remit of the Local Government Ombudsman in England following the implementation/enactment of section 35 of the Health Act 2009.
- 4.8 The Committee wishes to consider if the broader principle of 'following the public pound' should be adopted in informing inclusion in the Ombudsman's jurisdiction, and how this would be implemented in any new legislation. Currently bodies within jurisdiction are listed in a schedule to the legislation which is amended by the Department (OFMDFM). The alternative is to list those bodies exempted as is done with activities and matters not within remit. The Review raised the possibility of listing only exempted bodies but in commenting that bodies including the Equality Commission relied upon the designation in the Ombudsman legislation as a basis for defining bodies within their remit, it represented a transparent process which should be retained.

#### **Activities & Matters**

- 4.9 There are a range of activities and matters which are currently excluded from the AONI's jurisdiction.
- the commencement or conduct of proceedings before a court of law;
  - action taken by a member of staff of a tribunal so far as it is taken at the direction or authority of the person acting in the capacity as a member of the tribunal;
  - action taken in respect of appointments, removals, pay, discipline, superannuation or other personnel matters in relation to the service in any office or employment under the Crown or under listed authority service in any office or employment or contract for service in respect of which powers to take action in personnel matters are determined or approved;
  - actions relating to (certain) contractual matters or commercial transactions.<sup>9</sup>

7 This body has been abolished/now forms part of another organisation.

8 Ibid

9 Paragraph 5(2) of Schedule 4 of the Ombudsman (NI) Order 1996 exempts from this statutory bar 'transactions for or relating to the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily; or the disposal as surplus land acquired compulsorily or in circumstances in which it could have been acquired compulsorily'.

- 4.10 This last exclusion does not exist in the NICC jurisdiction and therefore in merging the two offices consideration should be given to whether or not this difference should be removed. On the one hand, respect for the principle of freedom of contract would leave to the courts disputes about the award or the terms of a contract. On the other hand there is a need to ensure that in the award of a tender there are no administrative errors giving rise to injustice, such as delay in forwarding an application pack or bias in the composition of a tender panel.<sup>10</sup>
- 4.11 The Review proposed that one item should be added to this group of excluded matters - public sector grievance, discipline and employment matters.
- 4.12 The Ombudsman is unique in having jurisdiction of this matter in these islands. The reason it was included in the 1969 legislation was concern over religious and political discrimination. As such issues can be taken before the Industrial and Fair Employment Tribunals and the Equality Commission it is no longer appropriate for the Ombudsman to continue to have jurisdiction for public servants only when employees from the private and voluntary sectors are excluded from such recourse.
- 4.13 One possible change in the other direction concerns the exercise of professional judgement in social care. The exercise of clinical judgement in health care was brought within jurisdiction in 1997 and the Ombudsman has a panel of clinical advisers who assist with complaints relating to their particular areas of professional expertise. Section 11(2) of the Public Services Ombudsman (Wales) Act 2005, extends this jurisdiction so that it not only covers health but also social care. As health and social care in Northern Ireland are jointly delivered by Health and Social Care Trusts it seems appropriate that professional judgement in both health and social care should be within jurisdiction.

#### **Questions**

7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?<sup>8</sup>.
8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?.
9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?
10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?

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10 Case No 2006/00308

## Acquisition of Cases

- 5.1 The usual way in which the Ombudsman acquires cases is by the submission of a complaint from an individual who alleges that he or she has suffered injustice as a result of the action or inactions of a public body. The AONI and NICC legislation allow for the acceptance of a complaint from someone other than the 'person aggrieved' in defined circumstances.<sup>11</sup> This section deals with (a) the requirements for submitting complaints, and (b) from whom they may be received and whether bodies within jurisdiction should be able to refer a case to the Ombudsman.
- 5.2 Currently complaints must be submitted in writing and also those for the AONI must be referred by a MLA. If it is agreed that the two Ombudsman offices should be merged then the requirements for submission of a complaint should be standardised. The Review recommended that the requirement of referral by a MLA for AONI cases (Northern Ireland Executive departments and their agencies) should be discontinued. This follows the precedent set in Scotland when the Scottish Ombudsman office was created. The research noted that complainants were confused and some did not pursue their complaints on being informed of the legislative requirement of referral by a MLA. The majority of those consulted in the Review were in favour of discontinuing sponsorship by MLAs.
- 5.3 In Northern Ireland referral by MLAs was transferred to the Northern Ireland Assembly from the UK Parliamentary Commissioner Act 1967. Referral has been criticised by successive UK parliamentary ombudsmen supported by the Public Administration Committee of the House of Commons to which that ombudsman reports, most recently in December 2009.<sup>12</sup> The AONI and the UK ombudsman are members of a very small group of ombudsmen for whom sponsorship of complaints by an elected representative is a requirement. Importantly in Northern Ireland, complaints submitted to the Commissioner of Complaints do not require referral.
- 5.4. As the Review pointed out, removing the requirement of referral by MLAs did not mean removing MLAs from any involvement in complaints about public services. It would be open to the constituents to approach the Ombudsman indirectly through their MLAs if that was their wish. Also, if complainants wish to have their MLA involved, the Ombudsman is happy to facilitate that wish.
- 5.5 A restriction on submission which applies to all complaints to the Ombudsman is that they must be in writing. This restriction has been eased in Scotland and Wales (s.5 (2) Welsh Act) and in relation to the English Local Government Ombudsmen who have been given discretion permitting them to accept oral complaints.
- 5.6 The rationale supporting the requirement of submission of written complaints only is that it reduces the risk of receiving incomplete or incorrect information and reduces the scope for disagreement or misunderstanding between a complainant and the Ombudsman's staff. On the other hand the requirement of submitting written complaints is a barrier to some people who have literacy problems, and because people are increasingly making contact with the Ombudsman using a free phone number rather than in writing.
- 5.7 Ombudsmen in ROI, Australia and New Zealand may all accept oral complaints. The question is where does the balance of convenience lie between increased accuracy through written complaints and increased access through oral complaints? Recent Omnibus surveys<sup>13</sup> have shown a lower awareness about the Ombudsman amongst young people as compared with

11 See article 11 of the Assembly Ombudsman (NI) Order 1996 and article 10 of the Commissioner for Complaints (NI) Order 1996.

12 Public Administration Select Committee, 2009, *Parliament and the Ombudsman*, HC 107 of 2009-10, (The Stationery Office).

13 NISRA Omnibus Survey September 2009 and January 2010

older age groups. Therefore in order to encourage use of the Ombudsman's services by younger persons it may be necessary to examine different methods of submitting complaints.

- 5.8 The Ombudsman may accept a complaint from any individual or any body (whether incorporated or not) other than a body specified in the relevant NICC or AONI legislation. In simple terms one public body may not bring a complaint to the Ombudsman about another public body. The reasoning being that the legislation is aimed at providing redress for complaints from the public about public services. A complaint will not be accepted from someone other than the complainant in AONI and NICC legislation except in certain defined circumstances. Where the person has died or is unable to act for himself a complaint can be accepted from a personal representative or a member of his family or other individual 'suitable' to represent him. While both the AONI and NICC legislation allows for such representatives of a 'person aggrieved' to make a complaint on that person's behalf, this provision is more restrictive than in the comparable Scottish and Welsh legislation (S.4 Welsh Act) which allows for any person authorised to act (there is no requirement of 'suitable to act') and so an equivalent change is sought.
- 5.9 In relation to complaints about health and social services bodies, NICC legislation allows for such a body to refer a complaint to the Ombudsman although it is not specific about the circumstances in which a body may decide to refer a complaint. In Scotland section 5(5) of the Scottish Public Services Ombudsman Act 2002, allows for a listed authority (a body within the Ombudsman's remit) to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter.

#### **Questions**

11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish to ask their MLA to refer a complaint on their behalf and to be involved?
12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?
13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?
14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?
15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?
16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?



## Case Handling Procedure

- 6.1 This section deals with the procedure for investigation and for resolving complaints.
- 6.2 The current legislation on the conduct of an investigation may be summarised
- where the Ombudsman proposes to investigate a complaint, he/she must give the body subject to investigation, or any person alleged to have taken or authorised the action complained of, the opportunity to comment on any allegations in the complaint; ·
  - the investigation must be conducted in private but otherwise the procedures are to be whatever the Ombudsman considers appropriate in the circumstances of the case. In particular, the Ombudsman may obtain information from any person and make such inquiries as he/she thinks fit; and may determine whether any person may be legally or otherwise represented in the investigation; ·
  - if he/she thinks fit, the Ombudsman may pay expenses or allowances by way of compensation for lost time, to the complainant and any other person who attends or supplies information for the purposes of an investigation; ·
  - the conduct of an investigation does not affect any action taken by the authority or body concerned or any power or duty of that authority to take further action in relation to the matter under investigation.·
- 6.3 If during the course of the investigation it appears to the Ombudsman under the NICC legislation that there may be grounds for making any report or recommendation that may adversely affect any body or person, then the Ombudsman may give that body or person the opportunity of being examined by his own legal representative and of having tested by way of cross-examination any evidence which may affect it or him. These opportunities may also be offered to the complainant if that person is not likely to be adversely affected by any report or recommendation. There is no equivalent provision in the legislation for the AONI or any other ombudsman in the UK or Ireland. It is proposed that a new provision should be included for the merged office to the effect that where the Ombudsman is minded to make an adverse comment about a person in a report, then that person should be given the opportunity to make submissions about the proposed comment and, if after those submissions the Ombudsman still proposes to make an adverse comment, then the Ombudsman must ensure that the person's defence is fairly stated in the report. This is modelled on a State of Queensland provision.<sup>14</sup>
- 6.4 The Ombudsman has the powers of the High Court in requiring evidence<sup>15</sup> and where the Ombudsman or his staff are obstructed without lawful excuse, then this may be certified to the High Court to be dealt with as if it were an offence committed against the court<sup>16</sup>.
- 6.5 It is proposed to add to these provisions a power similar to that in the Welsh legislation, enabling the Ombudsman who thinks a person may be able to provide information or produce a document also to provide any facility which the Ombudsman may reasonably require. An example of which could be when at that person's premises to use a photocopier.
- 6.6 The existing legislation empowers the Ombudsman to effect a settlement of the complaint. The Review recommended that mediation training might be given to the Ombudsman's staff to facilitate the early resolution of complaints. As mentioned earlier in paragraph 3.7, it is proposed that a wider power, equivalent to section 3 of the Public Services Ombudsman (Wales) Act 2005 be conferred which would authorise the taking of any action to resolve a complaint, and this action could be instead of, or in addition to, conducting an investigation.

14 Section 55 of the Ombudsman Act 2001.

15 See article 14 Ombudsman (NI) Order 1996

16 See article 15 Ombudsman (NI) Order 1996

6.7 It is proposed that the Ombudsman be authorised to co-operate with other Ombudsmen in the UK and ROI (the Ombudsman's jurisdiction extends to North South bodies) when it appears to him that a matter or case investigation could be the subject of an investigation by that other Ombudsman.

**Questions**

17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?
18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?
19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?
20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?

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## Reporting by the Ombudsman

- 7.1 Currently if an investigation is completed then a report is made to the complainant, to the body concerned, and any person alleged to have taken or authorised the action complained of, or is otherwise involved in the complaint's allegations. It is the Ombudsman practice to inform a public body when a complaint is not investigated and the reasons for this, the Committee considers that this may be informative and considers this should be replicated in the new legislation.
- 7.2 It is proposed to modify these provisions along the lines of those to be found in the Welsh legislation. These provisions make arrangements about who is to receive a report. Sections 17 to 23 of the Public Services Ombudsman (Wales) Act 2005, deal with requirements of Welsh public bodies to publicise reports and action to be taken on receipt of a report. A public body must make arrangements within specified timescales for publicising the report in a local newspaper enabling members of the public to have access to copies and to make copies of the report at a reasonable charge. The report must also be available on the body's website. It is an offence for any person wilfully to obstruct a member of the public in the exercise of these rights. There is also a duty on Welsh public bodies under that legislation for the body to consider the report and notify the Ombudsman what action it has taken or proposes to take. There is also provision for an alternative procedure under which reports are not published where (a) no injustice or hardship is found, or (b) where the complaint is upheld but the body agrees to implement the Ombudsman's recommendations within a specified period and (c) the Ombudsman is satisfied that there is no public interest in following the usual publication arrangements. Given the increased transparency and accessibility of the Welsh reporting procedures, the Committee is of the view that the Welsh approach should be considered as part of the consultation process.
- 7.3 In this section we deal with provisions concerning the reports which the Ombudsman may make. No change is proposed in the standard provisions in Ombudsman legislation which confer absolute privilege on the publication of any matter authorised or required to be published under the legislation providing protection against defamation. In NICC legislation the privilege attaches to the publication by the Commissioner or his officers and in AONI legislation this privilege extends to the publication by a MLA to the person by whom the complaint was made.
- 7.4 The identity of the complainant is always withheld by the Ombudsman in his annual report and in relation to other persons mentioned in the report is not given unless the Ombudsman feels it is in the public interest to do so having regard to obligations under the Data Protection Act 1998.
- 7.5 The Ombudsman should make an Annual Report and be entitled to make other reports on matters relating to the discharge of his functions in such a format and at such frequency as the circumstances may require.
- 7.6 As referred to in paragraph 3.5 the Ombudsman should be entitled to issue reports on good administrative practice (see question 5 above).

### Disclosure of Information

- 7.7 The Ombudsman is prevented from disclosing information obtained by him or his officers for the purposes of his investigation or any report made by him except in certain limited circumstances.<sup>17</sup> This is a statutory bar to disclosure and such information is exempt under Freedom of Information legislation. The Ombudsman can share information in only two further very limited circumstances one of which relates to disclosures to the Information Commissioner for the purposes of complaints about breaches of the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.<sup>18</sup> There is an equivalent provision in the Freedom of Information Act 2000<sup>19</sup> allowing the Information Commissioner to share information with the Ombudsman. The other circumstance which also permits information sharing is in the NICC legislation as a result of which the Ombudsman can disclose information to the effect that a person is likely to constitute a threat to the health or safety of any other person. The Ombudsman has a broad discretion to disclose to any person to whom he thinks it should be disclosed in the interests of the health or safety of any person and a person to whom a disclosure may be made may be a regulatory body. This information sharing gateway has been only used on two separate occasions by the current Ombudsman by way of disclosure of information to the General Medical Council in respect of the conduct of clinicians. This information sharing provision is similar to section 26 of the Public Services Ombudsman (Wales) Act 2005 but that legislation does allow for disclosure on health or safety grounds to persons whom the Ombudsman thinks it should be disclosed in the 'public interest'.
- 7.8 The Ombudsman would seek to co-operate with other public sector Ombudsman in the UK and ROI and with the C&AG in relation to specific investigations or indeed systemic investigations. If these powers were granted in the proposed legislation then it would be necessary to include an information sharing power for the Ombudsman similar to that enjoyed with the Information Commissioner.

### Questions

21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?
22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?
23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?
24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?
25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?

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17 Article 19 of the Ombudsman (Northern Ireland) Order 1996 and article 21 of the Commissioner for Complaints (Northern Ireland) Order 1996. These purposes are for any proceedings for an offence under the Official Secrets Acts 1911- 1989; any proceedings in relation to the offence of perjury; an enquiry with a view to the taking of proceedings of these and any proceedings by the Ombudsman for obstruction or contempt.

18 See section 44 of FOI Act; Article 19A of the Assembly Ombudsman (NI) Order 1996 and article 21A of the Commissioner for Complaints (NI) Order 1996 as inserted by section 76(2) of the Freedom of Information Act 2000 and schedule 7 paragraphs 9 and 10.

19 Section 76(1) of the Freedom of Information Act 2000

## Enforcement

- 8.1 Where a complaint is upheld, normally the body accepts and implements the Ombudsman's recommendations. Ombudsmen generally do not have power to enforce these recommendations; their power lies in moral suasion. Currently there is a difference between the AONI and NICC legislation. Under the NICC provisions it is possible for the complainant to seek an award of damages in the county court where the body has not remedied the injustice. It is also open to the court to make a direction requiring the body to take action or to refrain from taking certain action.
- 8.2 This provision has not been used by a complainant in some 26 years and is unique.<sup>20</sup> It was initially introduced in 1969 due to concerns over political and religious discrimination in local government employment and housing. The normal position where an Ombudsman is satisfied that injustice has not or will not be remedied to his satisfaction, is to make a special report and usually the publicity associated with such a special report adds to political and public pressure so that the matter is resolved to the Ombudsman's satisfaction. This is the position under the AONI legislation where a special report can be laid before the Assembly. This is the situation in the unified Ombudsman offices in Scotland and Wales, where the report is published to the Parliament and Assembly respectively and there are also powers for providing the report to others and publicising it. This special report authority has not been exercised by either the Scottish<sup>21</sup> or Welsh<sup>22</sup> Ombudsmen to date.
- 8.3 As the authority of and respect for the Ombudsman's findings and recommendations has not been challenged, it is not considered necessary or appropriate to retain the provision in the NICC legislation to allow complainants to seek a remedy in the county court when the body has not implemented the Ombudsman's recommendations for remedying injustice caused by maladministration. The Ombudsman should be empowered in every case to make and publicise a special report, including publication to the Assembly, when satisfied that injustice found in a reported investigation had not or would not be remedied.

### Question

26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?
27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?

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20 Mary Seneviratne considers this point in her publication *Ombudsmen – Public Services and Administrative Justice* (2002) Butterworths, p.247 and comments that the majority of the 30 actions brought by complainants have related to employment issues at paragraph. 4.11.

21 Section 16 Scottish Public Services Ombudsman Act 2012

22 Section 22 and 23 of Public Sector Ombudsman (Wales) Act 2005

## Appointment of the Ombudsman

- 9.1 The Review recommended that the Ombudsman should continue to be appointed by the Queen following a resolution by the Assembly. The tenure would be for a five year term but there could be reappointment.
- 9.2 One proposal is that the Assembly could nominate a candidate for appointment following an appointment process held under the auspices of the Assembly Commission and that this should be in a resolution supported by two thirds of the MLAs voting.
- 9.3 The practice on tenure has changed in the UK from one in which it could extend until retirement age, to a fixed term but with eligibility for reappointment, to a single fixed term. The rationale underlying this is that it secures an appropriate balance between the independence and accountability of the Ombudsman. The proposed length of the single fixed term is seven years which is longer than the four year term of the Assembly and allows for one full Assembly term after appointment of a new Ombudsman and an additional three years in respect of a new Assembly.

### Questions

28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?
29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?

## Staffing & Finance

- 10.1. Currently the majority of the Ombudsman's staff are seconded for periods of up to three years from the Northern Ireland Civil Service and the wider public service. The Review noted that the staff felt that the fact that they were seconded civil servants in no way compromised the independence of the Office and this was accepted by the stakeholders who were consulted. However, the Ombudsman considers that the increase in the number of health related complaints and recent extensions to jurisdiction arising from devolution of justice have necessitated a fresh look at how the office is staffed particularly at senior management level.
- 10.2 The Review recommended the development of a human resource strategy and enhanced equality and diversity programmes. The Committee considers that in small to medium sized organisations such as the Ombudsman's office there is a need to retain the secondment option while combining it with an option for direct employment so as to ensure maximum diversity, equality of opportunity and flexibility in the workforce.
- 10.3 The Ombudsman would wish to have explicit authority to be able to obtain advice from any person and to pay a reasonable fee for such advice. This would cover investigations where specialist expertise is relevant and other circumstances including the seeking of legal advice.
- 10.4 The financing of the office of the Ombudsman should continue to be by grant (out of the Consolidated Fund) approved by Assembly vote.
- 10.5 In AONI and CCNI legislation the salary of the Ombudsman is set annually by Order based on recommendations by the Department of Finance and Personnel. The Review concluded that the Ombudsman's salary linkage to the Senior Civil Service was inappropriate and recommended linkage to judicial scales. The Review recommended a review of this salary arrangement.
- 10.6 There should continue to be authority for delegation of functions by the Ombudsman to one of his officers, the retention of a deputy post and a mechanism for the appointment of an acting Ombudsman.

### Questions

30. Should the Ombudsman be able to employ staff directly to his/her Office and also to provide for secondment in his Human Resources Strategy?
31. Should the current link with the judicial salary scale be maintained?

## Governance & Accountability

- 11.1 The Review recommended that the Ombudsman should continue to be an officer of the Assembly and to have arrangements similar to those of the Comptroller and Auditor General who appears before the Assembly's Audit Committee to give an account in relation to his performance, resources and salary.
- 11.2 Potential committees who could scrutinise the work of the Ombudsman include the Audit Committee or the Committee for the Office of the First Minister and deputy First Minister. Some adaptations would need to be made in both cases. While the OFMDFM Committee oversees a particular department, this department has a wide remit.
- 11.3 It is likely that other statutory committees would wish the Ombudsman to appear before them, for example the Committee for Health, Social Services and Public Safety, the Committee for Justice, the Committee for Social Development and the Committee for the Environment all oversee departments whose work will form a large part of the Ombudsman's case load. The Committee for Justice will be interested in the Ombudsman's perspective on the working of the administrative justice system. It is possible that appearances before Assembly committees could take up a lot of the Ombudsman's time and it will therefore be a matter for the committees working through their chairs, to ensure effective co-ordination of Ombudsman's attendance at committees.

### Questions

32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?



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## Other Issues

- 12.1 Currently the Ombudsman is unable to consider cases where the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal or any action in respect of which a person aggrieved has or had a remedy by way of legal proceedings. He may conduct an investigation notwithstanding that such a remedy exists only where he considers it was not reasonable to expect the person to have resort to or have resorted to that alternative remedy. The Law Commission of England and Wales and leading academics in this area have debated the removal of this statutory bar in Public Sector Ombudsman legislation. The Ombudsman considers that given developments in the wider system of administrative justice that in new legislation the Ombudsman should have the power to accept any complaint of maladministration about a body in jurisdiction but to direct a complainant to an alternative form of remedy such as the courts where it appears that body is able to provide a more appropriate and proportionate remedy.
- 12.2 Obtaining Advice – Although not part of the Review recommendations, the Ombudsman would welcome specific powers to obtain advice from any person who in his opinion is qualified to give it and to assist in the discharge of any of his functions.
- 12.3 Local Government Standards – the Review recommended that as in Wales breaches of the Local Government Statutory Code of Conduct for elected representatives in local authorities be investigated by the Ombudsman. This change is being enacted in draft local government legislation which is under consideration by the Executive. Although the exact timetable for commencement of the relevant local government legislation is uncertain, the Committee notes this development.
- 12.4 Given the current economic climate and pressures on public funds it is essential that there is no duplication of roles on the part of ombudsmen and commissioners in Northern Ireland. There is a potential for creating an ombudsman model which is sufficiently flexible to undertake other responsibilities which must however be consistent with the core purpose of the office in order to achieve maximum value for the public purse.

## Next Steps

13.1 Comments are welcomed on the questions posed in this consultation paper and on other points relevant to the reform and updating of the Ombudsman's legislation. The consultation questions are grouped together below.

13.2 Any organisation or individual with an interest in this issue is invited to submit written evidence on the proposals by answering the questions raised in the consultation document.

Written evidence should be sent to the Committee by e-mail to [committee.ofmdfm@niassembly.gov.uk](mailto:committee.ofmdfm@niassembly.gov.uk) or by post to the address below:

The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

Further copies of the consultation paper can be obtained from the website:

<http://bit.ly/reformniombudsman>

13.3 If you do not have access to internet or e-mail facilities or you have any other enquiries please contact the Committee office on (028) 9052 1904.

Closing date for submissions is **noon Friday 17 December 2010**.

13.4 Written evidence submitted to the Committee should be kept confidential until published by the Committee. However, witnesses should be aware that if they decide to publish the evidence that they provide to the committee, the publication would not be covered by Assembly privilege in relation to the law of defamation. Witnesses who nevertheless decide to publish their evidence should provide the Committee with advance notice of their intentions.

13.5 Unless indicated otherwise it will be assumed that those submitting written evidence have no objections to it being made public by the Committee. Written evidence submitted will usually be made public by the Committee at the end of the consultation, by publication or other means.

13.6 Those submitting written evidence should indicate if they wish to be considered to give oral evidence to the committee.

### List of Consultation Questions

1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?
2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?
3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?
4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?
5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?

6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?
7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?
8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?
9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?
10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?
11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?
12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?
13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?
14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?
15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?
16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?
17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?
18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?
19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?
20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?

21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?
22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?
23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?
24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?
25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?
26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?
27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?
28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?
29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?
30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?
31. Should the current link with the judicial salary scale be maintained?
32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?

# Appendix 1

## Bodies Currently Within Jurisdiction

### **Bodies which fall within the remit of the Assembly Ombudsman**

- Agri-food and Biosciences Institute
- Civil Service Commissioners
- CMED (formerly Child Support Agency)
- Companies Registry
- Compensation Agency
- Department for Regional Development
- Department for Social Development
- Department of Agriculture and Rural Development
- Department of Culture, Arts and Leisure
- Department of Education
- Department of Employment and Learning
- Department of Enterprise, Trade and Investment
- Department of Finance and Personnel
- Department of Health, Social Services & Public Safety
- Department of the Environment
- Department of Justice
- Driver & Vehicle Agency
- Foras na Gaeilge
- Forensic Science Northern Ireland
- Forest Service
- Foyle, Carlingford & Irish Lights Commission
- General Register Office
- Health Estates Agency
- InterTradeIreland
- Land and Property Services
- Loughs Agency
- NI Statistics & Research Agency
- Northern Ireland Authority for Utility Regulation
- Northern Ireland Courts and Tribunals Service
- Northern Ireland Environment Agency
- Northern Ireland Prison Service
- Northern Ireland Prisoner Ombudsman
- Office of the First and Deputy First Minister
- Planning Appeals Commission
- Planning Service
- Public Record Office of Northern Ireland
- Rivers Agency
- Roads Service
- Safefood (formerly the Food Safety Promotion Board)
- Social Security Agency
- Special European Union Programmes Body
- Ulster-Scots Agency
- Waterways Ireland
- Youth Justice Agency

### **Bodies which fall within the remit of the Commissioner for Complaints**

- Abbeyfield UK (NI) Ltd
- Alpha Housing Association
- Antrim Borough Council
- Ards Borough Council
- Ark Housing Association (NI) Ltd
- Armagh City & District Council
- Arts Council
- Ballymena Borough Council
- Ballymoney Borough Council
- Ballynaveigh Housing Association
- Banbridge District Council
- Belfast City Council

- Belfast Community Housing Association Ltd
- Belfast Education and Library Board
- Belfast Harbour Commissioners
- Belfast Health & Social Care Trust
- Broadway Housing Association
- Carrickfergus Borough Council
- Castlereagh Borough Council
- Clanmil Housing Association Ltd
- Coleraine Borough Council
- Coleraine Harbour Commissioners
- Community Relations Council
- Connswater Homes Ltd
- Construction Industry Training Board
- Consumer Council
- Cookstown District Council
- Council for Catholic Maintained Schools
- Council for the Curriculum, Examinations & Assessment
- Covenanter Residential Association Ltd
- Craigavon Borough Council
- Craigowen Housing Association Ltd
- Criminal Inspection for Northern Ireland
- Derry City Council
- District Policing Partnerships
- Down District Council
- Dungannon & District Housing Association
- Dungannon & South Tyrone Borough Council
- Equality Commission for Northern Ireland
- Fermanagh District Council
- Filor Housing Association Ltd
- Flax Housing Association
- Fold Housing Association
- Gosford Housing Association (Armagh) Ltd
- Grove Housing Association Ltd
- Guardian Ad Litem Agency
- Habinteg Housing Association (Ulster) Ltd
- Health & Personal Social Services Tribunal
- Health & Safety Executive
- Health and Social Care Board
- Health and Social Care Business Services Organisation (took over responsibilities of Central Services Agency)
- Health Service Providers - GDP
- Health Service Providers - GP
- Health Service Providers - Optometrists
- Health Service Providers - Pharmacists
- HEARTH Housing Association
- Helm Housing
- Independent HSC Provider - Out of Hours GP Services
- Independent HSC Provider - Private Nursing Home
- Invest NI
- Labour Relations Agency
- Laganside Corporation
- Larne Borough Council
- Limavady Borough Council
- Lisburn City Council
- Livestock & Meat Commission for Northern Ireland
- Local Government Staff Commission
- Londonderry Port & Harbour Commissioners
- Magherafelt District Council
- Mental Health Commission for Northern Ireland
- Mental Health Review Tribunal
- Moyle District Council
- National Museums Northern Ireland
- Newington Housing Association

- 
- (1975) Ltd
- Newry & Mourne District Council
  - Newtownabbey Borough Council
  - North & West Housing Ltd
  - North Down Borough Council
  - North Eastern Education & Library Board
  - Northern Health & Social Care Trust
  - Northern Ireland Ambulance Service Health and Social Care Trust
  - Northern Ireland Blood Transfusion Service
  - Northern Ireland Certification Office
  - Northern Ireland Commissioner for Children & Young People
  - Northern Ireland Co-Ownership Housing Association Ltd
  - Northern Ireland Fire and Rescue Service
  - Northern Ireland Fishery Harbour Authority
  - Northern Ireland Housing Executive
  - Northern Ireland Law Commission
  - Northern Ireland Legal Services Commission
  - Northern Ireland Local Government Officers' Superannuation Committee
  - Northern Ireland Medical & Dental Training Agency
  - Northern Ireland Museums Council
  - Northern Ireland Police Fund
  - Northern Ireland Policing Board
  - Northern Ireland Practice and Education Council for Nursing & Midwifery
  - Northern Ireland Regional Medical Physics Agency
  - Northern Ireland Tourist Board
  - Oaklee Housing Association Ltd
  - Omagh District Council
  - Open Door Housing Association (NI) Ltd
  - Patient and Client Council
  - Probation Board for Northern Ireland
  - Public Health Agency
  - Regulation and Quality Improvement Authority
  - RUC George Cross Foundation
  - Rural Development Council
  - Rural Housing Association Ltd
  - SHAC Housing Association
  - South Eastern Education & Library Board
  - South Eastern Health & Social Care Trust
  - South Ulster Housing Association Ltd
  - Southern Education & Library Board
  - Southern Health & Social Care Trust
  - Sports Council for Northern Ireland
  - St Matthews Housing Association Ltd
  - Staff Commission for Education & Library Boards
  - Strabane District Council
  - Strategic Investment Board Ltd
  - Triangle Housing Association Ltd
  - Trinity Housing
  - Ulidia Housing Association Ltd
  - Ulster Supported Employment Ltd
  - Warrenpoint Harbour Commissioners
  - Wesley Housing Association Ltd
  - Western Education & Library Board
  - Western Health & Social Care Trust
  - Woodvale & Shankill Housing Association Ltd
  - Youth Council
-

## Draft Consultee list 20100917

### Legislation to update and reform the office of the Northern Ireland Ombudsman

#### Draft list of consultees

##### **Bodies currently within the remit of the Northern Ireland Assembly Ombudsman**

- Department of Agriculture and Rural Development

[[www.dardni.gov.uk](http://www.dardni.gov.uk)]

- Department of Culture, Arts and Leisure

[[www.dcalni.gov.uk](http://www.dcalni.gov.uk)]

- Department of Education

[[www.deni.gov.uk](http://www.deni.gov.uk)]

- Department for Employment and Learning

[[www.delni.gov.uk](http://www.delni.gov.uk)]

- Department of Enterprise, Trade and Investment

[[www.detini.gov.uk](http://www.detini.gov.uk)]

- Department of the Environment

[[www.doeni.gov.uk](http://www.doeni.gov.uk)]

- Department of Finance and Personnel

[[www.dfpni.gov.uk](http://www.dfpni.gov.uk)]

- Department of Health, Social Services and Public Safety

[[www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)]

- Department for Regional Development

[[www.drdni.gov.uk](http://www.drdni.gov.uk)]

- Department for Social Development

[[www.dsdni.gov.uk](http://www.dsdni.gov.uk)]

- Department of Justice

<http://www.dojni.gov.uk/>

- Office of the First Minister and Deputy First Minister

[[www.ofmdfmni.gov.uk](http://www.ofmdfmni.gov.uk)]

##### **Government agencies**

- Business Development Service

[[www.nics.gov.uk/bds](http://www.nics.gov.uk/bds)]

- Child Support Agency



[[www.dsdni.gov.uk/csa/](http://www.dsdni.gov.uk/csa/)]

- Construction Service

[[www.dfpni.gov.uk/constructionservice](http://www.dfpni.gov.uk/constructionservice)]

- Driver and Vehicle Agency

[[www.dvani.gov.uk](http://www.dvani.gov.uk)]

- Environment and Heritage Service

[[www.ehsni.gov.uk](http://www.ehsni.gov.uk)]

- Central Procurement Directorate

[[www.cpdni.gov.uk](http://www.cpdni.gov.uk)]

- Health Estates Agency

[[www.dhsspsni.gov.uk/hea](http://www.dhsspsni.gov.uk/hea)]

- Land and Property Services

[[www.lpsni.gov.uk](http://www.lpsni.gov.uk)]

- Land Registers

[[www.lrni.gov.uk](http://www.lrni.gov.uk)]

- Ordnance Survey

[[www.osni.gov.uk](http://www.osni.gov.uk)]

- Planning Service

[[www.planningni.gov.uk](http://www.planningni.gov.uk)]

- Public Record Office

[[www.proni.gov.uk](http://www.proni.gov.uk)]

- Rivers Agency

[[www.dardni.gov.uk/index/countryside/](http://www.dardni.gov.uk/index/countryside/)]

- Roads Service

[[www.roadsni.gov.uk](http://www.roadsni.gov.uk)]

- Social Security Agency

[[www.dsdni.gov.uk/index/ssa.htm](http://www.dsdni.gov.uk/index/ssa.htm)]

- Statistics and Research Agency

[[www.nisra.gov.uk](http://www.nisra.gov.uk)]

#### **Other organisations**

- Waterways Ireland

[[www.waterwaysireland.org](http://www.waterwaysireland.org)]

- Food Safety Promotion Board

[[www.safefoodonline.com](http://www.safefoodonline.com)]

- Special European Union Programmes Body

[[www.seupb.org](http://www.seupb.org)]

- Foras na Gaeilge

[[www.forasnagaeilge.ie/](http://www.forasnagaeilge.ie/)]

- Ulster-Scots Agency

[[www.ulsterscotsagency.com](http://www.ulsterscotsagency.com)]

- Loughs Agency

[[www.loughs-agency.org](http://www.loughs-agency.org)]

- Civil Service Commissioners

[[www.nicscommissioners.org](http://www.nicscommissioners.org)]

- General Register Office

[[www.groni.gov.uk](http://www.groni.gov.uk)]

- Northern Ireland Authority for Utility Regulation

[[ofreg.nics.gov.uk](http://ofreg.nics.gov.uk)]

- Registry of Companies, Credit Unions and Industrial and Provident Societies

[[www.detini.gov.uk/cgi-bin/get\\_builder\\_page?page=1966&site=7](http://www.detini.gov.uk/cgi-bin/get_builder_page?page=1966&site=7)]

- Registry of Deeds

[[www.lrni.gov.uk/static/staticFrame.jsp](http://www.lrni.gov.uk/static/staticFrame.jsp)]

### **Tribunals**

- Child Support

[[www.dsdni.gov.uk/taser-appeals\\_service.htm](http://www.dsdni.gov.uk/taser-appeals_service.htm)]

- Compensation for Loss of Employment through Civil Unrest

- Disability Appeal

- Fair Employment

[[www.employmenttribunalsni.co.uk](http://www.employmenttribunalsni.co.uk)]

- Industrial

[[www.employmenttribunalsni.co.uk](http://www.employmenttribunalsni.co.uk)]

- Lands

[[www.landstribunalni.org](http://www.landstribunalni.org)]

- Planning Appeals Commission

[[www.pacni.gov.uk](http://www.pacni.gov.uk)]

- Provision of General Medical Services List

- Medical Appeal

- Mental Health Review

- Registered Homes

- Rent Assessment Committee

- Social Security Appeal

[[www.dsdni.gov.uk/](http://www.dsdni.gov.uk/)]

- Vaccine Damage
- Water Appeals Commission

[[www.pacni.gov.uk/aboutwaterappeals.asp](http://www.pacni.gov.uk/aboutwaterappeals.asp)]

## Bodies currently within the remit of the Northern Ireland Commissioner for Complaints

### **Local councils**

- Antrim Borough Council

[[www.antrim.gov.uk](http://www.antrim.gov.uk)]

- Ards Borough Council

[[www.ards-council.gov.uk](http://www.ards-council.gov.uk)]

- Armagh City & District Council

[[www.armagh.gov.uk](http://www.armagh.gov.uk)]

- Ballymena Borough Council

[[www.ballymena.gov.uk](http://www.ballymena.gov.uk)]

- Ballymoney Borough Council

[[www.ballymoney.gov.uk](http://www.ballymoney.gov.uk)]

- Banbridge District Council

[[www.banbridgedc.gov.uk](http://www.banbridgedc.gov.uk)]

- Belfast City Council

[[www.belfastcity.gov.uk](http://www.belfastcity.gov.uk)]

- Carrickfergus Borough Council

[[www.carrickfergus.org](http://www.carrickfergus.org)]

- Castlereagh Borough Council

[[www.castlereagh.gov.uk](http://www.castlereagh.gov.uk)]

- Coleraine Borough Council

[[www.colerainebc.gov.uk](http://www.colerainebc.gov.uk)]

- Cookstown District Council

[[www.cookstown.gov.uk](http://www.cookstown.gov.uk)]

- Craigavon Borough Council

[[www.craigavon.gov.uk](http://www.craigavon.gov.uk)]

- Derry City Council

[[www.derrycity.gov.uk](http://www.derrycity.gov.uk)]

- Down District Council

[[www.downdc.gov.uk](http://www.downdc.gov.uk)]

- Dungannon & South Tyrone Borough Council

[[www.dungannon.gov.uk](http://www.dungannon.gov.uk)]

- Fermanagh District Council

[[www.fermanagh-online.com](http://www.fermanagh-online.com)]

- Larne Borough Council

[[www.larne.gov.uk](http://www.larne.gov.uk)]

- Limavady Borough Council

[[www.limavady.gov.ukk](http://www.limavady.gov.ukk)]

- Lisburn City Council

[[www.lisburn.gov.uk](http://www.lisburn.gov.uk)]

- Magherafelt District Council

[[www.magherafelt.gov.uk](http://www.magherafelt.gov.uk)]

- Moyle District Council

[[www.moyle-council.org](http://www.moyle-council.org)]

- Newry and Mourne District Council

[[www.newryandmourne.gov.uk](http://www.newryandmourne.gov.uk)]

- Newtownabbey Borough Council

[[www.newtownabbey.gov.uk](http://www.newtownabbey.gov.uk)]

- North Down Borough Council

[[www.northdown.gov.uk](http://www.northdown.gov.uk)]

- Omagh District Council

[[www.omagh.gov.uk](http://www.omagh.gov.uk)]

- Strabane District Council

[[www.strabanedc.com](http://www.strabanedc.com)]

#### **Education and Library Boards**

- Belfast Education & Library Board

[[www.belb.org.uk](http://www.belb.org.uk)]

- North Eastern Education & Library Board

[[www.neelb.org.uk/welcome/welcome.asp](http://www.neelb.org.uk/welcome/welcome.asp)]

- South Eastern Education & Library Board

[[www.seelb.org.uk](http://www.seelb.org.uk)]

- Southern Education & Library Board

[[www.selb.org](http://www.selb.org)]

- Western Education & Library Board

[[www.welbni.org](http://www.welbni.org)]

#### **Harbour authorities**

- Belfast Harbour Commissioners

[[www.belfast-harbour.co.uk](http://www.belfast-harbour.co.uk)]

- Coleraine Harbour Commissioners

[[www.coleraineharbour.f9.co.uk](http://www.coleraineharbour.f9.co.uk)]

- Londonderry Port and Harbour Commissioners

[[www.londonderryport.com](http://www.londonderryport.com)]

- Warrenpoint Harbour Authority

[[www.warrenpointharbour.co.uk](http://www.warrenpointharbour.co.uk)]

#### **Health and Social Services Boards**

- Eastern Health & Social Services Board

[[www.ehssb.n-i.nhs.uk](http://www.ehssb.n-i.nhs.uk)]

- Northern Health and Social Services Board

[[www.nhssb.n-i.nhs.uk](http://www.nhssb.n-i.nhs.uk)]

- Southern Health and Social Services Board

[[www.shssb.org](http://www.shssb.org)]

- Western Health & Social Services Board

[[www.whssb.org](http://www.whssb.org)]

#### **Health and Social Services Trusts**

- Belfast Health & Social Care Trust

[[www.belfasttrust.hscni.net](http://www.belfasttrust.hscni.net)]

- NI Ambulance Service

[[www.niamb.co.uk](http://www.niamb.co.uk)]

- Northern Health & Social Care Trust

[[www.northerntrust.hscni.net](http://www.northerntrust.hscni.net)]

- Southern Health & Social Care Trust

[[www.southerntrust.hscni.net](http://www.southerntrust.hscni.net)]

- South Eastern Health & Social Care Trust

[[www.setrust.hscni.net](http://www.setrust.hscni.net)]

- Western Health & Social Care Trust

[[www.westernttrust.hscni.net](http://www.westernttrust.hscni.net)]

#### **Special Health and Social Services Agencies**

- Guardian Ad Litem Agency

[[www.n-i.nhs.uk/Nigalaweb](http://www.n-i.nhs.uk/Nigalaweb)]

- -NI Blood Transfusion Service

[[www.nibts.org](http://www.nibts.org)]

- Public Health Agency

## **Housing**

- Housing Executive

[[www.nihe.gov.uk](http://www.nihe.gov.uk)]

- Northern Ireland Federation of Housing Associations

[www.nifha.org/](http://www.nifha.org/)

## **Other bodies**

A company designated under Article 5 of the Strategic Development and Regeneration of Sites (NI) Order 2003

A Development Corporation established under Part III of the Strategic Development and Regeneration of Sites (NI) Order 2003

- Agri-food and Biosciences Institute

[[www.afbini.gov.uk](http://www.afbini.gov.uk)]

- Arts Council

[[www.artscouncil-ni.org](http://www.artscouncil-ni.org)]

- Board of Trustees of National Museums and Galleries of NI

[[www.magni.org.uk](http://www.magni.org.uk)]

- Commissioner for Children and Young People for Northern Ireland

[[www.nickey.org](http://www.nickey.org)]

- Community Relations Council

[[www.community-relations.org.uk](http://www.community-relations.org.uk)]

- Council for Catholic Maintained Schools

[[www.onlineccms.com](http://www.onlineccms.com)]

- Council for the Curriculum, Examinations and Assessment

[[www.ccea.org.uk](http://www.ccea.org.uk)]

- N.I. Medical & Dental Training Agency

[[www.nimdtta.gov.uk](http://www.nimdtta.gov.uk)]

- District Policing Partnerships

[[www.districtpolicing.com](http://www.districtpolicing.com)]

- Equality Commission for Northern Ireland

[[www.equalityni.org](http://www.equalityni.org)]

Family health services in the National Health Service where provided by doctors, dentists, pharmacists and optometrists (ophthalmic opticians) - with effect from 1 December 1997

- Fire and Rescue Service Board

[[www.nifrs.org](http://www.nifrs.org)]

- Fishery Harbour Authority

[[www.nifha.fsnet.co.uk](http://www.nifha.fsnet.co.uk)]

- General Consumer Council for Northern Ireland

[[www.gccni.org.uk](http://www.gccni.org.uk)]

- Health and Safety Executive

[[www.hseni.gov.uk](http://www.hseni.gov.uk)]

- Industrial Training Boards

[[www.citbni.org.uk](http://www.citbni.org.uk)]

- Labour Relations Agency

[[www.lra.org.uk](http://www.lra.org.uk)]

- Laganside Corporation

[[www.laganside.com](http://www.laganside.com)]

- Livestock and Meat Commission

[[www.lmcni.com](http://www.lmcni.com)]

- Invest Northern Ireland

[[www.investni.com](http://www.investni.com)]

- Local Government Officers' Superannuation Committee

[[www.nilgosc.org.uk](http://www.nilgosc.org.uk)]

- Local Government Staff Commission

[[www.lgsc.org.uk](http://www.lgsc.org.uk)]

- Museums Council

[[www.nimc.co.uk](http://www.nimc.co.uk)]

- Northern Ireland Certification Office

[[www.nicertoffice.org.uk](http://www.nicertoffice.org.uk)]

- Northern Ireland Practice & Education Council for Nursing & Midwifery

[[www.nipec.n-i.nhs.uk](http://www.nipec.n-i.nhs.uk)]

- Northern Ireland Social Care Council

[[www.niscc.info](http://www.niscc.info)]

New town commissions established under the New Towns Acts (Northern Ireland) 1965 to 1968 and any of their committees or sub-committees

- Regulation and Quality Improvement Authority

[[www.rqia.org.uk](http://www.rqia.org.uk)]

- Rural Development Council

[[www.rdc.org.uk/rdc](http://www.rdc.org.uk/rdc)]

- Sports Council

[[www.sportni.org](http://www.sportni.org)]

- Staff Commission for Education and Library Boards

[[www.staffcom.org.uk](http://www.staffcom.org.uk)]

- Strategic Investment Board

[[www.sibni.org](http://www.sibni.org)]

- Tourist Board

[[www.nitb.com](http://www.nitb.com)]

- Ulster Supported Employment Limited

[[www.usel.co.uk](http://www.usel.co.uk)]

- Youth Council for Northern Ireland

[[www.youthcouncil-ni.org.uk](http://www.youthcouncil-ni.org.uk)]

## Organisations identified in the 2004 Deloitte review currently outside the Ombudsman's jurisdiction

- The Northern Ireland Assembly Commission
- Northern Ireland Audit Office
- Schools (could be covered by Education & Library Boards)
- Universities
- Colleges of Further Education
- General Teaching Council for Northern Ireland
- Northern Ireland Higher Education Council
- Northern Ireland Council for Integrated Education
- Integrated Education Fund
- Drainage Council
- Historic Buildings Council
- Historic Monuments Council
- Armagh Observatory and Planetarium

## Other organisations

- Public Service Ombudsman for Wales
- Scottish Public Service Ombudsman
- Office of the Ombudsman, Ireland
- Parliamentary and Health Service Ombudsman
- Patient Client Council
- Law Society
- General Medical Council



## Public notice seeking written evidence



**Northern Ireland  
Assembly**

Committee for the Office of the First  
Minister and deputy First Minister

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

The Northern Ireland Assembly Committee for the Office of the First Minister and deputy First Minister has published its consultation paper on Legislation to Update and Reform the Office of the Northern Ireland Ombudsman. Any organisation or individual with an interest in this issue is invited to submit written evidence on the proposals by answering the questions raised in the consultation document.

Written evidence should be sent to the Committee by e-mail to [committee.ofmdfm@niassembly.gov.uk](mailto:committee.ofmdfm@niassembly.gov.uk) or by post to the address below:

**The Clerk to the Committee  
Room 404, Parliament Buildings,  
Ballymiscaw, Belfast BT4 3XX**

A copy of the consultation paper can be obtained from the Assembly's website:

**<http://bit.ly/reformniombudsman>**

If you do not have access to internet or e-mail facilities or you have any other enquiries please contact the Committee office on (028) 9052 1904.

Closing date for submissions is noon  
**Friday 17 December 2010.**

## A2B access to benefits

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The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

17 December 2010

Dear Committee

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

A2B welcomes the opportunity to respond to this consultation. Rather than go through each question in turn, this letter covers our main areas of interest. In general, we agree with the plans laid out in the consultation and the establishment of a single office.

The most important thing for older people in Northern Ireland is that the Ombudsman is accessible to them. The processes must be clear and simple and guidance or support should be provided when necessary. We welcome the proposed change to 'ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved.' This removes a substantial barrier for complainants while still giving them the option to involve their local representative if they wish. In order to make the Ombudsman as accessible as possible, a wide range of methods should be considered for submitting a complaint. This includes letter, telephone, face-to-face (in some cases), email or website form. A text message could be used to generate an initial contact but not as a formal complaint submission.

We agree that the Ombudsman should 'seek to improve public administration as part of his/her work' and be able to carry out investigations on their own behalf.

It is important that the Ombudsman's office works closely with other relevant bodies including the Equality Commission and the impending Commissioner for Older People, to ensure a streamlined service for complainants which directs them to the most appropriate channel in each case.

We are happy to discuss further any aspect of this response – you can do so by contacting Zoë Anderson on 028 9075 4070 or zoe@a2b.org.uk.

Yours sincerely

**Zoë Anderson,**  
Content Officer.

# Age NI



The new force combining *AGE* and **HELP THE AGED WE WILL**

**Consultation Response**  
**On**  
**Proposals to update legislation to reform the Office of the**  
**Northern Ireland Ombudsman**

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## **1. INTRODUCTION AND SOME KEY POINTS**

**AgeNI welcomes the opportunity to respond to the consultation on proposals to update legislation to reform the Office of the NI Ombudsman.**

**Age NI is the new charity combining Age Concern NI and Help the Aged in Northern Ireland. We celebrate ageing and work to create opportunity in later life.**

**Age NI works for a better later life today and tomorrow. We celebrate ageing and work to create opportunity in later life, we fight and challenge disadvantage and unfairness wherever we find it. We have a positive, forward-looking vision for our ageing society.**

**The following should not be considered to be the total summary of our position but a few of the key points that we make.**

- The NI Ombudsman should be able to hold both the office of ombudsman and of commissioner for complaints and it may be helpful to merge these.**
- The NI Ombudsman should not at the same time hold either or both of the offices overseeing political representatives' standards and conduct: Assembly Commissioner for Standards and Privileges or any new body with responsibility for oversight of local government standards.**
- The NI Ombudsman should be required to consult, cooperate and collaborate with regulatory, standards and oversight bodies in Northern Ireland, and to work on an equal footing with them to develop Memorandums of Understanding.**
- The NI Ombudsman is primarily a casework body in maladministration and any investigation and systemic review powers granted should flow from casework.**
- The NI Ombudsman is a maladministration body and should not be able to challenge the merits of discretionary decisions.**
- Complainants should not have to route their complaints through an MLA.**
- If the NI Ombudsman is to play a 'design authority' role the culture of the office will have to change and expertise in consultation and engagement will have to be developed.**

- **Further consideration and consultation is needed on identifying with other key bodies if gaps will appear in employment and procurement oversight before removing the NI Ombudsman's powers in these areas.**
- **The existence of enforcement mechanisms in themselves are a deterrent and none should be weakened or removed.**

## **2. PROPOSAL FOR A SINGLE OFFICE**

### **1. *Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?***

Amongst members of the public who know that there is an Ombudsman, many will not be aware that there are in fact two separate offices or what the difference between them is. Moreover, the two posts are held by the same person and when an internet search is conducted using either title, web-browsers are directed to a single website ([www.ni-ombudsman.org.uk](http://www.ni-ombudsman.org.uk)). The term 'NI Ombudsman' is the common reference used throughout the website and the distinction between the two roles (neither of which is NI Ombudsman) is not obvious. Therefore for the user, merging the titles is likely to make little difference in appearance. Serving the people of Northern Ireland more effectively is a desirable outcome, and in our opinion a more effective service relates directly to the experience of the user.

In relation to the Commissioner for Complaints, at present public awareness of the office and its functions are relatively poor despite the key function of this office being to serve the public, so much greater awareness needs to be raised. Raising awareness is likely to lead to an increase in complaints received and may require a review of the current complaints handling procedures as under the current arrangements achieving remedial action when a complaint is upheld is a lengthy process. One example known to us took over two years to reach resolution and proved to be an exhausting process for the complainant who was an older person. In the case of older people, this delay may in a very real sense, negate the benefit of reaching a resolution.

Providing more effective service to the people of Northern Ireland will depend on whether a merged office will create greater capacity to develop the public face of the organisation and facilitate streamlining of complaint handling that will ultimately shorten the timeline in achieving decisions for complainants. Timely complaint handling is important even when the decision not to uphold a complaint is taken as alternative routes to a resolution may need to be explored in a timely manner.

It is vital that the office works collaboratively and on an equal footing with other bodies operating in regulation, oversight and

**scrutiny. Respect and collaboration between bodies are important because different bodies can work with different methods and within different time constraints to achieve the impact on services the public needs. An example is the case of a farmer (aged over 60) who was kicked in the head by a bull and originally denied brain injury treatment due to his age. Acting in response to a complaint the Ombudsman is likely to have found the hospital had no case to answer as it had followed its procedures, and it could have taken up to two years to arrive at this result. The Commissioner for Older People could potentially have resolved this matter by mediation within weeks. Moreover under powers to review the adequacy and effectiveness of services provided to older people s/he could have undertaken a systemic review of arbitrary age-based barriers which no other body can currently do.**

**A mapping of such bodies and their responsibilities in terms of the order in which a complainant should approach them would be a useful information tool for members of the public and could avoid unnecessary delays when seeking redress.**

**From the information in the Annual Report, it is unclear how a decision to take up a complaint is made and whether complaints that are not taken up are directed to other appropriate potential routes of remedy; or whether the office performs an informal mediation role in the interests of providing speedy, cost effective remedy.**

**We are surprised, and concerned, about the reference in this section to the removal of the court as a sanctioning mechanism. Sanctions cannot be entirely left within the remit of a very busy Assembly. Moreover it is a confusion of role and purpose to replace a court with the Assembly as the former provides an individual remedy, which may also set a precedent for further action in some cases, while the latter mainly makes overarching proposals. We wonder if sacrificing this sanction is favourable chiefly to fulfil the desire to merge the two bodies. This needs to be given careful consideration.**

**We concur that there is a lack of visibility of the two offices of the Ombudsman and this has an effect on accessibility for members of the public. The lack of public awareness is surprising given the length of time these offices been established. Other Commissions and scrutiny bodies that have not been around for this length of time are arguably better known. One must ask: Has there been a communications and engagement strategy? If so, why has it not been effective?**



While merging of the Ombudsman's two offices is a sensible suggestion, adding additional powers may lead to problems where there is a history of a lack of cooperation and collaboration between the Ombudsman's office and other bodies. If additional powers are granted this matter should be addressed in the legislation at the same time to ensure that all bodies work collaboratively and in a way that is complimentary to their aims.

***2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?***

The renaming of the office is less important than what it can deliver. However, given the likelihood of the name being abbreviated it may be wise to adopt the former suggestion to avoid any false association with the PSNI. The name 'Ombudsman' harks back to a different and less enlighten era. We suggest that the name be changed to 'Ombudsperson' as a more fitting and inclusive term.

The impression has been given in earlier debates, scrutiny hearings and dealings on other legislation (e.g. the Bill for the Older People's Commissioner) that there is or ought to be a super-office which would encompass all existing bodies. This role should not automatically fall to the Public Services Ombudsman. It must be remembered that the Ombudsman's offices, whether merged or not, are concerned with maladministration not with people's human rights or with their interests more generally. Moreover, it is eminently sensible to separate powers and functions across a range of bodies as to make one single powerful body that fails to deliver would be detrimental to the interests of people in Northern Ireland.

It should be noted that the Northern Ireland Human Rights Commission has the role to advise the Assembly on legislative and other measures to protect human rights.

**3. PURPOSE OF THE OFFICE**

***3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?***

In the roles of NI Ombudsman and of NI Commissioner for Complaints, the Ombudsman's remit extends only to the exercise of administrative functions of the bodies to which the Orders apply. In effect, the role is about the procedure and process of public services – triggered by someone who claims to 'have sustained injustice in

**consequence of maladministration'<sup>1</sup> – rather than about the content of public services, any obligation to deliver services that meet people's needs and rights or the merit of a decision.**

**The improvement of public services in so far as maladministration is concerned should be a paramount aim for the Ombudsman, and where a complaint has been upheld avoiding further instances should be addressed in the interests of improving public services. It may be surprising for members of the public who have heard of the Ombudsman to learn that this would require a change to legislation and is not within the current remit.**

**It is disappointing that it has not been the Ombudsman's practice to draw lessons for improvement and good practice in regularly occurring complaints as an added value 'add on' to the role in the past. This has been a failure of the office especially since the welcoming statement on the website states: "The purpose of my Office is to ensure that every citizen in Northern Ireland is served by a fair and efficient public administration that is committed to accountability; openness; and quality of service."**

**At present the Ombudsman acts as an "independent referee without power of sanction or appeal between individual citizens and their Government and its administration"<sup>2</sup> The Ombudsman, under the Ombudsman (NI) Order 1996 may lay special reports in front of the Assembly, in addition to annual and other reports. It would appear that the practice of reporting to the Assembly has not been significant in terms of driving positive change in policy and practice in public administration. It is therefore most surprising that the consultation is suggesting reliance on this rather than also having a remedy through the court. The proposals for formally widening the remit to encompass the improvement of public services is a sensible one but more effective action is required to deliver results. This is not just a matter of the enabling legislation, which is important, but also of effective implementation and innovation in finding ways to advance improvement to the gain of both citizens and public bodies.**

**Data from Age NI's telephone advice service indicates that maladministration of benefits to older people is a systemic, recurring problem. At present, the Ombudsman only investigates maladministration complaints brought forward by individuals but**

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<sup>1</sup>The Commissioner for Complaints (Amendment) (NI) Order 1997, s7(7).

<sup>2</sup> NI Assembly OFMdFM Committee Consultation Paper, Proposals to update legislation to reform Office of the Northern Ireland Ombudsman, undated autumn 2010, p2.

**problems within the administration of benefits that affect many are evident and have not been addressed. Addressing systemic problems is important in improving public services. However, any role for the Ombudsman in this needs to be considered alongside a requirement for the office to develop cooperative working arrangements with other oversight and scrutiny bodies and open up opportunities for collaborative enquiry.**

**According to the NI Assembly Research and Library Service: “The Northern Ireland Ombudsman has to date been reluctant to enter into Memorandums of Understanding (MOUs) with organisations under his remit due to the risk that this could potentially impact on the independence of his office...”<sup>3</sup>**

**The Research and Library Service paper goes on to indicate that the reluctance to develop MoUs is not in keeping with current practice in Scotland and Wales or indeed between other Northern Ireland oversight bodies. This stance seems unreasonable given the potential benefits in terms of improving public service as well as avoiding duplication. It seems unjustified to suggest differing from other counterparts in this respect whilst at the same time seeking legislative change to acquire many of the same powers that some of these bodies have.**

**Furthermore, the report indicates the Ombudsman is currently exploring the option of an information sharing protocol with the RQIA and the General Medical Council for issues regarding complaints about healthcare professionals.<sup>4</sup> It seems like a fragmented approach to work with some and not with others. Rather, it would seem sensible for the Ombudsman and all other organizations with oversight and regulatory roles to work together collaboratively to improve public services for the people of Northern Ireland where this is appropriate.**

**Age NI are disappointed that the Ombudsman is currently excluded from the oversight of the Older People’s Commissioner. There are indications of current offices lack of attention to older citizens: there has been no data recording and analysis of cases presenting in terms of age. Older people have complained to voluntary agencies about frustration in terms of delays and cases not being taken up. If the Ombudsman hopes to improve public services, it would seem sensible to keep better data on all presenting cases for the purposes**

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<sup>3</sup> NI Assembly, Research & Library Service Briefing Note, 170/10, 9<sup>th</sup> September 2010, NIAR 426-10

<sup>4</sup> NI Assembly Research & Library Briefing Note, Paper 170/10, 9<sup>th</sup> September 2010, NIAR 426-10

**of identifying problem areas. We suggest that the most effective way of protecting citizens and securing active continuous improvement in our public services is to allow public bodies such as Commissions and Ombudsmen to be accountable to one another in order ensure the best possible outcomes for the people of Northern Ireland. We welcome the provision for review of the Older People's Commissioner legislation (contained in the OPC Bill) that will allow bodies such as the Ombudsman to be brought under remit of the Older People's Commissioner if Ministers see fit.**

**From the information contained in the Annual Report, it is evident that only a small number of complaints are investigated in relation to the overall number of complaints received. In the interests of improving public services, the Ombudsman should keep data on all cases presented, whether or not they are upheld. Data of this nature could contribute to the identification of systemic problems requiring remedial action. To our knowledge, at present the Ombudsman does not hold comprehensive data on the breakdown of complaints received/upheld. AgeNI requested information on the number of complaints received from older people and was told that this information was not held. A Deloitte Report for OFMdfM in May 2008 also noted the absence of these statistics for the development of an evidence base and suggests that the Ombudsman operates on the basis of general assumptions.<sup>5</sup>**

**If the Ombudsman aims to improve public administration in a wider sense, beyond the individual complaint, the collation and analysis of this information must be an important focus as it would increase the office's capacity to address multiple instances of the same problem. Indeed, it is surprising that the Ombudsman has not already considered the contribution the office could make to advancing equality by providing data to underpin knowledge within the s75 categories. Whether designated under s75 or not, a body responsible for overseeing public administration should keep such data (and voluntarily follow the Equality Commissions guidance) as a matter of good practice and an example to public bodies over which it has oversight. There are several bodies that already collect this information from which the Ombudsman could avail.**

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<sup>5</sup> OFMdfM, Examining the case for a Commissioner for Older People, Deloitte Report, May 2008: 'The Office does not keep age-related statistics but it is considered that older people constitute a considerable proportion of complaints each year especially in health and social care and housing' (conversely, the Ombudsman's office appears to have quoted the fact that 'many registered housing associations have a specific remit for older people' as justification for the inclusion of housing here.)

***4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?***

There are several other bodies which have the power to undertake investigations and systemic reviews. We would not object on principle to the idea of the Ombudsman initiating an investigation or systemic review provided the relationship between the Ombudsman's office and other bodies is on an equal footing and the Ombudsman is not regarded as primarily the first port of call with other bodies simply being referred issues by the Ombudsman. Bodies should work together collaboratively and assist each other.

The Ombudsman is primarily a casework body in maladministration. The Ombudsman's systemic review powers should flow from casework following consultation with other significant bodies, not solely with the Comptroller and Auditor General. This is also the view of stakeholders.<sup>6</sup> Focus should be on early resolution of complaints with investigation powers as a last resort. There ought to be scope for joint-body work, with the Ombudsman drawing the systemic implications of the casework to the attention of other bodies with existing powers and expertise in investigation for them to consider undertaking the task of investigation and review.

There is a danger that the Ombudsman is seen as the one big 'catch-all' for public administration at all levels. There are differences in the role and remit of different bodies, for example, the Ombudsman's role is only in relation to maladministration while others are there to improve standards or protect the rights and interests of everyone or of certain groups. Furthermore, other bodies may be a more appropriate given the area, the concern, or the group affected e.g. the RQIA, the Equality Commission or the Older People's Commissioner.

It is essential that the Ombudsman's office works collaboratively and on an equal footing with other regulatory, standards and oversight bodies. In the interests of maximising the efficiency of public resources, duplication of effort should be avoided. Collaborations can be managed through MoUs as is the case in Scotland and Wales.

<sup>6</sup> OFMdFM, Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p31 indicated support for system review powers, but only where there is sufficient evidence from casework and there is no duplication with other bodies.

**It must be borne in mind that adding investigation and systemic review greatly extends the Ombudsman's powers and this harbours implications for public authorities. The Ombudsman made the point earlier this year about accountability fatigue given the increasing pressure on public bodies from the many bodies monitoring and reviewing them. It may be valuable to consider, therefore, whether a more creative and cost effective approach would be to require the Ombudsman to refer substantive matters for investigation to other bodies with existing powers and experience in using them. Moreover, if the Ombudsman is correct in his assertion about the time consumed by public bodies in responding to oversight, priority must be given to areas concerned with discrimination or that affect people's rights as these are the most fundamental to a person's citizenship.**

**It appears from the consultation paper that there is a lack of attention to the purpose behind interventions when the role of informal intervention is posited as 'using the telephone as opposed to a letter or report'. Usually 'informal procedures' stand in comparison to 'formal procedures' that require an oversight body to undertake certain things in a certain formal way; this can be time-consuming but breaches of formal processes laid down in legislation can lead to serious consequences. There may be a role for an intermediate or informal process or stage between guidance and monitoring and more substantive and intrusive inquiries and investigations. This can be a more proportionate tool in appropriate circumstances.<sup>7</sup> However to describe an informal process as simply being about using oral communications over written, as opposed to being about a proportionate but effective approach to achieving change is to miss the point of what the body is constituted to do.**

***5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?***

**This question is confusing as there is a difference between a public body being *required* and being *expected* to take something into account. It appears that the Ombudsman has already taken steps to issue guidance and provide training. This is a welcome introduction and certainly public bodies should be expected to implement recommendations that the Ombudsman makes, as they are currently expected to implement recommendations made following a successful determination for a complainant.**

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<sup>7</sup> See EHRC, *Fairness: A new contract with the public*, July 2008, pp40-41.

However, an expectation is not a requirement and does not suggest power to ensure there is implementation. So, the matter to be considered is whether bodies coming under the Ombudsman should be *required* to take account of guidance and, if so, what enforcement mechanisms should accompany this.

This raises the questions: (i) whether *requirement* is the best route for a matter of administrative practice (as opposed to application of rights and equality legislation); and (ii) how such requirement can be effectively implemented. Even though it is desirable to take all routes to uplifting standards of practice it is important to consider whether the first of these has a place in administration. The maladministration the Ombudsman is responsible for embraces a range of conduct including 'neglect, bias, delay, incompetence, perversity, arbitrariness, rudeness, refusal to answer reasonable questions, neglecting to inform an individual, on request, of his rights or entitlements, giving inadequate or misleading advice, faulty procedures, etc.'<sup>8</sup>

Bodies falling under various remits of the Equality Commission are required to take account of that Commission's guidance in certain matters. As a body that promotes and protects equality for all citizens it seeks to tackle discrimination and raise to an equal standing those most affected by inequality (such as groups identified under s75). S75 guidance is an example of where public bodies are required to follow some elements of the guidance – the requirement extends to matters in the guide which are covered in legislation – while other parts of that guide are expected to be followed but are not mandatory.

Extending a requirement such as that proposed means extending resources for oversight and follow-through to implementation. The worst possible option is to extend a power and then not resource its application properly as then the body appears to have something which in practice it does not. An Ombudsman would not want status and authority without substance as this could potentially bring the body into disrepute.

Introducing a power to place a requirement on public bodies should be considered in light of the likely impact on workload for the Ombudsman's office and public bodies. Other bodies who work in the field of mandatory and non-mandatory guidance have been successful because of attention to consultation processes and

<sup>8</sup> OFMdFM, Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004.

ongoing support. These improve compliance but are likely to be time consuming and will require additional resources if they are to be implemented properly and this needs careful consideration.

***6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?***

The addition of this function has the potential to resolve some issues at source and streamline complaints procedures. However, a number of things need to be considered about the approach to this if effective results are to be achieved. Otherwise it is pointless to extend powers to this area.

The current Ombudsman's dismissal of the effectiveness of the consultation process undertaken by OFMdFM which, alongside other expertise, helped to shape the legislation for the Older People's Commissioner was surprising and did not reflect the wider view. In contrast, in her evidence to the OFMdFM Committee the Interim Advocate for Older People referred to the informed and constructive discussions at the consultations and the contributions of a wide range of stakeholders; she had attended nine consultations.

If the Ombudsman is to undertake such a role effectively the office will need to undertake research and gather and analyse data from its own and others' complaints processes, work in partnership with others with expertise and consult widely with stakeholders – both public bodies and citizens – as the basis for 'authority' to design public sector complaints processes. The Ombudsman's expertise is concentrated in a limited field handling individual complaints and weaknesses in a number of these areas as has already been identified.

The experience of the public service user and complainant must be a central focus in design of public sector complaints processes. To achieve the best effect, a 'design authority' should adopt a user centred approach and liaise widely with: public bodies, advice providers, complainants and potential complainants. The overall aim of design must be to improve practice across the board. Central to this will be improving accessibility and reducing the length of time it takes to reach resolution, as well as ensuring that public bodies are adequately trained to cater appropriately for all sections of the community.



#### 4. REMIT OF THE OFFICE

##### ***7. Should the broad principle of ‘following the public pound’ be the basis on which bodies will be included within the Ombudsman’s jurisdiction?***

The principle of ‘following the public pound’ may be construed different ways – as a means of determining which bodies should come under the Ombudsman’s remit and powers or deciding where the Ombudsman’s attention should be concentrated.

It is logical that the Ombudsman’s remit should extend to all publicly funded bodies but some are more important to citizens than others, and this is not always on the basis of their place in the funding hierarchy. The Ombudsman has jurisdiction over a wide range of bodies already, so before a decision is taken to widen the reach, examples of the benefit of including other bodies should be provided along with proof of the effectiveness of the office in delivering on its current remit.

The Northern Ireland Ombudsman has by far the lowest percentage of complaints upheld across these islands at 10.8% compared with 85% in England, 47.6% in Ireland and 16.2% in Wales.<sup>9</sup> Deloitte surmises but there is no evidence on why this might be. It is a matter that needs to be understood before additional powers are added to the Ombudsman as such a low level of return for citizens may be a factor undermining public confidence in the office.

It is important that the Ombudsman does not overlap with and duplicate the role of the Comptroller and Auditor General, or other bodies in the application of powers. All public bodies have to prioritise, and the means by which they make choices in what they do is important. It may be appropriate for the Comptroller and Auditor General to ‘follow the public pound’ to decide where he focuses his attention. However, this should not be the major criteria by which the Ombudsman determines priorities. Rather, complaints generated by citizens, including by vulnerable individuals, should be at the centre of prioritisation. Where rationalisation is necessary selection criteria should be developed around e.g. where a case has merit, if it comes from a vulnerable person, if there is a volume in a particular sector, important points of principle, multiplier effect, etc.

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<sup>9</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, pp27-28.

***8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?***

The fact that bodies are listed and publicly available offers greater transparency which is essential to an accessible process. Inclusion in the list also means these bodies are included under the jurisdiction of the Equality Commission and other bodies whose legislation is similarly worded. If the choice is between a reference to 'following the public pound' or naming the bodies in the legislation, the latter is the preferred option.

OFMdfM should have responsibility for maintaining the list and regularly scanning the public sector environment to see which bodies should be added as this list is a reference point for other bodies and not just the Ombudsman.

***9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?***

Deloitte found that the NI Ombudsman is unique among other Ombudsmen but not among other Northern Ireland Commissions in having power over employment. Stakeholders were evenly balanced about his jurisdiction in these matters. Most recognise that there continues to be a significant number of employment complaints each year.<sup>10</sup> Amongst the reasons given for proposing the removal of employment matters from the Ombudsman's remit include the existence of specific remedies under equality, employment and human rights legislation since the establishment of the Ombudsman's office in 1969; and the creation of the Pensions Ombudsman. The greater advantage accruing to public and civil servants over private and voluntary sector employees is cited again in the current consultation.<sup>11</sup>

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<sup>10</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p31. Pp35-36 goes on to illustrate that an average of 111 such cases are received each year with some extent of maladministration found in 40% of completed investigations and criticism in a further 18%.

<sup>11</sup> NI Assembly OFMdfM Committee Consultation Paper, Proposals to update legislation to reform Office of the Northern Ireland Ombudsman, undated autumn 2010, p11. Also in OFMdfM Review of the Offices of the Assembly

While there is some logic in this position it must be remembered that the public sector is the biggest employer in Northern Ireland. Moreover, the sector still faces significant change from the Review of Public Administration, especially in local government which is further behind in the RPA process. Added to this is the likely downsizing of the public sector as a result of the economic downturn.

Deloitte noted that it had not been possible to establish the equality aspects from the information available.<sup>12</sup> In light of these factors, it is advisable to undertake discussions with the Equality Commission and other relevant bodies such as the Labour Relations Agency, and to conduct consultations with others including trade unions and representative groups of potentially affected staff before a final decision is taken on this matter. The issue is not whether religious and political discrimination is covered elsewhere, as it is, but the identification of gaps beyond these grounds given the significance of the public sector employment pool and of impending change.

A proposal is also made to exclude 'actions relating to (certain) contractual matters or commercial transactions' from the merged body. Procurement has been a matter of concern in the equality field, and it is important that the Ombudsman does not duplicate the Equality Commission. Nevertheless, consistency of approach can be developed if the Ombudsman has a role in resolving general administrative errors in tendering processes, sometimes jointly with other bodies. Again further consideration of this matter, including specifically with the Equality Commission, would be useful.

***10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?***

We do not see the Ombudsman having the primary role in relation to professional judgement in social care. As the largest proportion of adults in social care are older people and the Commissioner for Older People Bill offers a similar provision, only for older people. Children and young people are another group of social care users and NICCYs remit currently offers provision that extends to young people with a disability or in care up to the age of 21. Given that the number of complaints that fall outside these remits is likely to be very small consideration must be given to the number of likely

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Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p35.

<sup>12</sup> OFMdFM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p36.

**cases. Any decision taken should not defer from existing provision and opportunities for knowledge sharing and collaboration should be taken advantage of in the best interests of the public.**

**One of the matters considered in the 2004 review was whether the office should be able to challenge the merits of discretionary decisions to which stakeholders were opposed (other than clinical judgement which is within scope).<sup>13</sup> Deloitte considered that 'the Ombudsman should continue to be concerned with faulty administration rather than the merits of decision-making'. The point has been made that 'The Ombudsman is not an alternative to the courts, tribunals, or to ministerial appeal or other bodies that are empowered to examine discretionary decisions'.<sup>14</sup>**

**The nature of cases likely to emerge for the Ombudsman to address in maladministration of social care should be clarified and discussed with the appropriate bodies. Care needs to be taken to identify need and clarify the Ombudsman's specific potential role to avoid unnecessary duplication. As mentioned previously, the Ombudsman needs to develop better methods of collaboration with other oversight bodies such as those named to ensure the best use of resources and best outcomes for complainants.**

**The consultation paper refers to the Ombudsman's role where a rule or policy is itself maladministration giving rise to an injustice and there has been a failure to review the policy. This runs close to the Equality Commission's role in s75 duties where an equality impact assessment is expected to trigger policy revision or mitigation when appropriate. Indeed the Human Rights Commission might also have a role in relation to infringement of rights. If the Ombudsman's powers are to be increased encroachment on others' remits and duplication across a wide range of bodies and functions is likely to be an inevitable consequence unless more collaborative working practices are fostered.**

## **5. ACQUISITION OF CASES**

***11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish to ask their***

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<sup>13</sup> OFMdfM, Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p31.

<sup>14</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p37. (with the exception of the present provision in health service cases).

***MLA to refer a complaint on their behalf and to be involved?***

It is important not to assume a patronising stance in terms of judging people's capacity to represent themselves as this constitutes disempowerment for the citizen. This is particularly relevant point in relation to older people and other groups assumed to be vulnerable. The idea that people should deliver their complaints through an MLA under part of the Ombudsman's role is out of step with a citizen-based approach in a democratic society. In effect, to lay this task at the door of MLAs is to put the politician into the role of gatekeeper deciding on whether the citizen is permitted to complain when that complaint is directed at the higher administrative level. Such routine channelling treats MLAs simply as complaint funnels and encourages a clientalist approach to political representation, rather than freeing MLAs to undertake their more proper strategic role of policy representation, overview, development and scrutiny.

It is notable that once freed from political sponsorship in England and Scotland the number of complaints to the Ombudsman increased.<sup>15</sup> It can be deduced from this that gate-keeping is also an obstacle to accessing the service. A more direct route from complainant to Ombudsman can also reduce delay in initiating the complaint.

It is quite another matter if someone needs and wants the support of their MLA, and in this case they should not be denied this. Listening and responding to constituents is an important part of an elected representative's duty and a case from a constituent can be a memorable personal story that propels their duty to act. The Ombudsman has recently started to provide a 'digest' of anonymised cases for Assembly members. MLAs will be able to use the evidence coming through the Ombudsman's office to inform their strategic policy work and representation. Of course, it should not be viewed as a replacement for personal representation to MLAs by complainants if they so wish.

As this section refers to MLAs and by extension the Assembly it is worth making the point here about inappropriate multiple roles that relate to oversight mechanisms in the political sphere. The role of Assembly Commissioner for Standards and Privileges should not be held by the same person who holds the Ombudsman's other

<sup>15</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p33.

offices, nor indeed by anyone holding a similar position in a Commission. While the separation of powers doctrine is usually understood in terms of separating the legislature from the executive and those from the judicial system, it is appropriate to apply the principles here.

The Assembly is the top body in Northern Ireland. Its Standards and Privileges Committee oversees the work of the Assembly Commissioner for Standards and Privileges who in turn considers and reports on MLAs standards of conduct and abuse of privilege. Examples of matters that come under the office's purview include improper lobbying relationships, MLAs conduct in external roles, advising on government contracts while a member, use of confidential information, acting to remove regulatory impediments to clients, inappropriate use of influence, failure to declare financial or other conflicts of interest.

This is not to say these do or will happen here, but an effective system guards against potential conflicts of interest before they happen and provides the proper safeguards to prevent and/or deal with them. Too close a relationship between levels of checks and balances is unhealthy, including specifically too close a relationship between complaints and investigation mechanisms at different levels of public service. Even the *perception* among the public that it may be possible for a political representative to intervene and influence a matter inappropriately and that recourse to address this is to the same person to whom they may have complained previously undermines democracy. As those in the top policy and law-making body in Northern Ireland, MLAs are best protected by having a distinctly separate Commissioner for Standards and Privileges that is unattached to any other body.

Moreover, it would compound the problem if the same Ombudsman were to become responsible for overseeing standards under a mandatory code of conduct for local government. In effect there would be too great a concentration of power and authority in the hands of one office and a consequent reduction in checks and balances in the system. Arrangements for overseeing political standards ought to be separate from other types of oversight as a matter of principle.

***12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?***

In the interests of accessibility and ease of use, complaints should be accepted in whatever form is most practical and convenient for the complainant. Assistance and advice with respect to making a submission should also be offered to complainants when required, perhaps by a third party to reduce the potential of compromising the independent position of the Ombudsman.

***13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?***

Yes, the legislation should include these as acceptable forms of complaint. Recorded audio and video footage should also be accepted to help overcome literacy problems. Considering the ubiquitous nature of the required technology this could be easily accommodated at little cost.

***14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?***

Any person authorised to act, including advocacy bodies, should be permitted to bring complaints to the Ombudsman on behalf of the aggrieved. The finer detail of the distinction between the Scottish and Welsh legislation and the existing NI legislation is not clear from the consultation paper. However, our response is based on the assumption that this proposal aims to make submitting a complaint easier for those who do not have the capacity to do this for themselves. It is important that the person experiencing the grievance is as informed and involved as possible.

***15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?***

It is unclear as to what is meant by this question, and the text does not add any further clarity. The primary focus for the Ombudsman is responding to individual citizens and dealing with their complaints. Other aspects are secondary to this role, even where these are to promote awareness or improve public bodies' complaints processes and capacities.

The word 'bodies' might refer to any number of different types of organisations. If it refers to advocacy and advice bodies acting of

**behalf of an individual or group of individuals with a valid complaint then these ought to be permitted to refer a complaint.**

**If the intention is to allow the referral of a complaint from one authority to another because of appropriateness e.g. from the Equality Commission to the Ombudsman and vice versa, then this ought to be permitted within reason. However, it is important that abuse does not creep in with advantage being taken to evade responsibility for complaints that a body should be dealing with itself. Neither should an individual be passed from pillar to post. Nor should an individual find that despite several bodies having some responsibility none actually takes responsibility, using another body's role as the excuse.**

**It is essential for regulatory, standards and oversight bodies, including the Ombudsman, to have the requisite legislation to do their jobs but not to act without due regard to the statutory powers and duties of others.**

**It is worthwhile commenting at this point on the inter-related matters of gaps and duplication between bodies. The OFMdFM Committee, in considering the Commissioner for Older People Bill, recently gave substantial attention to the matters of gaps and duplication. It received evidence from officials that identified gaps. This evidence illustrated the effect on people's lives of not closing gaps in protection. Identifying and closing gaps is important in terms of improving practice and reducing instances where a complainant experiences the frustration of no body accepting responsibility for their complaint. Bodies should be required to work together to identify gaps and report such in the interests of improving public services.**

**It is easy to look at a list of agencies and assume there is duplication, but bodies have different roles and purposes. The Ombudsman, for example, is concerned solely with maladministration. Others focus in greater depth on a single area of public administration. Others have complex layers of international and European standards as well as domestic legislation to take into account. Some are there to concentrate in a holistic manner on the rights and interests of a vulnerable group. This means that a body will approach an issue from a different perspective, in a different way, with a different goal in mind.**

**In considering this, it is a not simple matter of whether particular bodies have the same or similar powers. Some bodies' powers are limited to a specific field of operation. A body's capacity is likely to be restricted by resource or strategic focus – it will choose priority**



areas in which to deploy its powers. There may be a matter of willingness to prioritise certain matters or categories of people in some bodies. These types of gap are evident.

An important factor in considering where and how there is potential duplication and replication between bodies is where, when and how those powers are used. Each body will assess any intervention it might make in terms of the strategic benefit of that intervention to achieving the priorities established by the particular organisation in fulfilling its duties. For example, a decision may be made that an investigation will not take place because it does not fit within the immediate strategic priorities of that body, it would not have sufficient opportunity cost to the organisation or that it is postponed to a later time. While one body may not judge an investigation to be cost effective and sufficiently strategic within its priorities it could well be that it would be strategic for another body seeking to add to the understanding of good practice, enhance or change practice in a particular area.

Gaps in public oversight arise in a variety of ways: e.g. where no body has the power to act, where a body has the power to act but in exercising its discretion does not act, and where a matter cuts across a number of bodies and no one body deals with it.

Gaps can be created by 'absolute' residual clauses in legislation; and they can be closed by extending full powers and requiring bodies to act in a sensible and collaborative manner. An 'absolute' approach is one where a body is simply forbidden to act where another body has or might have the power to act. Where there is more concern about duplication than about eliminating gaps, gaps can be narrowed at least by acceding powers with milder but no less effective restraints. Rather than completely closing off a body's ability to act, a less restrictive residual clause permits it to step in if another body is 'not likely to' act.

There is a very simple way to avoid duplication which is used in legislation in other jurisdictions – include the power and duty to work jointly and collaboratively with similar bodies in the legislation of oversight bodies. The legislation for the Commissioner for Older People in Wales includes clauses on informing, consulting, cooperating and undertaking joint work with others. The RQIA in Northern Ireland has the power to co-operate with other public authorities in the United Kingdom enshrined in legislation.

The Pensions Ombudsman makes clear that its office will not investigate complaints being investigated by another Ombudsman. In a presentation to the OFMdfM Committee, the Northern Ireland

**Ombudsman proposed pre-consultation between his office and the Comptroller and Auditor General as a means of managing the potential overlap and duplication between them on systemic review were he to get increased powers.<sup>16</sup>**

**Fundamentally it is not about having the same or similar powers, but about minimising duplication in their deployment. The Interim Advocate for Older People commented to the OFMdfM Committee in July that: "It is also cautionary to consider if some overlap may ensure greater vigilance in decision making and provide more accessible pathways into the relevant systems if problems occur."<sup>17</sup> Note that the point is overlap in powers rather than duplication in deployment.**

**Avoiding both gaps and duplication can be managed though framing legislation well, making it a statutory requirement for bodies to consult and cooperate, and requiring memorandums of understanding to be exchanged between bodies that should be expected to pursue pre-consultation, cooperation and collaboration with each other. These are the best conditions for arriving at seamless delivery without gaps across the piece. It follows that it is common sense for the body with the best institutional knowledge on a matter to take it forward.**

***16 . In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?***

**As reference to listed authorities appears here we assume these are not the bodies referred to in Question 15. The management of the proposed changes to the Ombudsman role and powers suffers from a poverty of consultation mechanisms. We are not aware of facilitated public discussion such as roundtables involving users and**

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<sup>16</sup> At the OFMdfM Committee on 27<sup>th</sup> July 2010.

<sup>17</sup> Some comments by the Older People's Advocate on evidence presented on 30<sup>th</sup> June 2010 to the Committee of the Office of The First and Deputy First Minister in their scrutiny of the Commissioner for Older People Bill (Northern Ireland)

citizens generally, or with key organisations with a heightened interest in the proposal given that they work with and/or represent groups of people with a high potential to be affected, e.g. older people. Thus even though in the case of this question the meaning is clear, the implication of the impact is not. An example of its operation would have been useful. The best guess is that it appears to be a good idea.

## **6. CASE HANDLING PROCEDURE**

***17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?***

Yes, provided that steps are taken to avoid duplication and there is enhanced cooperation between the office of the Ombudsman and other bodies with oversight and scrutiny roles. The additional power seems like a sensible suggestion.

***18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?***

This proposal is inappropriate and leaves the Ombudsman open to the charges of bias and lack of transparency in the process, thus undermining confidence in the office and destroying its authority.

Investigations should be managed fairly with both sides fully able to state their case, with support if required. Parties should be given equal opportunity to present their argument and be questioned in advance of the Ombudsman's decision on the case. In making his decision the Ombudsman makes a finding that is one of the following: upholds the case, partially upholds the case, does not uphold the case but makes critical comment, or simply does not uphold the case. In the first three of these the comment is most likely to be made about the public body at the centre of the complaint.

It would be invidious for the Ombudsman to proceed to share with one side in the dispute the comments that are part of the

**Ombudsman's findings and recommendations, and further, to privilege the statement of the defence over the statement of the complainant. Rather the Ombudsman should prepare and present his report independently and expect compliance within a reasonable period of time. The public body should comply, but also have the option of refusing to comply and justifying its decision.**

**If the Ombudsman has not treated either side fairly and honestly then s/he should be taken to task. This raises the need for effective accountability mechanisms.**

***19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?***

**Informal approaches to achieving resolutions are common practice among some oversight bodies such as NICCY. The EHRC in Britain proposed that it be given a simpler and more proportionate tool, an informal process that would sit alongside its inquiry and investigative powers aimed at faster resolution of problems to free it up to undertake more.<sup>18</sup> The potential to resolve issues quickly is obviously favourable for the complainant.**

**Alternative Dispute Resolution (ADR) methods offer a modern and cost effective alternative to formal processes and have obvious benefits in terms of the potential for delivering speedier resolutions, but it should not preclude the pursuit of other methods for redress when injustice is evident and/or when ADR fails to provide agreement.**

**Conciliation is a voluntary process that requires the cooperation of both parties, with agreement between both on the desired outcome. Duplication should be avoided where another body has this power, and the Ombudsman should not be considered to be the ADR mechanism for judicial review cases or for other bodies. Indeed if the Ombudsman is to have ADR powers these must be outsourced, as is the case with the ADR (conciliation) powers of the Commissioner for Older People, so as not to prejudice or be prejudiced by the Ombudsman's primary powers to make judgements and recommendations in relations to complaints.**

***20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?***

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<sup>18</sup> See EHRC, *Fairness: A new contract with the public*, July 2008, pp40-41

**Yes, the Ombudsman should be authorised to cooperate with Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions in the interests of avoiding duplication.**

**It is surprising, however, that there is little reference in the consultation document to working with other oversight bodies within Northern Ireland. For example, there is not a single reference to the RQIA (Regulation and Quality Improvement Authority in Health and Social Services) or the NI Human Rights Commission; and none of the three references to the Equality Commission are substantive. It is important that the Ombudsman avoids duplication with other bodies and, as importantly, begins to develop the habit of collaboration with them. Perhaps the Ombudsman should be required, not just empowered, to consult and cooperate.**

**Furthermore, public bodies such as Commissions and Ombudsmen should be prepared to be accountable to one another in meeting all the standards that each is responsible for. This does not encroach on any body's independence or capacity to operate. We have already expressed regret that the Ombudsman is currently excluded from the oversight of the newly created Commissioner for Older People.**

## **7. REPORTING BY THE OMBUDSMAN**

**It is disappointing that this section refers only to public sector Ombudsmen in the UK and Ireland yet again, and not to other regulatory, standards and oversight bodies in Northern Ireland with the exception of the Comptroller and Auditor General. Indeed the consultation paper as a whole lacks reference to other important bodies whose remit and powers should be part of an informed consultation on new powers for the Ombudsman. These bodies have the very powers that the Ombudsman is seeking to have to place the office on a par with Ombudsmen in other jurisdictions who also have them.**

**It is understandable that the Ombudsman will want to compare and benchmark himself against other Ombudsmen. However, there should be an analysis of where the Northern Ireland Ombudsman sits with other Northern Ireland bodies before decisions are taken on taking forward new powers for the NI Ombudsman.**

**The Assembly Research and Library Service paper referred to the Ombudsman's reluctance to enter into Memorandums of Understanding (MoU) due to his concern that this could potentially**

**impact on the independence of his office. This is not a valid concern as can be seen from the practice of Ombudsmen in other jurisdictions where there is no fear of risk to independence from sensible collaboration. In Wales, for example, cooperation between the Public Services Ombudsman and the Commissioner for Older People is enshrined in law and the Welsh Ombudsman is in the process of formalising MoUs with other commissions.<sup>19</sup>**

***21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?***

**In the interests of increasing greater collaboration and avoiding duplication/replication between other scrutiny and regulatory bodies, greater sharing of information should be pursued. If the aim of the Ombudsman and other bodies is to pursue an effective strategy for improving public services more joint working and creative thinking will be required. For example, publishing reports is a minimal requirement. Further lessons could be learned if anonymised cases were available for reference.**

**The proposed arrangements for reporting are adequate up to a point. There is no reason why a report on a complaint should be held back from publication simply because a body agrees to implement the Ombudsman's recommendations. We oppose this suggestion.**

**The nature of information held by the Ombudsman should take into consideration the wider landscape and how it can be made useful. A large proportion of the work of the office involves gathering information and this valuable resource should be capitalised on for the benefit of improving public services. As mentioned previously, it does not seem sensible that the office currently does not hold simple information on the number of complaints broken down and analysed by age and in other ways.**

***22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?***

**It seems peculiar to write about the Welsh model of increased transparency and accessibility and then to propose a reduction in the requirement to publish reports. We do not support the proposal to remove the requirement to report where (a) no injustice or hardship is found (b) the complaint is upheld and the body agrees**

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<sup>19</sup> NI Assembly, Research & Library Service Briefing Note, The Northern Ireland Ombudsman, 9 September 2010.

to implement recommendations within an agreed timeframe, (c) the Ombudsman is satisfied that there is no public interest in following the usual publication arrangements.

Whilst it can be argued that the removal of the duty to report in these circumstances would free up resources. It is an inappropriate suggestion that would reduce considerably the capacity for transparency with respect to judgements made by the Ombudsman. Transparency is important to retain public confidence in the office and protect the Ombudsman from undue criticism.

Furthermore, published reports provide an important historical reference that can help inform future judgements and thus are a vital part of effective knowledge management. Tacit knowledge will leave the organisation when staff move on, but records and reports will not.

***23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?***

This question appears to suggest that the Ombudsman might not be bound by a regular reporting cycle i.e. "as he/she sees fit". Whilst it may be desirable to have a flexible approach to reporting in terms of managing workload, it is important that the legislation recognises the duty to report and that reporting standards are carefully outlined. The manner of reporting and the frequency of such reports should be framed in the legislation and not at the Ombudsman's discretion. For reasons outlined above, standards are extremely important and must be consistent now, in years to come and upon the appointment of future office bearers.

***24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?***

Please refer to comments elsewhere about the Ombudsman's relationship with bodies in Northern Ireland. There is no objection to sharing information appropriately with Ombudsmen in other jurisdictions, but there is no rationale for asking consistently for a limited application of sharing.

It is appreciated that the consultation document may have been written by someone with an intimate knowledge of the legislation for the Welsh Ombudsman as well as that for the NI Ombudsman,

**but the communication of that knowledge is not adequate to inform consultation respondents effectively. It is not clear what the difference as regards health and safety is between the two bodies. Neither have the implications of the difference been spelt out. Thus it is difficult to comment.**

***25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?***

**The framing of questions 24 and 25 is confusing. This question appears to be a repeat of the second part of Question 24 which refers to health and safety which is actually in paragraph 7.7. If, rather, it refers to the second sentence of 7.8, the implications arising from that sentence are not well explained.**

**Paragraph 7.8 is an important paragraph which relates to the Ombudsman's relationship with Ombudsman bodies in other jurisdictions and the Northern Ireland Comptroller and Auditor General – but not to other regulatory, standards and oversight bodies in Northern Ireland. This time the proposal is to cooperate 'in relation to specific investigations or indeed systemic investigations.'<sup>20</sup> We suggest that if the Ombudsman's office is serious in wishing to avoid duplication and maximize effort and efficiency – it should surely seek to collaborate in these matters with significant Northern Ireland bodies if additional powers are granted.**

## **8. ENFORCEMENT**

**The final recourse under the Ombudsman's remit, which is to report a department's failure to implement a recommendation to the Assembly whereupon MLAs can take the matter forward, has never been used in Northern Ireland. Under the Commissioner for Complaints' remit, on a finding of maladministration a successful complainant can go to the County Court to seek award of damages in respect of 'costs incurred and opportunity lost', but this has not happened for very many years.<sup>21</sup>**

**While it has been suggested that the County Court route was primarily envisaged as a remedy in cases of discrimination in**

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<sup>20</sup> Consultation document, p20

<sup>21</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p19.



employment,<sup>22</sup> there is no reason why this avenue of recourse should be restricted to employment matters.

Enforcement needs to be effective, yet there is so little enforcement history in the Ombudsman's office. It would be important to discover the reason why means of final recourse are not being used. It may not be unrelated to lack of appetite for using these means. The Ombudsman finds it "absolutely indefensible that two public bodies would appear in court against one another."<sup>23</sup> He has also made clear that he considers that 'formal enforcement powers are not necessary to achieve a satisfactory outcome in relation to a complaint.'<sup>24</sup>

A different approach to enforcement is seen in the Equality and Human Rights Commission in Britain which talks about a 'proportionate, risk-based approach to enforcement'. The EHRC says it will do everything it can to encourage fairness and compliance and provide assistance to organisations to do so, but realistically encouragement and exhortation will not always succeed and then it will be necessary to take a different approach through investigation and enforcement.<sup>25</sup>

It may be the limited scope of his office (to complaint handling) that informs the Ombudsman's view that the power of recommendation is 'highly effective in any complaint handling model'.<sup>26</sup> However, the consultation proposes extensive new powers, including powers of investigation and systemic review, at the same time as proposing the removal of an enforcement mechanism.

***26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?***

<sup>22</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p19.

<sup>23</sup> NI Assembly, OFMdfM Committee Official Report (Hansard), Commissioner for Older People Bill, 30 June 2010, p15.

<sup>24</sup> NI Ombudsman, A response to the Consultation document & Draft Bill Integrated Assessment on a Commissioner for Older People in Northern Ireland, January 2010, p16.

<sup>25</sup> See EHRC, Fairness: A new contract with the public, July 2008, p40.

<sup>26</sup> NI Ombudsman, A response to the Consultation document & Draft Bill Integrated Assessment on a Commissioner for Older People in Northern Ireland, January 2010, p16.

**Yes, the Ombudsman should have and use effectively the power to publish special reports and lay reports in front of the Assembly as one means of enforcement.**

***27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?***

**The application of this mechanism should absolutely NOT be removed from any body under the remit of the office for the Commissioner for Complaints; rather, it should be extended to bodies under the office of the Ombudsman. That is, on merger of the office enforcement mechanism should not be diluted but harmonised upwards to the highest standard. The highest standard is the availability of multiple mechanisms and merger provides the opportunity to make this possible.**

**It is important to note that there are two enforcement mechanisms available under the County Court: (i) an award for damages can be made; and (ii) a direction can be made requiring the body to take action or to refrain from taking certain action if the body has not remedied an injustice found by the Ombudsman. These are in addition to the 'name and shame' mechanism through publication of reports. Consideration should be given as to why this remedy has not been used frequently. For example: Have all public bodies implemented all recommendations? Have complainants not been made fully aware of the remedy? Have complainants been discouraged from taking this path? Etc.**

**That it has not been used is not an indication that it is not relevant or will never be used. A recent example in another sphere is recourse to the Convention on the Elimination of Discrimination Against Women (CEDAW) to which the UK is a signatory. CEDAW has an Operational Protocol to which women can have recourse to pursue implementation of a signatory's obligations under the Convention. The Operational Protocol had never been triggered in the UK until last week. Under the Operational Protocol the UN's CEDAW Committee have been asked to undertake an inquiry in Northern Ireland.**

**Nor is lack of use an indication that the measure is obsolete. The best deterrent is one that is never needed because its very existence makes people act. Despite not being used it is still an effective deterrent to offending bodies and it may be harder to get compliance in its absence.**

## **9. APPOINTMENT OF THE OMBUDSMAN**

***28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?***

Further discussion should take place on the method of appointment. It is not necessary for the appointment to be made by the Queen. An Assembly appointment is an interesting idea to explore, as is an appointment made by the Executive. If the Ombudsman were appointed through a regular appointments process it would not necessarily mean that the Ombudsman is somehow not independent. Commitment to independence is critical and is tested by determination to protect the operational independence of the office in daily practice, whether this is delivering fair decisions or standing up against encroachment or influence.

***29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?***

We have no fixed view on this, provided there is an absolute limit. A cyclical appointment is a factor in ensuring independence of office. We are happy to accept one fixed term of seven years with no renewal; or a term of five years which can be renewed once, giving a total of ten years maximum.

The reference to retirement age in the consultation paper is not appropriate given the EU directive and the change that will be made to the age regulations from April 2011 to remove the default retirement age. There no longer will be a retirement age. Rather, the focus should be on absolute term limits for public appointments.

## **10. STAFFING & FINANCE**

***30. Should the Ombudsman be able to employ staff directly to his/her Office and also to provide for secondment in his Human Resources Strategy?***

All of the Ombudsman's staff should be independent from the civil service. That is, they should all be directly employed by the Ombudsman's office. This does not have to affect the terms and conditions of the staff; staff in similar bodies are employed in this way, yet are on civil service terms and conditions.

**This means that the Ombudsman can recruit from anywhere which would be beneficial in terms of achieving diversity in the workplace. It would be valuable for some staff to come from the civil or public service and arrangements should be agreed with the civil service that such applicants should be accommodated by way of secondment.**

**Consideration should also be given to recruitment from the voluntary and community sector where, for example, those working in organisations providing advice could provide useful insights from another perspective that might enhance creative approaches to problem solving.**

***31. Should the current link with the judicial salary scale be maintained?***

**The Ombudsman is not a judge. It is an inappropriate step such as this that sets the conditions for the Ombudsman to move outside the realm of other significant public bodies he should be on a par with and working alongside. The Ombudsman should follow the same terms and conditions including salary arrangements as the Chief Commissioner and equivalent of other regulatory, standards and oversight bodies.**

**11. GOVERNANCE & ACCOUNTABILITY**

***32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?***

**There is a significant difficulty with the Ombudsman being accountable to the Assembly when that same Ombudsman is the oversight body for Members standards and privileges. It is important that these two offices are separated. If they are separated then it is appropriate for the Ombudsman to be accountable for his performance to the Assembly.**

## 12. OTHER ISSUES

1. At present the NI Ombudsman (AONI & NICC) also holds the post of Interim Assembly Commissioner for Standards and Privileges. This position should not be held by the Ombudsman as it presents a significant potential for conflict of interest because the same person who reports on Assembly members standards is also held to account by the Assembly.

2. Moreover, it would compound the problem if the same Ombudsman were to become responsible for overseeing standards under a mandatory code of conduct for local government. In effect there would be too great a concentration of power and authority in the hands of one office and a consequent reduction in checks and balances in the system. Arrangements for overseeing political standards in the Assembly and local government ought to be separate from other types of oversight as a matter of principle.

*Please refer back to the comments on these matters on Page 15-16 under Section 5 Question 11.*

3. Is the Ombudsman's Office cost effective at £3-£4m per year with a very low record of record of cases upheld when compared with Ombudsmen in other jurisdictions? Referring to case clearance Deloitte commented on the need for effective workload management.<sup>27</sup> Deloitte also considered that more sophisticated performance measures were needed for internal management processes and for assuring complainants that their complaint would be dealt with thoroughly and expeditiously.<sup>28</sup> It was recommended that attention be paid to the efficiency and cost effectiveness of the Northern Ireland Ombudsman, with costs per case in excess of 25% more than in Wales.<sup>29</sup>

4. Stakeholders views canvassed in 2004 favoured the amalgamation of the two offices. They were in favour of the Ombudsman's core business being maladministration and were concerned about extensions to the role that would detract from casework.<sup>30</sup>

<sup>27</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p15.

<sup>28</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p16.

<sup>29</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, pp26-27.

<sup>30</sup> OFMdfM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p30.

**5. Deloitte referred to the fact that the Commissioner for Complaints role is not seen as being on a par with the Ombudsman's role and that 'some public bodies do not seem to recognise that they could be called before an Assembly Committee on foot of a case referred to in the Ombudsman's Annual Report'.<sup>31</sup> This lack of penetration of public sector consciousness is surprising in a body that has been in existence since 1969 (more than forty years).**

**6. The notion that the Ombudsman is the final level of recourse outside the judicial remedy for the individual citizen is, frankly, fatuous. This may have been the view when the UK Parliamentary Ombudsman was established back in 1967, or even as far back as Scandinavian countries in the early 20<sup>th</sup> and even the early 19<sup>th</sup> centuries! This is the 21<sup>st</sup> century and the world and the UK have progressed significantly in citizens' rights and protections over the last forty years, including in bodies with significant remits to ensure these are adhered to. The Ombudsman cannot but be aware of this as the office is seeking for itself the more strategic and effective powers that other bodies have – but in their case their remits surpass maladministration.**

**7. 'The Ombudsman is not an alternative to the courts, tribunals, or to ministerial appeal or other bodies that are empowered to examine discretionary decisions' has been stated clearly.<sup>32</sup> One of the matters considered in the 2004 review was whether the office should be able to challenge the merits of discretionary decisions but their stakeholders were opposed to this (other than clinical judgement which is within scope).<sup>33</sup> Deloitte considered that 'the Ombudsman should continue to be concerned with faulty administration rather than the merits of decision-making'.**

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<sup>31</sup> OFMdFM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p19.

<sup>32</sup> OFMdFM Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p37. (with the exception of the present provision in health service cases).

<sup>33</sup> OFMdFM, Review of the Offices of the Assembly Ombudsman / Commissioner for Complaints, Part 1 Report, Deloitte, March 2004, p31.

# Austrian Ombudsman Board

VOLKSANWALTSCHAFT



The Chairman

Northern Ireland Assembly  
The Committee for the Office of the First Minister  
and deputy First Minister  
Committee Office Room 404  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

Contact:  
Mag. Christine Stockhammer

Ref:  
VA-5030/0012-IK/2010

Date:  
Vienna, 17 December 2010

Dear Sir / Madam,

On behalf of the members of the Austrian Ombudsman Board I would like to thank the Committee for the Office of the First Minister and the Deputy First Minister for its invitation to submit written evidence on the proposals to reform the Office of the Northern Ireland Ombudsman.

Many of the issues raised in the consultation document regard administrative or legislative structures that are specific for this jurisdiction. My comments will therefore focus on several questions of general concern within the Ombudsman community. I answer these questions in my role as Chairman of the Austrian Ombudsman Board but also draw from my experience as Secretary General of the International Ombudsman Institute (I.O.I.).

## 1. Austrian Ombudsman Board (AOB)

The AOB has been independently monitoring and controlling Austria's entire public administration since 1977 by order of the Federal Constitution. It checks the legality of decisions by authorities and examines possible cases of maladministration in the public administration. The relevant legal foundations as well as an outline of the AOB mandate can be found on the AOB's website at <http://volksanwaltschaft.braintrust.at/en/legal-bases>.

The Ombudsman Board's mandate of examination is broad. It examines the entire public administration, i.e. all authorities, administrative offices, and departments. The Ombudsman Board controls the direct and indirect federal administration. Seven of Austria's nine states have also mandated the AOB with monitoring the entire state, regional and municipal administration. Around

15,000 people turn to the AOB each year. In 60 percent of all complaints, the AOB initiates a detailed investigation. Altogether, 6,700 of the cases of 2008 and 2009 could be closed in 2009. The members determined a case of maladministration in 15 percent of the initiated investigative proceedings.

## **2. International Ombudsman Institute (I.O.I.)**

The International Ombudsman Institute (I.O.I.), established in 1978, is the only global organisation for the cooperation of more than 120 independent ombudsman institutions. The Office of the Northern Ireland Ombudsman is a long standing member of the I.O.I. complying with the strict criteria for institutional membership regarding independence and accountability. The current incumbent also serves as I.O.I. Vice-President.

The purpose of the I.O.I. is to promote the concept and institution of ombudsman and to encourage its development throughout the world. It develops and operates programmes enabling an exchange of information and experience between ombudsmen throughout the world as well as fostering the professional development of its members through co-operation. The I.O.I. also supports the autonomy and independence of its members and encourages mutual understanding and assistance by and between members.

The International Ombudsman Institute is organised in the following regional chapters: Africa, Asia, Australasia & Pacific, the Caribbean & Latin America, Europe and North America. The headquarters of the I.O.I. are located at the office of the AOB in Vienna, Austria.

## **3. Merger into a single office**

Best practise examples show that direct access and transparent structures are extremely important for citizens and the credibility of the ombudsman institution. Structural and organisational barriers should therefore be as low as possible and there should be no delay in the access to the ombudsman. Separate organisational structures very often result in a complexity, which does not support the work of the ombudsman institution.

As a consequence, the suggested merger of the two statutory offices, that is the Assembly Ombudsman for Northern Ireland (AONI) and the Northern Ireland Commissioner for Complaints (NICC), would be a recommendable step. Possible confusions which arises from the differences between the statutory arrangements over access for the public could be avoided and the citizens' perception that an ombudsman deals with all public administration problems would be reflected more accurately; a person who complains about different services provided by different bodies in



relation to linked events should not be forced to launch two separate complaints to two separate offices.

#### **4. Own initiative investigations**

The Austrian Federal Constitution provides the AOB with the possibility of ex-officio review proceedings if it has a concrete suspicion regarding possible maladministration within the administration. The members of the AOB regularly make use of this right, initiating 72 ex-officio review proceedings in 2009. This provision reflects very well the role of the ombudsman in today's reality: it goes far beyond the understanding that the purpose and role of the ombudsman is to deal with complaints and that this would take the form of an investigation culminating in a report with recommendations. The ombudsman has a specifically deep insight into the public administration and at eventual shortcomings and can play an important role in improving public administration as such.

The power to conduct an investigation or systemic review on his own initiative would add positively to the valuable work of the ombudsman and could be an important tool to give guidance on good administrative practise. The ombudsman may have information indicating that there may be problems in some parts of the public administration but he is currently dependent on receiving a complaint to start an investigation. Specifically own initiative investigations often lead to recommendations, which affect a large number of people and go beyond a single case. In this context the specificities of the Northern Ireland structures have to be well reflected.

#### **5. Acquisition of cases**

Complaints with the AOB can be launched by telephone, in writing and personally at any time. People are increasingly contacting the AOB using its toll-free phone number. Members of the AOB hold around 200 consultation days throughout the country. Over the course of a year almost 1,200 personal conversations take place, during which hundreds of oral complaints are launched. Consultation days are held not only at the offices of the Administrative District Authorities or in administrative offices of the state government, but also in penal institutions, police detention centres and federal army buildings. This eases the access to the AOB considerably.

The current regulation that a complaint must be in writing by a person aggrieved and that there are restrictions as to whether another person can launch a complaint on behalf of somebody certainly complies with international standards. But a considerable number of legislators – among them Austria – have taken the opinion that this constitutes a barrier and means limited access to the ombudsman and his services. From the experience of the AOB oral complaints reduce the

scope for disagreement or misunderstanding between a complainant and the ombudsman and clearly lower the barrier for complainants who have literacy problems.

#### **6. Cooperation with other ombudsman institutions**

Seven of Austria's nine provinces have mandated the AOB with monitoring the entire provincial and municipal administration. In the Tyrol and Vorarlberg, there are however provincial ombudspersons appointed by the provincial parliaments. In these provinces, the AOB only deals with complaints about the federal administration and strongly cooperates with the provincial ombudspersons to make sure that the complainants' concerns are dealt with adequately. In this context information about complaints is shared between the AOB and the provincial ombudsperson. However, it is always clear whether the AOB or the provincial ombudsperson is responsible for the investigation, and the competent ombudsman institution performs the investigation in complete independence. When sharing information, strict regulations on data exchange are applied, for example the complainant is informed that his request is forwarded to the other institution.

It is proposed that the ombudsman be authorised to co-operate with other ombudsmen in the UK and ROI when it appears to him that a matter or case investigation could be the subject of an investigation by that other ombudsman. This clearly would constitute an asset for the complainant and would further improve the quality of service that the ombudsman office offers to the citizens. The ombudsman is already actively involved in co operations with colleagues on a national and international level, but an additional legal provision would further strengthen this currently still informal aspect of his work.

#### **7. Reporting by the ombudsman**

The Federal Constitution foresees that the AOB submits a comprehensive annual report once a year to the members of Parliament (Federal Council and, where competent, Regional Parliament). For the members of the Federal Council this report presents all important focal points on the federal level and contains recommendations of the AOB regarding necessary changes of laws.

On the basis of the annual report and the following debate in the National and Federal Council, the legislator has the possibility to draw consequences. Due to the input of the AOB, members of parliament can abolish problematic regulations. International experience shows, that these annual reports constitute an important tool for all independent ombudsman institutions. It would therefore be advisable to foresee a provision that the ombudsman should present an annual report and possibly also be entitled to make other reports on matters relating to the discharge of his functions in such a format and at such frequency as the circumstances may require.

### 8. Governance and accountability

As outlined in point 6 the AOB has a strong formal reporting relationship with the Parliament: The members of the AOB are entitled to participate in the debates by the National Council and the Federal Council and by their committees (sub-committees) on the AOB's reports and on each occasion to be given at their request. There is even a specific committee which is exclusively devoted to the work of the AOB and before which the members of the AOB appear regularly to give an account on their performance.

It is certainly highly recommendable to establish a direct reporting relationship for the ombudsman to one or several Committees of the Assembly. International best practise examples have clearly shown that this adds to the transparency of the ombudsman's work and that it might be vital to ensure that recommendations of the ombudsman, aiming at a change in legislation, can be successfully implemented.



Peter Kostelka  
Chairman of the Austrian Ombudsman Board

## Belfast Health and Social Care Trust

- 1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

Yes it would provide clarity.

- 2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

Northern Ireland Public Services Ombudsman

- 3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?**

In our experience of working with the Ombudsman we welcome his comments on recommendations and good practice. The BHSCT also feels that it would be very beneficial where a complaint is not upheld that examples of good practice are identified and shared across relevant organisations.

- 4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies ?**

No This is a responsibility of healthcare organisations, including RQIA. It would require a significant shift of resources to the NIO.

The BHSCT would be concerned that this may cause difficulties in those cases that have been referred to other organisations such as PSNI.

- 5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?**

The BHSCT would welcome suggestions on good administrative practice.

- 6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

This would require further consideration given the integrated nature of HSC in Northern Ireland. This would also impact on the legislative requirements already in place.

- 7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

Yes

- 8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

It would be sensible to list bodies on face of legislation.

- 9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

The BHSCT does not agree that the public sector should be excluded from the Ombudsman's jurisdiction. Having this path available actually allows for some issues of complaint to be addressed without redress to the legal system

Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?

A number of other bodies, and Independent Agencies including the Courts have a scrutiny function in relation to Social Care Service Delivery; which includes consideration of individual professional judgement and the Trusts overall discharge of its functions in relation to the provision of Social Care. Any role the Ombudsman may have therefore needs to dovetail with the processes and provisions that already exist.

A key consideration would be the requirement for the Ombudsman's office to have access to appropriate knowledge, skills and experience to inform any judgement in relation to Social Care Service delivery.

The Trust would require further clarity in relation to this proposal which would encompass consideration of the implications of findings of the Ombudsman in respect of professional judgement. In particular, the implications for policy, organisational arrangements, practice and resource priorities.

- 10. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish to ask their MLA to refer a complaint on their behalf and to be involved?**

The BHSCT believes that all complaints should be made directly to the Ombudsman.

- 11. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**

Yes the BHSCT would agree. All complainants should have the opportunity to choose to make their complaint either orally or in writing. Mechanisms should be in place to guide complainants and ensure accurate recording of the nature of the complaint.

- 12. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**

Yes. Respect for Code of Confidentiality and Good and Practice and Consent would need to be considered at all times.

- 13. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**

Yes.

- 14. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**

Yes the BHSCT would fully agree with this approach.

- 15. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**

Yes.

- 16. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of**

**any facility from a person who may be able to provide information or produce a document be included in the legislation?**

Yes.

**17. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**

Yes

**18. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**

Yes

**19. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

Yes

**20. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**

Yes

**21. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**

N/A

**22. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**

Yes

**23. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**

Yes

**24. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**

Yes

**25. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

No. The existing systems for holding public bodies to account should be exercised in these situations.

**26. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

The Trust Belfast believes this should be removed completely.

- 27. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**  
The current process is satisfactory.
- 28. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**  
Yes in line with other Government Departments.
- 29. Should the Ombudsman be able to employ staff directly to his/her Office and also to provide for secondment in his Human Resources Strategy?**  
All employment to this office should follow current recruitment practices of the Public Sector
- 30. Should the current link with the judicial salary scale be maintained?**  
Yes
- 31. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**  
Yes

# British and Irish Ombudsman Association

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(also by email to: committee.ofmdfm@niassembly.gov.uk)

15 December 2010

Dear Sir

## **Northern Ireland Assembly Consultation Paper:**

### **Proposals to update legislation to reform the office of the Northern Ireland Ombudsman**

Thank you for the opportunity to respond to this consultation. I am writing on behalf of the Chair and Executive Committee of the British and Irish Ombudsman Association (BIOA) which was established in 1991 and includes as members all major ombudsman schemes and complaint handling bodies in the United Kingdom and Republic of Ireland. Our objectives include:

- encouraging, developing and safeguarding the role and title of Ombudsmen in both the public and private sectors
- setting criteria for the recognition of Ombudsman offices by the Association
- formally recognising those persons or offices who satisfy the criteria
- facilitating mutual learning and providing services to members designed to develop best practice
- working to raise the profile of Ombudsmen and the understanding of their work

We will not be commenting on all of the questions posed in the consultation, but rather write in support of both the Northern Ireland Ombudsman's views and also the Association's wider principles in relation to Ombudsmen. Referring to your question numbers therefore, we would comment as follows:

1. We most certainly support the merger of the two existing offices into a single Ombudsman scheme, with powers to investigate all government and public bodies, to serve the people of Northern Ireland. That must make for a simpler and more accessible, effective and efficient scheme.



7. We support the broad principle of 'following the public pound' to be basis on which bodies are included in the Ombudsmen's jurisdiction.
9. We do not believe that public sector employment issues should be within an Ombudsman's jurisdiction. It is not traditionally or typically within the role of an Ombudsman, and there are other effective existing routes available to all employees, both public and private, to resolve employment disputes.
11. In line with other public service Ombudsmen in the UK's devolved administrations, we believe that citizens in Northern Ireland should have unfettered access to the Ombudsman without needing to be referred by an elected member of the Assembly.
12. We believe that it should be for the Ombudsmen to determine the manner and means of submission of complaints, and that specifically the requirement to hold an oral hearing under article 12 of the Commissioner Complaints (NI) Order 1996 should be removed.
20. and 24.  
We would support the enabling of co-operation and sharing of information with other Ombudsmen in the UK and ROI.
29. to 31.  
Whilst it is not for the Association to direct or determine Ombudsmen's remuneration or length of term of office, or how their offices are staffed, there are nevertheless some principles and guidelines we recommend to strengthen their independence, both actual and perceived, as follows:
- a single term of office is preferable, with a seven year minimum length (the need to reappointment Ombudsmen after an initial term can impinge upon independence)
  - reasons for removal of a sitting Ombudsman should only be for exceptional circumstances, such as bringing the office into disrepute, insanity, bankruptcy, etc
  - salary should not be performance-related or at the discretion of any body or person under jurisdiction, so a direct link to the judicial salary scale is ideal
  - direct employment of staff by an Ombudsman strengthens independence, so is preferable to a reliance on seconded civil servants

We hope that the above is useful. If you require further information or clarification, please do not hesitate to contact me.

Yours faithfully

**Ian Pattison**  
Secretary

## Central Procurement Directorate

Please note that CPD have no written evidence to refer on the Consultation on reform of the NI Ombudsman.

Should you have any queries please do not hesitate to contact me on Tel: 028 9081 6237  
Ext: 76237.

Regards

Beverley  
Beverley Watson

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# Colleges of Further Education in NI

## Directors Human Resource Working Group Colleges of Further Education in Northern Ireland

In the current economic climate it is questionable why the proposals made in 2004, which have not progressed due to resource constraints, should be considered at this time.

**Q1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

Yes. It is a sensible approach to have a single Ombudsman Office to deal with complaints about Government departments and public bodies in Northern Ireland.

**Q2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

Preference would be Public Services Ombudsman for Northern Ireland.

**Q3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?**

The involvement of the Ombudsman should only be possible when the internal complaints procedure has been exhausted. This will give public sector bodies to deal with issues identified rather than have an external body do this before the employer has an opportunity to do so. However, it would be extremely useful to have guidance from the Ombudsman about good practice particularly addressing poor practice that has been identified through the Ombudsman investigatory processes.

**Q4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?**

No. This facility could be open to abuse. It is likely disgruntled trade union officials or complainants will raise issues that could result in a misuse of the resources available to the Ombudsman office.

**Q5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?**

Yes. Advice and guidance from the Ombudsman would be welcomed. This guidance should have the same status as 'Codes of Practice' in employment.

**Q6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

No. If guidance from the Ombudsman Office has the status of a 'Code of Practice' and is expected to be implemented there is no need for the Ombudsman to play a 'design authority' role.

**Q7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

No. Due to many changes over the years procedures for dealing with complaints have been developed and in the FE Sector are significant. Complaints on many occasions have the opportunity to progress through a number of stages and have an independent appeal heard by a panel established by the Labour Relations Agency. This process is time consuming and costly to the public purse. The inclusion of the Ombudsman as an avenue to pursue

a complaint in addition to the facilities already available would appear not to be a prudent approach and one that would cost the public purse considerably more at a time when all public sector bodies are struggling with reduced funding.

**Q8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

Yes it is necessary to include the list of organisations within the legislation. This provides certainty which is important.

No the OFMDFM should not maintain a list that can change as this does not provide certainty.

No the list of exclusions should remain. The FE colleges should not be included for reasons referred to above.

**Q9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

Yes. There are extensive employment policies and procedures already available to deal with complaints.

**Q10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**

No comment.

**Q11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish to ask their MLA to refer a complaint on their behalf and to be involved?**

No comment.

**Q12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**

Complaints should be in writing to provide certainty. If oral complaints are received they should be committed to written form and agreed by complainant at an early stage.

**Q13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**

Yes.

**Q14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**

Yes.

**Q15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**

No.

**Q16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the**

**Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**

Public bodies need to take responsibility to find a resolution to issues raised and problems encountered. There are many advising bodies that can assist but public bodies and their Accountable Chief Officers should not rely on someone such as the Ombudsman office to find a successful resolution.

**Q17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**

Yes, the Ombudsman should have the power to require the provision of any facilities necessary and this should be included in legislation.

**Q18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**

Yes.

**Q19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**

No, any action needed should only be taken with agreement of the public body.

**Q20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

Yes.

**Q21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**

Yes.

**Q22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**

Yes. It would appear appropriate in circumstances stated not to have a written report and the need to publish.

**Q23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**

Yes.

**Q24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**

No comment.

**Q25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**

No comment.

**Q26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

Yes. A recommendation to redress a finding of maladministration that has caused injustice must be implemented therefore the publishing of a special report could be very effective.

**Q27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

Remove completely.

**Q28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**

A proper Recruitment and Selection process conducted by members of the Assembly.

**Q29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**

7 years seems appropriate.

**Q30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?**

Yes, ensuring it remains affordable. If secondments from the Civil Service are replaced whilst on secondment then there is a direct cost.

**Q31. Should the current link with the judicial salary scale be maintained?**

No comment.

**Q32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**

Yes.

Kate Duffy	North West Regional College
Barbara Laverty	Northern Regional College
Harry McCarry	Belfast Metropolitan College
Eimear Rushe	South West College
Raymond Sloan	Southern Regional College
Paul Smyth	South Eastern Regional College

# Department of Enterprise, Trade and Investment

Ms Cathie White  
 Clerk to the Committee  
 OFMdFM  
 Committee Office Room 404  
 Parliament Buildings  
 Stormont  
 Belfast  
 BT4 3XX

29th November 2010

Dear Ms White,

Thank you for your letter of 24 September 2010, seeking answers to the questions raised in the consultation document 'Proposal to update the Legislation to reform the Office of the Northern Ireland Ombudsman'.

Relevant officials within DETI and its NDPBs have been consulted. Please find attached DETI's response.

Yours sincerely

[signed]

**David McCune**  
 DETI Assembly Liaison Officer

## **Committee for the Office of the First Minister and Deputy First Minister – Proposals to Update Legislation to Reform the Office of the NI Ombudsman**

### **Invest NI Response**

- 1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**
  - A. Yes, the proposed changes should allow for the provision of a more streamlined, efficient & effective service. It would also remove any confusion over the office's role and remit.
- 2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**
  - A. The NI Public Services Ombudsman.
- 3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?**
  - A. Extending the remit of the office could create issues with duplication of services and potential additional bureaucracy.
- 4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?**
  - A. Again, this has the potential to cause duplication and unnecessary bureaucratic effort.

**5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?**

A. Yes, this would seem to be a logical conclusion with the focus on requiring the public body to take account of guidance issued. However, it should ultimately be up to the public body as to whether it is implemented after a thorough evaluation of potential impacts.

**6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

A. It would seem logical that the office played a design role in the complaints process; however, it is questionable whether an enforcement role would be appropriate or proportionate. Instead, focus should be on supplying advice and guidance and sharing best practice allowing each body to apply taking account of what is most appropriate to their individual circumstances.

**7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

A. No, this should not necessarily be the proviso. Instead, provision should be based on where it is most appropriately needed and in the absence of similar provision.

**8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

A. An Annex to the legislation with a definitive list would be appropriate.

The OFMdFM would seem to be the most appropriate to have responsibility for the list.

Bodies listed at para 4.6 should only be added to the list if the functions of the ombudsman is not already adequately carried out. If similar functions are already provided, a decision on the provision going forward should be based on which option provides the most cost effective and streamlined solution.

**9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

A. Yes, Invest NI would consider that there is sufficient provision for such issues to be addressed through bodies already in existence. This would just cause uncertainty, duplication and unnecessary additional administrative layers.

A. (DETI HR) Yes. There is no justification for retaining this provision which is not available to any non-public sector employee. There is now sufficient other appropriate avenues, including industrial tribunals, where civil servants and other public servants can raise employment issues, including equality issues. The removal of the Ombudsman provision will not put public sector employees at a disadvantage compared to private sector employees or indeed other Crown Employees, as the current Ombudsman legislation already excludes other Crown Servants (the police etc) from bringing employment matters to the Ombudsman.

**10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**

A. Not applicable.



- 11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish to ask their MLA to refer a complaint on their behalf and to be involved?**
- A. This would seem a logical step and would remove a barrier to complainants who do not wish to engage their MLA.
- 12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**
- A. Yes, again this would seem a logical approach with submission by phone, text, in person, by letter, by email or on-line permissible.
- 13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**
- A. Yes.
- 14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**
- A. Yes this would seem reasonable, although guidance should be clear to prevent spurious submissions. There should be a legitimate connection between the aggrieved and the person acting on their behalf.
- 15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**
- A. No. This would be viewed as being counter productive. The Ombudsman's office is designed to facilitate resolution for a service user. Allowing a body to also use the process would seem to be outside the spirit of the legislation. Such complaints should be encouraged to be resolved through direct dialogue.
- 16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**
- A. Yes. This should ensure that there is an onus on the public body to resolve the complaint prior to referring to the Ombudsman.
- 17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**
- A. Given that the office of the ombudsman has the powers of the high court in requiring evidence, surely this addition would be unnecessary.
- 18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**
- A. To ensure transparency, allowing the ability for a proportionate reply would seem appropriate.

**19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**

A. This would seem reasonable and should allow for more timely responses in certain instances.

**20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

A. This would seem appropriate and could provide a useful mechanism to allow for sharing of best practice.

**21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**

A. Yes, the current proposals would seem to be appropriate.

**22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**

A. In the interests of transparency and accountability the emphasis should be on publishing all reports unless it is against or potentially harmful to the public interest to disclose.

**23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**

A. Strong guidance should be in place to regulate such reports and this should be in line with best practice in other areas of the Public Sector, i.e. DFP guidance.

**24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**

A. This would seem a sensible approach, assuming there would be strict guidance on when and how information should be shared and provision was made for two-way flow.

**25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**

A. Yes, this would be in line with comments at Q.24.

**26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

A. Yes, this would seem to be a logical step to ensure transparency and accountability.

**27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

A. Assuming that the issues identified in Q.26 are adequately addressed, the removal of the county court provision would seem appropriate.

**28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**

A. No, process would seem reasonable.

- 29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**
- A. The seven year term would seem logical, allowing the ombudsman to preside over a term and a half of an assembly providing an aspect of continuity while allowing sufficient time for the appointment and bedding in of an ombudsman between elections.
- 30. Should the Ombudsman be able to employ staff directly to his/her Office and also to provide for secondment in his Human Resources Strategy?**
- A. Yes, this would seem logical and would allow for a certain degree of flexibility. However, OFMdfM should retain a close oversight role to ensure staffing levels are monitored and are appropriate. This is even more important given the current financial constraints impinging on the public sector.
- 31. Should the current link with the judicial salary scale be maintained?**
- A. No, would consider a link to the Senior Civil Service to be more appropriate.
- 32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**
- A. Yes, this would be an appropriate oversight and accountability provision. Ownership of such a function would most appropriately reside with the OFMdfM.

**Committee for the Office of the First Minister and Deputy First Minister – Proposals to Update Legislation to Reform the Office of the NI Ombudsman**

**HSENI Response**

The Health and Safety Executive for Northern Ireland (HSENI) would welcome the establishment of a single Ombudsman's office for Northern Ireland to replace the existing offices of the Assembly Ombudsman (AONI) and the Northern Ireland Commissioner for Complaints (NICC).

While this would be sensible on economic grounds alone, it would also address the confusion which abounds, not just in the public perception, but also within public bodies, over the jurisdiction of the two offices.

While HSENI has no specific comments to offer on the remit or underlying administrative arrangements of any new Ombudsman's Office, we would comment as follows on an issue in the paper relating to health and safety information sharing

- 24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**
- 25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**
- A. Although HSENI would support the principle of data sharing as presently set out in NICC legislation (to the effect that a person is likely to constitute a threat to the health or safety of any other person), with regard to the adoption of the equivalent Welsh Provisions on disclosure (i.e. disclosed in the "public interest") or wider sharing of data with the other Ombudsman in the UK and ROI, HSENI would ask that consideration is given to the impact of NI legislation (that is section 30 of the Health and Safety at Work (Northern Ireland) Order 1978) which contains a statutory bar to disclosure of information without consent. The Ministry of Justice is currently working towards removing this statutory bar but until that provision is repealed (as it is in GB) the exemption under section 44 of the Freedom of Information Act 2000, relating to prohibitions on disclosure would continue to apply.

# Department for Social Development

Clerk to The Committee for the OFMDFM  
Committee Office Room 404  
Parliament Buildings  
Belfast  
BT4 3XX

22 December 2010

## **Proposal to update Legislation to reform the Office of the Northern Ireland Ombudsman**

Dear Cathie

You wrote to the Child Maintenance & Enforcement Division, on 24 September 2010 requesting written evidence on proposals to update legislation to reform the Office of the Northern Ireland Ombudsman.

I am responding in my capacity as Acting Head of the Child Maintenance and Enforcement Division and have detailed responses to the questions raised in the attached Annex.

With regard to the work of this Division, it would be helpful to understand how the office of the Ombudsman would regard the role of the Independent Case Examiner (ICE) in the handling of complaints.

The Division does not wish to provide oral evidence to the Committee.

Yours sincerely,

Catherine McCallum  
Acting Head of Child Maintenance & Enforcement Division

## **Annex 1**

### **List of Consultation Questions & CMED response**

- 1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

A single body would avoid confusion for complainants, bring NI into line with other jurisdictions where there is a single Ombudsman and provide an opportunity for greater efficiency and value for money.

- 2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

Public Services Ombudsman for Northern Ireland would be more appropriate when considering abbreviations. (PSONI rather than NIPSO) The second option may also be more readily understood for a public service user.

- 3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?**

No. The current set up enables public bodies to consider the best means of implementing recommendations, taking into account costs, communications with stakeholders/others or system considerations. There is a real risk of confusion and duplication with other audit

bodies. Recommendations may not take into account the needs of the Public Body or the necessity for Parity in certain social development areas. That said, recommendations normally assist public bodies in terms of learning and adopting best practice.

**4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?**

No. This moves away from the core function in respect of complaints and the service being for those having experienced service difficulties.

**5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?**

The current set up enables public bodies to consider the best means of implementing recommendations. Requirements or expectations may not take into account the needs of the Public Body or the necessity for parity in certain social development areas.

**6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

Requirements or expectations may not take into account the needs of the Public Body or the necessity for parity in certain social development areas.

**7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

The Ombudsman services should be available for complaints against any publicly funded service.

**8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

It is important that a full list of bodies is readily available and kept up to date. Maintenance of an up to date list somewhere other than on the face of the legislation would avoid the need for legislative amendment when new bodies are established.

**9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

Yes.

**10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**

This change would bring social care into line with health care.

**11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish to ask their MLA to refer a complaint on their behalf and to be involved?**

MLA sponsorship may filter mischievous complaints. If MLA sponsorship is removed, there may be a need for other filters/assessment within the Ombudsman's office. Internal procedures should still be exhausted prior to acceptance of a complaint by the Ombudsman's office.

**12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**

It would seem more reliable and appropriate that the complaint be made in writing using a method suitable to the complainant. In order to remove the barrier for complainants with literacy problems, the ombudsman's office could signpost complainants to support services for assistance in making their complaint.

**13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**

A definition of what constitutes a written complaint would be helpful..

**14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**

Yes

**15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**

No, the aim of the legislation is to provide redress for complaints from the public about public services.

**16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**

No comment as this refers to complaints about HSS bodies.

**17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Yes. Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**

Yes this would seem appropriate

**18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**

Provision for a person about whom an adverse comment might be made in an Ombudsman's report to have the opportunity to make representations on the comments would be considered an important aspect of the process.

**19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**

No, our internal processes intent is to enable action to resolve complaints. On the basis that internal procedures must be exhausted, it would be reasonable to assume that action to resolve the complaint would already have been progressed.

**20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

This would seem appropriate.

- 21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**  
Yes.
- 22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**  
The proposal for non publication seems a logical one if there is no need to publish. This would also seem to be in the taxpayers interest, however, consideration should be given to what the rationale behind the change is other than to align with the Welsh legislation.
- 23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**  
It would seem appropriate for this to be more definitive as the proposal suggests that this would provide scope for multiple reports.
- 24. Should the Ombudsman be able to share information with other Ombudsmen in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**  
The general principle of sharing with other Ombudsman seems reasonable.
- 25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**  
No comment as related to Health Service disclosure.
- 26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**  
Yes, providing the relevant body's response is also included.
- 27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**  
It would seem reasonable that the mechanism be removed completely if it has not been used by a complainant for 26 years.
- 28. What do you think about the proposed appointment process?**  
Content with proposal at 9.2. Are there any other conditions you would like to see? No.
- 29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**  
Content with 7 years proposed
- 30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?**  
It would seem reasonable for there to be flexibility in recruitment to allow for both secondment and direct recruitment..
- 31. Should the current link with the judicial salary scale be maintained?**  
The rationale for linking to the judiciary scale rather than the SCS scale is not sufficiently clear for comment to be made. The Review recommended a review of this salary arrangement and this would seem an appropriate way forward.

**32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**

It would seem reasonable that the Ombudsman should be accountable to the Assembly's Audit Committee. In addition to the Audit Committee, a range of committees may be keen to scrutinise the work of the Ombudsman.



# Education and Library Boards

COMMITTEE  
17 DEC 2010  
FOR THE OMBUDSMAN

JMcC/GMcM

17 December 2010

The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
BELFAST  
BT4 3XX



Chief Executive: David Cargo

Dear Sir/Madam

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

Please find herewith, response to the above consultation on behalf of the Education and Library Boards.

Yours sincerely

**John McCullough**  
**Assistant Senior Education Officer**

Enc

**Committee for the Office of the First Minister  
and Deputy First Minister  
Proposals to Update Legislation to Reform the Office  
of the Northern Ireland Ombudsman  
Response on the Behalf of the Education and Library Boards**

**Responses to Consultation Questions**

1. No comment.
2. No comment.
3. No comment.
4. No comment.
5. Clear guidance on good administrative practice would be welcomed by Education and Library Boards.
6. Standard complaints procedures across public bodies would be seen to be helpful.
7. As Education and Library Boards already fall within the remit of the Northern Ireland Ombudsman, comment on this question would be inappropriate.
8. Although Boards of Governors of schools are presently not subject to investigations by the Ombudsman, they are subject to Article 101 of the Education and Libraries (NI) Order 1986, as amended, - The power of direction of the Department of Education. At the very least, a proper consultation exercise should be carried out before schools/Boards of Governors are added to the list.
9. It is not clear whether this would mean that the Ombudsman would not have jurisdiction for employees employed by schools, eg classroom assistants etc and whether previous complaints cases would not happen under new arrangements.
10. No comment.
11. At present, the Ombudsman does not require that complaints about Education and Library Boards emanate solely from MLAs.
12. Complainants are encouraged to make their complaints in writing as is the case, for example, with statutory workplace grievance procedures. The practice of having complaints submitted in writing should be continued.

13. Whilst it may be possible to accept complaints submitted by e-mail, the use of text messages to submit complaints is seen as inappropriate.

It is essential that a public authority knows the exact nature and extent of a complaint that is being made against it. Complaints can lead to disciplinary action against a board employee and fairness would demand that he or she be fully apprised of the specifics of the original complaint.

14. No comment.
15. At present, Education and Library Boards cannot refer complaints against other public bodies nor can they be the subject of complaint by other bodies. It is difficult to see why this situation should change.
16. Education and Library Boards will have to consider if they want the power to refer cases to the Ombudsman in certain circumstances.
17. The existing powers as to investigation appear to be adequate, however, the facilities proposal probably reflects current practice and does not appear to be unduly onerous.
18. This proposal seems reasonable in terms of fairness and natural justice.
19. If this means that the Ombudsman is proposing a power to seek an early settlement, this would appear to be acceptable.
20. No comment.
21. The Education and Library Boards see the current model of reporting as sufficient. These proposals seem particularly onerous on public authorities and the paper does not disclose sufficient grounds for changing current arrangements.
22. The present model of reporting is sufficient and there are insufficient grounds for changing current arrangements.
23. There is no objection to this proposal.
24. There is no objection to this proposal.
25. There is no objection to this proposal.
26. This proposal concerning special reports would be acceptable provided that the current ability of a complainant to seek damages in the County Court, where a body has failed to implement a NICC recommendation, is removed for reasons set out in paragraph 8.2 of the consultation paper.

27. Provided that the current ability of a complainant to seek damages in the County Court, where a body has failed to implement a NICC recommendation, is removed for reasons set out in paragraph 8.2 of the consultation paper.
28. Further consideration would have to be given to this proposal.
29. Further consideration would have to be given to this proposal.
30. Further consideration would have to be given to this proposal.
31. Further consideration would have to be given to this proposal.
32. Further consideration would have to be given to this proposal.

# Equality Commission NI

## Introduction

1. The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 and the positive disability duties under the Disability Discrimination Act 1995.
3. The Commission’s general duties include:
  - working towards the elimination of discrimination.
  - promoting equality of opportunity and encouraging good practice.
  - promoting positive / affirmative action.
  - promoting good relations between people of different racial groups.
  - overseeing the implementation and effectiveness of the statutory duties in relation to equality, good relations and disability on relevant public authorities.
  - keeping all relevant legislation under review.

## Context

4. The Equality Commission welcomes the opportunity to submit evidence to the Committee on its proposals to update legislation to reform the office of the Northern Ireland Ombudsman. We support the general aim of simplifying the arrangements in respect of complaints about government departments and public bodies.
5. Our comments follow the structure of the consultation document generally. However, we have not responded in detail to all questions posed, concentrating on those most relevant to the remit and experience of the Equality Commission.

## Substantive comments

### **Proposal for a single office**

- Q.1 The Commission considers that the people of Northern Ireland would be more effectively served in the future by the establishment of a single office covering the current roles of both the Commissioner for Complaints and the Assembly Ombudsman. There appears to be no compelling reason to maintain two jurisdictions. We consider that a merger of the two offices and an update of functions provide an opportunity to create a clear route for people seeking redress of grievances relating to administrative processes both in government departments and public bodies in Northern Ireland.
- Q.2 The Commission does not have a strong view on the name of any merged office, although putting its function first – that is, the Public Services Ombudsman for Northern Ireland – may help to ensure good understanding of the role of the office.

### **Purpose of the office**

Q.3 The Commission believes that, in addition to resolving complaints, the office should also have the power to seek to improve public administration. This is linked to question 5. By its nature, the role of the Ombudsman is to offer redress for failures of administrative practice and, so, is inescapably connected with the quality of public administration. Engagements with the full range of citizens' complaints and the related investigation of administrative practice gives the Ombudsman an opportunity to derive general principles which could assist public bodies beyond those directly involved in the investigation. Thus, the principal focus should be on dealing with the complaints of individuals but the Ombudsman should be authorised and encouraged, to develop, from time to time, guides to better administrative practice with a view to improving the quality of public administration generally.

Q.4 The Commission does not consider that a power to conduct investigations without complaint would be useful or necessary, given the potential overlaps with existing statutory powers of other bodies. Given the existence and remit of the Comptroller and Auditor General (C&AG), it is difficult to see what benefit could flow from the power to conduct investigations on the Ombudsman's own initiative. It may be the case, however, that in the course of an investigation of a complaint, the Ombudsman forms the belief that an issue of wider dimension exists. In such circumstances the Ombudsman should be authorised to bring the matter to the attention of the C&AG who seems best placed to investigate further. If the C&AG requires additional statutory powers for such a purpose, that suggests itself as the better route to follow.

In addition, the character of the Ombudsman's office has historically been that of an office that arbitrates between Government and the governed, rather than that of an inspector general, and conferring a general investigation power may divert resources from dealing with complaints from members of the public.

Q.5 The provision of guidance could form a part of the improving public administration role. In our experience, producing guidance material and codes of practice under the equality and anti-discrimination legislation is a very valuable means of promoting good practice as well as explaining clearly the standards that are applicable. This work is informed by information gathered through complaints raised by individuals as well as queries from employers and service providers. This approach would facilitate the development of the Ombudsman's role as a 'design authority' (as outlined in paragraph 3.6 of the consultation document), as producing guidance would require the office to highlight good practice that currently exists in the public sector.

Q.6 The establishment of the Ombudsman as a 'design authority' for complaints processes will require further consideration. The guidance referred to in response to questions 3 and 5 could include advice on better complaints procedures without the need to adopt a "design authority" role. It might also avoid the risk that "standardised" procedures could fail to take account of the widely differing roles of public bodies.

### **Remit of the office**

Q.7 We believe that the remit of the office should extend to bodies receiving substantial public funding rather than any public funding. To broaden the remit of the Ombudsman to bodies receiving "any" public moneys could lead to a mountain of additional work, and pose a serious threat to its effectiveness and ability to act. The principle of "following the public pound" would be best served by focussing on those bodies who are "substantially" funded by public moneys or those for whom public money is their principal revenue source.

Q.8 The Commission believes that listing the bodies covered by the Ombudsman should be retained as the approach, as this is a transparent process. We also consider that maintaining this list should continue to be a function of OFMdFM. This listing is a useful part of the designation process for public authorities in respect of Section 75 of the Northern Ireland Act 1998.

Q.9 The Commission recognises the rationale for removing public sector employment matters from the remit of the Ombudsman as these, in common with private sector matters, can be addressed through the tribunal system. However, we would urge some caution in relation to this, as the tribunals are not designed to address issues of maladministration. If, for example, a person was not considered for a public sector position as the relevant human resources department had lost their application form, there would be no remedy available under the anti-discrimination legislation or employment legislation through the tribunal system as it stands. This should then quite rightly fall within the remit of the Ombudsman to investigate any subsequent complaint of maladministration. We would recommend that any change to this provision should emphasise that the remit of the office will still extend to administrative issues where there is otherwise a gap in seeking redress.

Q.10 The Commission does not consider that professional judgement in social care or medical judgement should fall within the remit of the office, as complaints in relation to these can be heard through the professional bodies complaints mechanisms.

#### **Acquisition of cases**

Q.11 The Commission does not believe that all cases should be referred to the Ombudsman's office by MLAs. Individuals should be entitled to seek the assistance of a MLA in making a complaint and MLAs should be entitled to offer such assistance, including referring the complaint on behalf of the individual.

As noted above, the function of the office is to arbitrate between the Government and the governed, and the requirement for a MLA to forward a case potentially interposes a branch of Government into filtering the cases that the Ombudsman receives.

Q.12 In keeping with the founding principles of the Ombudsman's role, individuals should be facilitated however possible in making complaints. That should extend to making complaints other than in writing. Quite apart from those who have special needs in this regard, there are many who might be deterred from seeking the assistance of the Ombudsman by the requirement to set out their complaint in writing. A complaint made orally, together with such supporting evidence as is given, can relatively easily be reduced to writing by the Ombudsman's staff and, when the complainant assents to the formulation, become the basis of any consideration or investigation.

Q.13 It would be desirable specifically to identify that electronic means of communication are acceptable, while recognising that some modern electronic communication is of a brevity that might pose some difficulties for the office of the Ombudsman.

Q.15 Public bodies who cannot resolve matters which have been the subject of complaint to them should be able to refer the matter to the Ombudsman. Such a decision reflects a willingness on the part of the body for a detached evaluation of the issue and should be encouraged.

#### **Case handling procedures**

Q.17-20 The Commission agrees that the existing powers in relation to investigations should continue and that the proposed amendments are reasonable.

#### **Reporting by the Ombudsman**

Q.21-25 The Commission considers the proposals outlined are reasonable, including carrying over the practice of informing a public authority when and why a complaint is not being investigated.

#### **Enforcement**

Q.26 The Commission agrees with the proposal enabling the Ombudsman to make special reports where not satisfied with a public authority's response to recommendations. We also recommend that there should be a clear indication of the range of responses expected or permitted from the body or bodies before which such reports are laid.

- Q.27 We urge caution on the removal of the right to pursue compensation in the courts by a complainant, as the very existence of this provision may have been the reason for its lack of use. In short, a public authority can avoid costly litigation by complying with the recommendations of the Ombudsman. The Commission is further concerned that this proposal would diminish the rights of redress currently afforded to people due to maladministration by government.

**Appointment**

- Q.28 The appointment of the Ombudsman should continue to be by the Queen following a resolution by the Assembly. The selection of the person to be nominated should be by public competition conducted by the Assembly Commission under the guidance of the Office of the Commissioner for Public Appointments for Northern Ireland. Whether a two-thirds vote in the Assembly is required is a moot point but such a vote would demonstrate the strength of support for the candidate. It is difficult to envisage circumstances in which an Assembly would decline to nominate the candidate emerging from the public competition.
- Q.29 The Commission has no particular view as between a single term of seven years or an initial term of four years, renewable for a single further term. The principle of holding the office for a defined number of years is supported.

**Staffing and finance**

- Q.30 The Ombudsman, like all other office holders, has to operate within the constraints of a given budget and be able to respond to the economic exigencies of the day. Subject to that overriding obligation, there should be as much discretion as possible available to the Ombudsman to appoint those who are best capable of discharging the important tasks associated with the office. As well as recognising the need to take account of the statutory requirements in terms of equality of opportunity and of diversity generally, the best people coupled with the broadest perspective and experience, not confined to the public service, would best serve the interests of those whose complaints are considered.
- Q.31 It is desirable that the Ombudsman should not have to negotiate salary arrangements with offices or departments whose decisions may fall to be investigated. Therefore, the principle of linking the remuneration to some other scale is supported.
- Q.32 Receipt of public money and accounting for its proper use do not, of themselves, diminish or infringe the independence of the Ombudsman. Therefore, it would not be appropriate that the Ombudsman appear periodically before a Committee of the Assembly to account for the resources of the office. It would be wrong, however, were there to be any suggestion that accounting for "performance" should extend to being asked to justify or to reconsider any decision or recommendation made.

December 2010



# General Medical Council

20 December 2010

Mrs Cathie White  
The Clerk to the Committee of First Minister and deputy First Minister  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

Dear Ms White

Thank you for the opportunity of responding to your Committee's consultation on Proposals to Update Legislation to Reform the Office of the Northern Ireland Ombudsman.

The GMC is the independent regulator for doctors in the United Kingdom. Our statutory purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. We also have a statutory role to provide guidance to doctors on standards of professional conduct and medical ethics, and to this end we publish guidance on good practice in prescribing medicines.

The General Medical Council (GMC) only wishes to comment on a small number of questions which are relevant to our organisation as outlined below:

Question 5 Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?

If such guidance were issued, it would provide an opportunity to provide guidance to public bodies on their duties to refer to other statutory professional regulatory bodies. This would highlight that where the health and safety of patients and the public is at risk, or potentially at risk, due to the performance of individual healthcare practitioners that the appropriate regulatory body should also be informed. This would ensure the potential for such risk can be investigated and addressed.'

Question 24 Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?

'The GMC welcomes the fact the Northern Ireland Ombudsman has previously referred two cases to our fitness to practise procedures for consideration. We believe that this is an important function to ensure that where patient safety is at risk, or potentially at risk, that the appropriate statutory professional regulatory body, such as the GMC, has an opportunity to consider, and investigate, if a doctor's fitness to practise may be impaired and take steps to address any potential risk to patients and the public.

This occurs in other parts of the UK. In Scotland the GMC has a Memorandum of Understanding with the Scottish Public Services Ombudsman covering information sharing.

We hope that these comments are of assistance to the Committee in its deliberations. Please feel free to contact me if you require any further clarification or information on our response.

Yours sincerely

Alan Walker  
Head of Northern Ireland Affairs  
awalker@gmc-uk.org

Tel: 028 9031 9944

# General Teaching Council for Northern Ireland

14<sup>th</sup> December 2010

Ms Cathie White  
The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast  
BT4 3XX



General Teaching Council  
for Northern Ireland

Dear Ms White

Please find enclosed the GTCNI response to the Consultation document on the Reform of the Northern Ireland Ombudsman.

If you have any queries, please not hesitate to contact us.

Yours sincerely

Eddie McArdle  
Registrar

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Registrar: Mr E McArdle

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## **CONSULTATION DOCUMENT**

### **MERGER INTO A SINGLE OFFICE**

#### Question 1

In light of the potential for confusion in regard to the existing arrangements there is considerable merit in creating a single Ombudsman Office.

#### Question 2

Either title would suffice - it is the unity of functions rather than the title that is of significance.

### **PURPOSE OF THE OFFICE**

#### Question 3

It would seem wholly appropriate that the office of ombudsman should be engaged in, and empowered to initiate actions to improve public administration.

#### Question 4

Whilst there is logic in recommending an extension to the Ombudsmans power to allow for the initiation of investigations or systemic reviews the caveat set out in paragraph 3.4 of the consultation document is important i.e. re duplication of NIAO work. The protocols surrounding how such powers might be exercised need to be clearly set out in any legislation.

#### Question 5

It would be appropriate for the Ombudsman to provide guidance on good administrative practice.

#### Question 6

In pursuit of a measure of uniformity it would be appropriate to adopt the position taken in Scotland and Wales on this matter i.e. the Ombudsman should play a 'design authority' role in public sector complaints processes.

## REMIT OF THE OFFICE

### Question 7

It would seem appropriate that publicly funded bodies should come within the jurisdiction of the Ombudsman.

### Question 8

Accepting the principle in regard to publicly funded bodies noted above then would be a strong argument for including the bodies listed at para (4.6). There is, however, one exception to that namely The General Teaching Council for Northern Ireland. Unlike the others that body is not funded by grant in aid i.e. the public purse rather it is funded directly by registration fees collected from teachers themselves.

Given the need for a demonstrable autonomy of functions and purpose for the N Ireland Audit Office it might be appropriate to exclude that body.

With regard to the issue of inclusion "on the face of legislation" the Council would suggest that the legislation should be framed to allow for:

- (a) the listing elsewhere
- (b) amendments to be made following consultation and in keeping with agreed criteria and protocols
- (c) the above would then avoid the need for amendments to primary legislation.

### Question 9

The logic of para (4.12) leads to an inexorable conclusion that in light of the changing circumstances and the availability of other avenues of redress – public sector employment issues should now be excluded from the Ombudsman jurisdiction?

### Question 10

The Council remains unsure on this issue and is conscious that within the Health and Social Care environment there already exists a robust regime of scrutiny in regard to the competence and conduct of health/social care professionals.

## **ACQUISITION OF CASES**

### Question 11

It is appropriate to remove the restriction that complaint references should be constrained to MLAs – should be removed.

### Question 12

Whilst there is sympathy with the notion of allowing oral referrals in keeping with the notion of ease of access – there is none the less concerns that this could result in two problems:

- (i) lack of specificity
- (ii) an emotional response which may not help an individual to identify the true focus of that complaint.

### Question 13

It would be unnecessary to specify any particular vehicles for communication in the legislation – provided that any guidance materials were explicit on this point.

### Question 14

This is an appropriate suggestion/recommendation

### Question 15

The Council finds this issue outlined in a somewhat ambiguous way and so has not responded on this question.

### Question 16

The proposed provision would be appropriate.

## **CASE HANDLING PROCEDURE**

### Question 17

The proposed provision and the new requirement are appropriate.

Question 18

It would seem in keeping with the notion of natural justice that those subject to adverse comments should have the opportunity to make representations. In addition it is appropriate that where necessary these representations are included in any report.

Question 19

This proposal is appropriate it is obviously desirable if it is at all possible to resolve issues on a more informal basis.

Question 20

This proposal is appropriate.

**REPORTING BY OMBUDSMAN**

Question 21

In keeping with the prevailing culture of transparency and accessibility it should seem appropriate to adapt the Welsh approach to publication and dissemination.

Question 22

The proposed adoption of the Welsh Alternative procedure with no publication has considerable merit and should be adopted. Presumably it is predicated on that notion that prior to the Ombudsman's decision he/she will consult with the diverse interests.

Question 23

The Ombudsman should have discretion in this area.

Question 24

It would seem appropriate that the Ombudsman be empowered to share information with counterparts in other jurisdictions. The powers within the Welsh provisions in regard to Health and Safety should be incorporated in any future N Ireland legislation.

Question 25

Yes this is appropriate.

**ENFORCEMENT**

Question 26

Yes

Question 27

In light of historical precedent the option could be removed completely.

**APPOINTMENT OF THE OMBUDSMAN**

Question 28

Whilst having no particular concerns in regard to the current appointment process – there would be merit in the proposal set out in paragraph 9.2 However, recent experience in the Assembly might suggest that the arrival at a threshold of two thirds of MLAs voting might in certain circumstances present a problem.

Question 29

In regard to the terms of office there is considerable merit in the suggestion of a seven year period for the reasons set out in paragraph 9.3.

**STAFFING AND FINANCE**

Question 30

It would be appropriate that the Ombudsman should be able to both employ and second staff particularly in light of the observations in paragraph 11.13.

Question 31

The Council has no opinion on the matter of salary.

## **GOVERNANCE AND ACCOUNTABILITY**

### **Question 32**

In keeping with the prevailing culture of transparency and accountability arrangements should be made for the postholder to appear before a Committee of the Assembly on the issues identified in this question.



# HSC Patient and Client Council



**Patient and  
Client Council**

Your Voice in Health and Social Care

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Cathie White  
Clerk to the Committee  
The Committee for the Office of the First  
and Deputy First Minister  
Committee Office Room 404  
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**16 December 2010**

Dear Ms White

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

The response to this consultation is made on behalf of the Patient and Client Council.

**The Patient and Client Council**

The Patient and Client Council was established in April 2009 by the Health and Social Care (Reform) Act (Northern Ireland) to fulfil four primary functions:

- to represent the interests of the public by engaging with the public to obtain their views on services and engaging with Health and Social Care (HSC) organisations to ensure that the needs and expectations of the public are addressed in the planning, commissioning and delivery of health and social care services;
- to promote the involvement of patients, clients, carers and the public in the design, planning, commissioning and delivery of health and social care;
- to provide assistance to individuals making or intending to make a complaint relating to health and social care; and
- to promote the provision of advice and information to the public by the HSC about the design, commissioning and delivery of health and social care services.

### **Patient and Client Council involvement with the Office of the Northern Ireland Ombudsman**

With regard to the third function above, that of providing assistance to individuals making or intending to make a complaint relating to health and social care, the Patient Client Council will provide assistance to individuals who, if they remain dissatisfied following exhaustion of the remedies offered by the Health and Social Care Complaints Procedure, wish to bring their complaint to the Ombudsman. This assistance may include helping complainants to put their complaint in writing, attendance with complainants at meetings and providing general assistance with expressing clearly the nature of the complaint and the remedy sought by the complainant.

#### **General themes within this response**

With this function, therefore, in mind, the Patient and Client Council has given its response below to the questions asked by this consultation document. The following general principles underlie the responses to the individual questions and summarise what the Patient and Client Council would hope to see as an outcome of any reform of the Office of the Northern Ireland Ombudsman:

- a. simplification of the process of bringing a complaint to the Ombudsman for members of the public and raised awareness and understanding of the functions and purpose of the office among members of the public;
- b. strengthening the ability of the Office of the Northern Ireland Ombudsman to hold Health and Social Care bodies to account, to require improvement where this is found to be necessary and to impose effective sanctions for non-compliance with recommendations;
- c. broadening of the remit of the Office of the Northern Ireland Ombudsman to investigate issues of concern for patients, clients and the general public in relation to Health and Social Care, which the Patient and Client Council regards as of increased importance given the abolition of Stage Two of the Health and Social Care Complaints process as part of the reform of this process.

There are some areas of this consultation on which the Patient and Client Council has no particular experience or expertise – for example, the setting of appropriate remuneration for the Ombudsman. Where the Patient and Client Council has no view for this reason, this is clearly stated.

#### **Answers to specific questions**

1. *Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?*
2. *If a merged office was created should it be called the Northern Ireland Public Services Ombudsman or the Public Services Ombudsman for Northern Ireland?*

The consultation outlines the benefits of a merged office for access to and awareness of the office for members of the public, simplification of processes and the removal of barriers to the Ombudsman investigating complaints that involve more than one area of responsibility of public bodies – such as a complaint that combines Health and Social Care services and the provision of benefits. This last matter may be of particular relevance and benefit given the increased emphasis within Health and Social Care on addressing the wider determinants of health. If health and social wellbeing is taken to include matters such as housing and the

environment as well as directly provided health and social care services, it is sensible that people with concerns in these areas are enabled to raise those concerns within a single office. We would favour the title “Public Services Ombudsman for Northern Ireland” over the alternative as it places the idea of a single officer responsible for all public service complaints clearly into the public mind.

3. *Do you think that the Ombudsman should not only have the power to resolve complaints but should seek also to improve public administration as part of his/her work?*
4. *Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?*
5. *Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?*
6. *Do you think that the Ombudsman should play a “design authority” role in public sector complaints processes?*

As stated in our general comments above, we do think it would be desirable to broaden the role of the Office of the Northern Ireland Ombudsman in the manner described. The Health and Social Services Councils of Northern Ireland while accepting in the end the proposals for a new Health and Social Care complaints process did express throughout the consultation their concern that the abolition of the Stage 2 of this previous process meant that there was no longer a formal means by which themes or clusters of concern arising from health and social care complaints could be formally and independently investigated. Clearly, these proposals offer a remedy to those concerns. However, these proposals do represent a radical increase in the scope of issues that can be addressed by the Ombudsman and we feel that more information would be needed before agreeing in anything more than principle with these proposals. Such additional information might include:

- a. The relationship between these enhanced functions and the work of the independent bodies within Health and Social Care such as the Regulation and Quality Improvement Authority
- b. The relationship between these enhanced functions and the functions of the Minister with regard to ordering enquiries and reviews of policy and practice in Health and Social Care
- c. The means by which the Ombudsman is likely to make decisions on areas of investigation and the role of members of the public in prompting such investigations
- d. Greater clarity on the accountability of the Office of the Northern Ireland Ombudsman itself – while we respect absolutely the need for the Office to be independent and empowered we feel that taking on this broader range of functions make it even more important that the work of the Office is open to an appropriate form of public scrutiny and that this means of scrutiny is understood by the public
- e. The working capacity of the Office of the Northern Ireland Ombudsman. With such an enhanced role, should the public expectation be that the Ombudsman will look at all legitimate cases of complaint for investigation or will the Office – as with the Equality Commission, look at cases which exemplify an instance of poor practice or procedure. This issue touches on the accessibility of the Office of the Northern Ireland Ombudsman to the public. For some of the clients we have assisted, the length of time to go through the process of raising a concern with the Ombudsman has been an issue.

7. *Should the broad principle of “following the public pound” be the basis on which bodies will be included within the Ombudsman’s jurisdiction?*
8. *Is it necessary to list the bodies within the Ombudsman’s jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First and Deputy First Minister have responsibility for maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?*
9. *Do you think that public sector employment issues should be excluded from the Ombudsman’s jurisdiction?*
10. *Do you believe that professional judgement in social care should be included in the Ombudsman’s jurisdiction?*

We support strongly the principle of “following the public pound” in this instance. This is an important principle in Health and Social Care where various key items of care may be provided in the private or independent sectors. This principle will confirm and ensure that all health and social care providers – whether statutory, private or independent are subject to the same scrutiny and accountability.

Listing the bodies over which the Ombudsman has jurisdiction on the face of the legislation has the potential to limit the flexibility of the office to respond to ongoing changes in public administration in Northern Ireland without reviewing the legislation itself. We think a separate list should be maintained by the Office of the First and Deputy First Minister of specific public bodies and that the legislation should contain in itself a definition of the nature and functions of bodies that come under the Ombudsman’s jurisdiction (for example, publicly funded bodies engaged in the provision of health and social care services to the people of Northern Ireland) and not a list of named bodies.

We note that the jurisdiction over public sector employment issues is unique to Northern Ireland and had as its primary purpose the protection of employees in matters of equality and discrimination. With the advent of the Equality Commission we agree that this matter should no longer be part of the Ombudsman’s jurisdiction as members of staff of public sector organisations now have other remedies if they feel that they are being treated unfairly in this way.

We support strongly the proposal that professional judgement in social care should be part of the Ombudsman’s jurisdiction. This would be a welcome addition. Many of the complainants assisted by the Patient and Client Council have issues that relate to social work, to domiciliary care and related social care matters. The social care aspect of Health and Social Care Services is as important as the medical/clinical aspect and given the current direction of policy and strategy is likely to become more so. Not to give the Ombudsman jurisdiction in matters of social care professional judgement in this changing environment would be in our view a serious omission.

11. *Should the legislation ensure that complaints to the Ombudsman would not need to be referred by an MLA but would allow for complainants, if they wish to ask their MLA to refer a complaint on their behalf and to be involved?*
12. *Do you think that the person making the complaint should be able to choose to submit their complaints either verbally or in writing and what means of submission should be available?*

13. *Should a definition be written in the legislation to specify that electronic submissions by e-mail and website form and text messages may be used to submit a complaint?*
14. *Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?*
15. *Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?*
16. *In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland, if the Ombudsman was not satisfied that both of these conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?*

We strongly support any review of the legislation that improves access to the Office of the Northern Ireland Ombudsman by members of the public. In our view, access will be improved substantially by the removal for any requirement for complaints to be referred through a third party – in this case, an MLA.

The Office of the Northern Ireland Ombudsman should be required within this legislation to accept complaints in any form in common or current use (e.g. e-mail or text) and to facilitate potential and actual complainants by making provision for them to express themselves in the manner best suited to them. This should take account of the needs of those who cannot read or write or who have limited capacity to do so. We would suggest that the acceptance and provision of advocates specifically to enable complainants to express their views and participate in the Ombudsman process might be included in the legislation.

With regard to the “aggrieved representative” little detail is given in the consultation on the sort of person who would be accepted by the Ombudsman to bring a complaint on behalf of another person. In principle, we welcome broadening of this definition to allow for greater representation of people who - for one reason or another - are unable to represent themselves and we welcome harmonising of Northern Ireland Ombudsman legislation with that in effect in Scotland, England and Wales. More detail, however, is needed on how this would work in practice.

We would like to see checks and balances whereby the Ombudsman is required to clearly establish whether the “aggrieved representative” has the full consent of the complainant themselves to bring a complaint on their behalf. Similarly, more detail is required as to whether corporate bodies - such as the Patient Client Council – can take on the role of “aggrieved representative” in such cases, if asked to do so. We agree in principle with this proposal, therefore, but there should be an ongoing process of consultation on its implementation.

We are cautious about proposals to allow bodies within his jurisdiction to refer a complaint to the Ombudsman. The document discusses options and principles but raises more questions than it asks at 16. quoted in full above. In answering this question, therefore, we consider two options that appear to be possible given what appears in the text of the consultation and the question:

**a. One body may bring a complaint against another**

This might be a positive advantage to the Patient Client Council who would be enabled to refer a Health and Social Care Trust, for example, that consistently failed to address adequately a cluster of complaints on a specific theme.

However, our primary concern is for the ability of individuals – patients, clients and the public – to bring their concerns to a powerful, independent body. The issue here is that without remedies such as the Ombudsman these individuals are powerless to raise their concerns. With regard to the bodies within jurisdiction, all of these have corporate duties and responsibilities, all are accountable to a Minister of the Northern Ireland Executive. For such bodies to bring complaints against one another to the Office of the Northern Ireland Ombudsman then these lines of accountability would – presumably – have failed.

It is hard to see on the face of this consultation under what circumstances one body might bring a complaint against another.

**b. A body may submit a matter to the Ombudsman in the circumstances described in Question 16.**

We would take this to be a mechanism by which a body may seek independent opinion on a matter where, for example, a group of patients used the media to express the view that it (the body) had failed adequately to address a complaint but did not themselves bring the matter to the Ombudsman.

While this may be a useful facility which we would not oppose in principle, we would be cautious for reasons of capacity and prioritisation of complaints by the Ombudsman. We would prefer to see an office that clearly sought to prioritise the concerns of individual members of the public who lacked other remedies. There should, at least, be further discussion of this matter with examples of how this facility is used in practice. We would imagine the circumstances in which such a facility would be used would be exceptional.

17. *Should the existing powers in relation to the conduct of an investigation by the Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?*
18. *Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?*
19. *Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?*
20. *Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen on the UK and Ireland in matters which overlap their jurisdictions?*

Taken together, we support these proposals. In particular, we agree that a person about whom the Ombudsman may make an adverse comment should be given the opportunity within the course of the process to state their own case. The right to know who is complaining about you and to seek to answer those complaints is fundamental, we think, to a fair process.

We think it is clearly desirable that, wherever appropriate, Ombudsman offices should be allowed to co-operate.

We agree that the Ombudsman should be properly empowered to receive the information he requires and to exercise judgement and discretion in arriving at solutions to matters of concern.

21. *Do you think the proposals on the arrangements for the making of and publicising reports are sufficient?*
22. *Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?*
23. *Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he thinks fit?*
24. *Should the Ombudsman be able to share information with the other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?*
25. *Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?*

We would like to see the following general principles applied in legislation on these matters:

- a. that the independent nature of the office is essential and this includes autonomy for the Ombudsman of decision-making
  - b. that a standard of transparency and public accountability for his work should be reflected in the publication of an annual report and of reports from time to time at the discretion of the Ombudsman on significant matters of public interest
  - c. that, as part of such reports additional to the annual report, the Ombudsman should give insight into his rationale for the publication of the report and the processes that led to his decision to publish a report
  - d. that the Ombudsman should be able decide not to publish reports in the circumstances described in the report – perhaps particularly where the complaint is not upheld. We would understand this to be a decision, however, not a presumption that a report will not be published in any of the circumstances proposed in the consultation document. We think it is helpful, for example, for the Ombudsman to have reference to complaints not upheld as part of his annual report. Where a complaint is upheld but where a report may not be published if the public body agrees to implement change within a specified timescale, we would like assurance that the Ombudsman will discuss his decision with the original complainant.
  - e. that the Ombudsman should be empowered to share information with his colleagues and with others (such as regulatory bodies) in the event that an individual who has been the subject of a complaint – in the opinion of the Ombudsman – represents a Health and Safety risk of which others need to be aware.
  - f. that, wherever possible and appropriate, the jurisdiction of the Northern Ireland Ombudsman should mirror that of his colleagues in the United Kingdom and the Republic of Ireland – that this will tend to harmonise processes, improve general understanding of the office and its purposes and create opportunity for information sharing on matters of shared interest arising from the issues brought by complainants
26. *Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice*

27. *Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?*

While the intent of the Office of the Northern Ireland Ombudsman and this proposed reform of legislation is that the situation should not arise where the Ombudsman finds it necessary to do so, we do agree that the Ombudsman should be empowered to publish a special report where he has remaining concerns that are not being remedied by the public body in question. We note that the mechanism for County Court compensation for complainants where public bodies fail to implement Ombudsman recommendation has not been used in the 26 years in which it has been in force and is unique to Northern Ireland. In our experience, those complainants who wish to use legal means to have their concerns addressed will do so and do not require a separate provision for legal action within the workings of the Health and Social Care Complaints Process. There is no apparent benefit in the retention of this provision, therefore, either for complainants or for the Ombudsman and we would not object to its being removed entirely.

28. *What do you think about the proposed appointment process? Are there any other conditions you would like to see?*
29. *Should the Ombudsman be appointed for a single fixed term of seven years or what length should it be?*

We have no specific insight or expertise in the appointments process for the Ombudsman and have no detailed response to make beyond stating that any appointments process should take account of the following principles:

- a. that the arrangements for the appointment of the Ombudsman should reflect best practice and experience in other jurisdictions
- b. that a principle of succession is generally desirable – that an Ombudsman should be appointed until retirement would not satisfy such a principle
- c. that the tenure of the Ombudsman should reflect the length of time it takes to see through the processes within his jurisdiction from beginning to end so that the experience and insight of the Ombudsman is informed by the delivery of a caseload and so that complainants are assured of reasonable continuity and consistency. This principle would tend to favour a period of tenure, perhaps, of not less than five years
- d. that the independence of the Ombudsman in relation to the full range of public bodies requires that appointments are made by the highest authority in the area of jurisdiction.

We are not legal or constitutional experts and for these purposes do not wish to define what the highest authority may be for this set of functions – whether the Queen and/or the Assembly.

30. *Should the Ombudsman be able to employ staff directly to his/her Office and also to provide for secondment in his Human Resources Strategy?*
31. *Should the current link with the judicial salary scale be maintained?*  
We have no specific comments to make on these matters.
32. *Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?*



We have, throughout our responses so far expressed a desire to see that there is a mechanism for accountability for the Ombudsman and a means of ensuring that the Office and its decision making processes are transparent and accessible to the general public.

Any such arrangements should respect, however, the independence of the Ombudsman and he should not be subject to be held to account by any of those bodies over which he has jurisdiction. It may be that this is best accomplished by making arrangements for the Ombudsman to be subject to scrutiny by the Committee of the First and Deputy First Minister.

With regard to other Committees of the Assembly, while we agree that the Ombudsman should be asked to appear before them on matters of concern and interest that this may be for the purposes of consultation, information and questions on those matters and should be distinct from any accountability arrangement.

This is the conclusion of our comments on this consultation. We would like to thank the Committee of the Office of the First and Deputy First Minister for the opportunity to comment on these important proposals.

If you require further information or if you wish to clarify any aspect of this response, please contact me in the first instance.

Yours sincerely,

Brian Compston  
Chairman (Interim)  
Patient and Client Council

# Hayes, Maurice

## Response to consultation on Ombudsman

### Maurice Hayes

- Q1. Yes. 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 and to save on administrative costs. In addition, single-function ombudsmen run the risk of "agency capture".
- Q2 I does not really matter. If the first the acronym NIPSO might be confused with NIPSA.
- Q3-6 Yes to all
- Q7. Yes. Bodies should not be able to take functions or services out of the Ombudsman jurisdiction by contracting out or privatising. Contracts to provide services should contain a clause preserving the right of access to and by the Ombudsman.
- Q8. It would be more flexible if the list of bodies within jurisdiction were to be maintained by OFMDFM and bodies added or removed by statutory order. (B) Section 4.6 bodies should be included
- Q9 Yes, provided they are adequately protected elsewhere. The need which required inclusion in 1969 no longer exists and there is sufficient public faith in LRA and the tribunals.
- Q10 Yes. It would be anomalous to include clinical judgement in medical fields and to exclude the exercise of judgement by social workers.
- Q11. Yes
- Q12. Yes, but in the interests of the body or officer complained against, the Ombudsman should help the complainant to produce a written form of the complaint as soon as possible.
- Q13-17 Yes to all.
- Q18 The Ombudsman is already required to inform bodies and persons about the possibility of a negative report and to take account of their responses. It should be enough to require the Ombudsman to act according to the principles of natural justice.
- Q19-21 Yes to all
- Q22 I think all reports should be published –perhaps on web.
- Q23-26 Yes to all.
- Q27. I would retain the right to go to court to secure implementation of Ombudsman recommendation. This raises very basic questions of the division of responsibility between legislature and Courts. I would argue that the Assembly is not itself sovereign and there is a danger that the Executive which is the subject of criticism could control enough votes in the Assembly to nullify an Ombudsman report even where there has been injustice to a citizen. This has happened in a recent case in the Dail. Even though not used, the ability to go to court was a powerful weapon in the Ombudsman's armoury.
- Q28. The Ombudsman should be an officer of the Assembly, i.e. Legislature not the Executive. I find the proposed method of appointment at 9.2 quite adequate. There should, if possible be cross-party consensus, at least at leader level.

Q29. A single term of seven years.

Q30. Yes.

Q31. A link with Permanent Secretary salary, as in the past would be appropriate. There should be parity with C&AG.

Q32. Yes. It would be appropriate for the Ombudsman to have a dedicated committee and not to be required to attend all other committees. An arrangement where the PAC could divide into finance and administrative sub-groupings might be appropriate with the Ombudsman attached to the latter.

If the Committee thought it would be helpful. I would be glad to provide oral evidence.

**Maurice Hayes**

22/10/2010

# Law Society of Northern Ireland

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Email: [info@lawsoc-ni.org](mailto:info@lawsoc-ni.org)

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- 1.1 The Law Society of Northern Ireland (hereinafter “the Society”) is the professional body invested with statutory functions in relation to solicitors (primarily under the Solicitors (NI) Order 1976, as amended). The functions of the Society are to regulate responsibly and in the public interest, the solicitors’ profession in Northern Ireland and to represent solicitors’ interests.
- 1.2 The Society represents over 2,400 solicitors working in some 530 firms, based in over 74 geographical locations throughout Northern Ireland. Members of the Society represent private clients in legal matters. This makes the Society uniquely placed to comment on policy and law reform proposals.
- 1.3 The Society’s key policy objectives are;
  - to maintain a strong and ethical independent solicitors’ profession equipped to meet the legal needs of the community and to support commercial activity;
  - to ensure that justice is accessible to those in legal need; and
  - to ensure that the human rights of all are respected and that the rule of law is upheld.
- 1.4 The Society welcomes the opportunity to provide its views on the Committee of the Office of the First and deputy First Minister’s consultation on the NI Ombudsman. The Society will provide its views with reference to the questions asked in the consultation paper. There are a number of questions which the Society does not feel it appropriate for it to comment upon and therefore is not providing its views.

## Consultation Questions and Answers

- 1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

Whilst there is merit in combining the Assembly Ombudsman and Complaints Commissioner, the Society highlights to the Committee the potential for concern that the consolidation of too many functions and powers in one office may result in the creation of too large a remit which can present difficulties in and of itself. There is always the need to address potential conflicts of interest arising which can be difficult where a large remit is placed under one office. The Committee will wish to consider how the Ombudsman's office and role can be appropriately developed so as to ensure that the Northern Ireland Assembly continues to be the principal body with responsibility for holding government to account.

- 2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

The Society does not take a view on this matter.

- 3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?**

The Ombudsman clearly has a role in informing the debate regarding public administration and how it can be improved. It may be most appropriate for the Ombudsman to play a role informing and educating the relevant Assembly Committee on the issues it has identified when considering complaints.

- 4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?**

In considering this question one must consider the resource implications and the possibility of the duplication of work. Again it may be most appropriate for the Ombudsman to play an educational role informing Assembly Committees and other bodies that currently conduct systemic reviews relating to public administration.

- 5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?**

Again consideration must be given to the other bodies that provide such guidance and to existing guidance. However given its experience considering and determining complaints the Ombudsman clearly has a role to play in developing guidance on good administrative practice.

- 6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

Given the Ombudsman's expertise in complaints handling it would seem appropriate that public bodies take his views into consideration when developing their own complaints procedures.

- 7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

This would seem an appropriate principle to have regard to. However the key concern must be that the Ombudsman's office and its procedures provide an appropriate mechanism for the redress of complaints.

- 8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary**

**to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

It is appropriate that the bodies within the Ombudsman's jurisdiction be listed within the legislation. The Society does not wish to comment on the specific bodies for inclusion.

**9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

This would seem appropriate as the Ombudsman's complaints procedures may not be appropriate for the consideration of employment issues.

**10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**

Consideration must be given as to whether the Ombudsman's scheme provides an appropriate mechanism for the consideration of complaints relating to professional judgement in social care. The Ombudsman would inevitably rely on expert external advice.

**11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?**

This seems appropriate. It is important that there is a facility for MLAs to be involved in the resolution of their constituent's complaints.

**12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**

There are a number of schools of thought as to whether the receipt of oral complaints is appropriate or inappropriate. On the one hand it is considered that allowing complainants to complain orally assists those who find it difficult to put their complaints in written form. However others highlight that a written complaint is the best evidential basis upon which to consider a complaint. A complainant will usually more fully turn their mind towards the facts they include in a written statement than they would an oral account of their complaint.

There would clearly be a resource implication if the Ombudsman were to accept oral complaints. Complainants to the Ombudsman currently may seek the assistance of their solicitor, amongst others, when drafting their complaint. The consultation document does not refer to the sources of help that are available to complainants who wish to make a complaint to the Ombudsman. Rather than accept oral complaints it may be appropriate for an advice facility to be provided for potential complaints to assist them in the preparation of their written complaint. Consideration could be given as to whether an existing advice provider could provide advice to individuals considering making a complaint to the Ombudsman. The Ombudsman could then inform potential complainants of this source of advice on receipt of a query.

**13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**

The Society does not take a view on this matter. However the Society highlights the need to ensure the authenticity of complainants.

**14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**

The definition included in the Scottish and Welsh legislation appears appropriate. The key issue is whether there is an appropriate nexus between the aggrieved person and his/her representative. Furthermore it is important that the views of all interested parties are taken on board.

- 15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**  
This seems appropriate.
- 16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**  
It seems appropriate to allow a listed authority to refer a case to the Ombudsman in the identified circumstances.
- 17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**  
Enforceability would be problematic and the application of this power could potentially be oppressive.
- 18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**  
This appears to be a proposal that will ensure due process and fairness.
- 19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**  
This is quite a broad power, mediation is provided as an example of possible actions that might be taken forward. The Committee may wish to consider what other actions might be taken forward to resolve a complaint.
- 20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**  
It seems practical to allow co-operation across relevant jurisdictions.
- 21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**  
Accountability is a key consideration for such an important office.
- 22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**  
Accountability is a key consideration for such an important office.
- 23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**  
Accountability is a key consideration for such an important office.
- 24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**  
The Society does not take a view on this matter.

**25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**

The Society does not take a view on this matter.

**26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

It seems appropriate that the Ombudsman should make and publicise a special report in the identified circumstances. Careful consideration is required to be given to the issues of fairness and proportionality.

**27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

Whilst this mechanism has been underused, the Society is not of the view that this presents a case for it to be abolished or limited. Whilst in the vast majority of cases the publication of a special report will be sufficient to encourage a body to satisfy an injustice and provide an appropriate remedy, the option of seeking compensation in the County Court should not be denied to a complainant. Furthermore the presence of such a facility may encourage public bodies to resolve complaints in early course.

**28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**

The Society does not take a view on this matter.

**29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**

The Society does not take a view on this matter.

**30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?**

The Society does not take a view on this matter.

**31. Should the current link with the judicial salary scale be maintained?**

The Society does not take a view on this matter.

**32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**

Accountability and transparency are important issues for such an important office.



# Lisburn City Council



LISBURN  
CITY COUNCIL

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[www.lisburncity.gov.uk](http://www.lisburncity.gov.uk)

**Norman Davidson** *Chief Executive*

[normand@lisburn.gov.uk](mailto:normand@lisburn.gov.uk)

**Our ref:** CC/RN  
**Your ref:**

27<sup>th</sup> October, 2010

Dear Ms White

**Consultation – “Proposal to update the legislation to reform the Office of the Northern Ireland Ombudsman”**  
**(Closing date: 17<sup>th</sup> December 2010)**

I refer to your letter dated the 24<sup>th</sup> September, 2010 in respect of the above consultation document.

I wish to advise that, at its Meeting held on the 26<sup>th</sup> October, 2010 the Council accepted a recommendation from its Corporate Services Committee to support the provisions contained in the above consultation in particular that provision relating to the exclusion of the Ombudsman from Human Resource disputes.

The Council should be grateful if its comments as set out above could be taken into account during your Committee’s deliberations on the way forward in this regard.

Yours sincerely

  
**C CONNOLLY (MRS)**  
**Assistant Director Corporate Services**

Continued .....



Lisburn, a City for everyone

**David Briggs**  
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[davidb@lisburn.gov.uk](mailto:davidb@lisburn.gov.uk)

**Colin McClintock**  
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Page 2

CC/RN

27<sup>th</sup> October, 2010

Ms Cathie White  
Clerk  
Committee for the Office of the First Minister and Deputy First Minister  
Committee Office Room 404  
Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST  
BT4 3XX

# Loughs Agency

Our Ref: JMcC/LF

9th December 2010

## **Committee of the Office of the First Minister and Deputy First Minister**

### **Re: Proposals to update the Legislation to Reform the Office of the Northern Ireland Ombudsman**

In relation to the above consultation the Loughs Agency would like to take the opportunity to answer the questions raised as follows;

In relation to question 1, would the people be more effectively served in the future if a single Ombudsman Office is established. The Agency agrees with this proposal.

In relation to question 2, if a merged office was created what it should be called. The Agency has no view on this matter.

In relation to question 3, whether the Ombudsman should not only have the power to resolve complaints but also to seek to improve public administration. The Agency feels that the improvement of public administration currently lies within the Northern Ireland Civil Service who develop codes of practice for both Civil Service and for Departments sponsored by the Civil Service and this should remain as it is.

In relation to question 4, should the Ombudsman have the power to conduct an investigation systemic review on his or her own initiative. The Agency feels that any review or investigation of this type should only be carried out in partnership with an existing body.

In relation to question 5, the Ombudsman having the power to provide guidance on good administrative practice. The Agency would refer to the answer provided at question 3.

In relation to question 6, whether the Ombudsman should play a designated authority on public sector complaints. The Agency has no objection to this.

In relation to question 7, should a broad principal of following the public pound be the basis of which bodies will be included in the Ombudsman's jurisdiction. The Agency feels that the jurisdiction of the Ombudsman should be determined by need and not by fiscal direction.

In relation to question 8, the Agency feels that it is necessary list the bodies within the Ombudsman's jurisdiction in the regulation to avoid any confusion for members of the general public.

In relation to question 9, public sector employment issues should be excluded from the Ombudsman's jurisdiction.

In relation to question 10, professional judgement and social care, the Agency feels that this also should be excluded from the Ombudsman's jurisdiction.

In relation to question 11, should the legislation ensure that complaints to the Ombudsman would not need to be referred to an MLA but would allow for complaints if they wish to ask their MLA to refer their complaints. The Agency has no objections to this mechanism.

In relation to question 12, the person making the complaint should be able to choose to submit their complaint either orally or in writing. The Agency feels strongly that all complaints should be made in writing as this both ensure clarity in terms of complaints and in terms of the answer to the complaint if to be provided by an Agency under investigation.

In relation to question 13, should a definition be written in the legislation to specify electronic submissions by email and website form and text messages be used to issue a complaint. The Agency has no objection to email however would object to complaints by text message.

In relation to question 14, the definition of a person's agreed representative. The Agency has no view.

In relation to question 16, injustice and maladministration. The Agency has no objection to this proposal.

In relation to question 17, should the existing powers in relation to conduct investigation by an Ombudsman be continued and should additional power be included in the legislation. The Agency refers the right to comment on the legislation once it is written and could only comment on this point at that juncture.

In relation to question 18, the Agency feels it is imperative that a person who has been a subject of an adverse comment be allowed to have an opportunity to make representation and feels that this is a matter of simple justice. Additionally any reports should be given in draft to the person under investigation for review before final publication.

In relation to question 19, the Ombudsman having the power to take any action needed to resolve a complaint while conducting an investigation. The Agency feels this should be limited to suggestion in the final report from the Ombudsman on the basis of any complaint.

In relation to question 20, do you think that the Ombudsman should be authorised to cooperate with other Ombudsmen in overlapping jurisdictions. The Agency feels that particularly in respect of the Republic of Ireland this should be automatic and fundamental to the operation.

In relation to question 21, proposals on the arrangements for making up publicising of the reports are sufficient. The Agency has no view on this matter.

In relation to question 22, proposals for alternative arrangements, the Agency has no view on this matter.

In relation to question 23, the Agency feels that the delivery of reports and discharge of functions in relation to style should be subject to review by an appropriate committee in the Northern Ireland Assembly.

In relation to question 24, the Agency would encourage the sharing of information as described.

In relation to question 25, the Agency has no objection to this proposal.

In relation to question 26, a special report to deal with the situation with Ombudsman's not satisfied with other body's response to his recommendations or finding of maladministration that had caused injustice, the Agency suggests that while there has been an injustice this is dealt with by the appropriate court and where there is maladministration this is dealt with by the appropriate committee in the Northern Ireland Assembly.

In relation to question 27, allowing a complainant to seek compensation in a county court, the Agency feels this should be removed completely from the Ombudsman's proposed powers and the concept of compensation should be left with the appropriate court.

In relation to question 28, the appointment process, the Agency has no view on this.

In relation to question 29, the terms of office, the Agency has no view on this.

In relation to question 30, the employment of staff, the Agency would suggest that in relation to specialist investigations that specialist staff are seconded by the Ombudsman.

In relation to question 31, the salary scale, the Agency has no view on this matter.

In relation to question 32, the Agency feels that there should be arrangements for the Ombudsman to appear before a committee of the Assembly to give an account in relation to his performance, resources and salary.

**John McCartney**

Director of Conservation and Protection

Mclvor, Jill

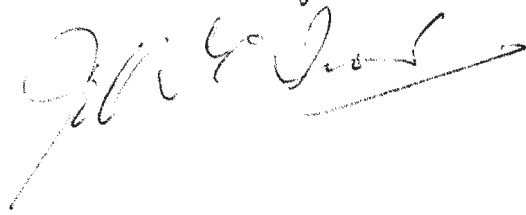
14. 12. 2010

Dear Mrs White,

Thank you for sending me the consultation paper on the Office of the Ombudsman. I have read it carefully and with great interest. However as I retired from the post of Ombudsman nearly seventeen years ago, I feel my observation would not be of any great help or interest. I have made a few brief responses to some questions and have appended a note on retirement age. I do not wish to give oral evidence. I should have drawn

your attention to the fact that  
this is a hand-written submission  
and I apologise for failing to  
do so before the deadline.

Yours sincerely,



Consultation Paper on the  
Office of the Ombudsman.  
14. 12. 2010

- Q4. P.7.No. I believe the power to conduct an investigation on his own initiative would "politicise" the position of the Ombudsman, or at least make it difficult to refute any such suggestions.
- Q11. P14. The need for a referral on behalf of a complainant by an MLA is unnecessary. It tends to form a barrier to quick and easy access to the services of the Ombudsman. Successive holders of the Office have worked hard to encourage complainants to make use of those services. I knew some MLAs welcome the opportunity to make contact with their constituents but on balance I feel it should be abolished.



2.

Q13 p. 14. Submission by e-mail should be allowed as this form of communication is in common use. Not so web-site form. Text messages are liable to misunderstandings and could cause delay, especially if using text-speak. Complaints made thoughtlessly or on the spur of the moment would be all too easy to make and difficult to investigate.

Q 26. p 22. The power to lay a special report before the Assembly should be retained. While rarely used, it is nevertheless indicative of the expectation that government departments will comply with the Ombudsman's decisions.

I had only one experience of this. I had difficulties with the Department responsible for the Support Agency, now abolished, which insisted that it could not decide on a certain matter

until it was <sup>3.</sup> known "what London would do." This was unacceptable. I had found in favour of two mothers each trying to bring up a child with no financial support from the absent father. I brought this to the attention of the Head of the Civil Service and said I intended to make a special report to Parliament (we then had direct rule). The matter was satisfactorily settled. It is a useful procedure and should be retained even if rarely used.

Q 30 p 25. The Ombudsman should certainly be empowered to employ staff directly when necessary as well as by secondment from the Civil Service. The latter method can work well and usually produces staff of high ability. Problems arise when there is a shortage of available personnel of the necessary

grades.

4.

The Commission should be able to advertise posts to maintain the high standard he requires.

Jill McInnis

5.

Addendums

Age of retirement. The 1969 legislation specifies that the Parliamentary Commissioner for Administration (as the post was then called) would be at the end of the year of service in which he attained the age of 65 years. The age must be the same for the then B. for C.

In the present climate and comparable to ~~similar~~ <sup>affairs</sup> such as those of the judiciary 72 years of age would seem to be more appropriate.

Please discuss. Thank you.

J.P. McDermott.

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# Newtownabbey Council

## **Reform of The Office of The Northern Ireland Ombudsman**

The Council welcomed the opportunity to comment on the proposals to reform the Office of the Northern Ireland Ombudsman.

In general the Council supported the proposal to merge the existing offices into one office.

It supported this proposal on the basis that it should make it easier for the public to make a complaint and a “one stop” shop has proved beneficially in the provision of many public services. The Council has no view on which of the two names is more preferable.

The Council would support the Ombudsman having the power to make recommendations for improvements arising from a complaint which was proven.

The Council would be supportive of the availability of good guidance on administrative practice arising from the resolution of cases.

The Council would be supportive of the notion of “following the public pound” as the criteria for including a public body within the Ombudsman’s jurisdiction.

The Council supported the exclusion of those matters that can be dealt with by an employment tribunal.

The Council did not believe that complaints should be forwarded by an MLA but would wish to see appropriate steps put in place to ensure vexatious complaints can be quickly removed from the system. The Council supported the idea of written complaints in any format.

The Council would support the proposal that the Ombudsman should have all necessary resources to ensure that any investigation is full and transparent.

The Council would support the Ombudsman having the power to resolve a complaint, if the body against which the complaint had been upheld was slow to act on any recommendations from the Ombudsman.

The Council would support the principle of publicising the findings of the Ombudsman’s report but were of the opinion that great care would be needed in including any adverse comments about an individual.

# Northern Ireland Audit Office



**Kieran Donnelly**  
Comptroller & Auditor General

## Northern Ireland Audit Office

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**Cathie White**  
Clerk to the OFMDFM Committee  
Room 416  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

22 November 2010

Dear Cathie

### **Proposal to update the legislation to reform the Office of the Northern Ireland Ombudsman**

Thank you for your letter of 24 September 2010 inviting me to comment on the above proposals. I have provided written responses to a number of the questions raised in the consultation document below, focusing on those which relate to the work of my Office. I do not intend to give oral evidence to the Committee on these matters at this time.

**Q4. Should the Ombudsman have a power to conduct an investigation or systematic review on his/her own initiative given the overlap with other bodies?**

I welcome the suggestion of the 2004 Review that a power to conduct a systematic review could be conferred upon the Ombudsman but subject to the condition that there must first be consultation with myself to avoid duplication.

I feel that this consultation is important to ensure there is no duplication of publicly funded resources and I would be pleased to enter into such a consultative relationship with the Ombudsman. It is important to note that whilst there is a shared interest between our two respective offices regarding improving public services, as noted, the work of our two offices are very different and my statutory responsibilities determine the work my office undertakes.

**Q5. Do you want the Ombudsman to have the power to provide guidance or good administrative practice that public bodies would be required/expected to take into account?**


I welcome the proposal that the Ombudsman should have the power to provide guidance on good administrative practices that public bodies would be expected to take into account. As with question four, I would suggest that in certain circumstances, where areas of work

*Office of the Comptroller and Auditor General for Northern Ireland  
Promoting accountability and best use of public money  
Telephone (028) 9025 1100 GTN 440*

overlap, it may be appropriate for the Ombudsman to consult with my Office to ensure any duplication is avoided.

I hope you have found my comments useful in considering the proposals outlined.

**Yours sincerely**

  
**Kieran J Donnelly**  
**Comptroller and Audit General**

# Northern Ireland Authority for Utility Regulation

COMMITTEE  
13 OCT 2010  
FOR THE OFMDFM



Ms Cathie White  
Clerk – Committee of the Office of the First Minister and Deputy First Minister  
Committee Office Room 404  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

7 October 2010

Dear Ms White

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

Thank you for your letter of 24 September 2010 to our Chief Executive, Iain Osborne, in respect of the above consultation. Mr Osborne has asked me to respond to your letter on his behalf.

The Northern Ireland Authority for Utility Regulation (the Utility Regulator) recognises the value of an independent Ombudsman function.

We are grateful for the opportunity to have sight of the consultation paper and to be kept informed of the Committee's thinking on the future direction of the Office. We do not have any specific comments to make on the detail of the consultation at this point but look forward to hearing the outcome of the process in due course.

Yours Sincerely

**Donald Henry**  
Director of Corporate Affairs

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Northern Ireland Authority for Utility Regulation  
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# Northern Ireland Certification Office

## Northern Ireland Certification Office

For Trade Unions and Employers' Associations

Your Ref

Our Ref

COMMITTEE  
- 1 OCT 2010  
FOR THE OFMDFM

Ms Cathie White  
Clerk to the Committee for  
The Office of the First Minister  
and Deputy First Minister  
Committee Room 404  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast, BT4 3XX

29 September 2010

Dear Madam

**Re: Proposal to update the Legislation to reform the Office of The Northern Ireland Ombudsman.**

Thank you for your letter dated 24 September 2010.

Please note for the record that we do not wish to provide any evidence.

Yours sincerely



John Bennett  
Assistant Certification Officer

# Northern Ireland Civil Service HR

HR Policy, Pay and Pensions Division  
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The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast  
BT4 3XX

12 December 2010

By Email

Dear Sir/Madam,

## **Consultation Paper: Reform of the Office of the Northern Ireland Ombudsman**

I am writing on behalf of the HR branches within the Departments of the Northern Ireland Civil Service in response to the consultation paper on proposals to reform the office of the Northern Ireland Ombudsman with specific reference to the questions posed in relation to proposals on the remit of the Office.

Question 7: Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?

NICS HR Departments support the view that all public bodies substantially funded from public money should be included within the Ombudsman's jurisdiction.

Question 8: Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?

The current practice should continue and the bodies listed at paragraph 4.6 are added to the list of bodies within the Ombudsman jurisdiction. However, it is not necessary for the Office of the First Minister and Deputy First Minister to have responsibility for maintaining an up to date list. It is suggested that the responsibility could sit with the ombudsman's office itself.

Question 9: Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?

NICS HR Departments are strongly of the view that public sector grievance, discipline and employment matters should be excluded from the remit of the Office. This provision is not available to any non-public sector employee and there are now sufficient other appropriate avenues, including Industrial Tribunals, where civil servants and other public servants can raise employment issues, including equality issues. The proposed removal of the Ombudsman provision will not put them at a disadvantage compared to private sector employees or indeed

other Crown Employees, as the current Ombudsman legislation already excludes other Crown Servants (e.g. the police) from bringing employment matters to the Ombudsman.

MLA sponsorship no longer required for case referral to Ombudsman (or to be in writing) – Section 5

The NICS would have particular concerns about a potential increase in the volume of complainants bypassing internal complaints procedures, or seeking support or clarification through a local representative, where a member of the public remains dissatisfied. This has the potential of not affording the Departments the opportunity to attempt to reach a satisfactory outcome for the customer, before the initiation of the usually more resource intensive process with the Ombudsman's Office.

The NICS would also be opposed to following the devolved administrations' approach (as opposed to the approach adopted in England), where complaints do not have to be made in writing. While the reason for adopting that approach is very reasonable (literacy problems), there does not appear to be any limitation on its use i.e. where no literacy issues exist, and the option appears to be open to all, including those who may have previously written to the Department concerned.

The NICS would also oppose accepting oral or text complaints, for reasons of accuracy and clarity, since such information will lead to detailed investigations being undertaken at considerable cost to the taxpayer. While the Department is not aware of examples where a customer may have been reluctant to challenge an issue because of literacy issues, it is accepted that this is sensitive issue. It is therefore recommended that the Ombudsman's Office explore alternative routes to ensure there are sufficient notification routes available for the general public through which they can bring issues to the attention of the Ombudsman.

#### **General Comments**

The reference to DEL in the list at Appendix 1 should read "for" rather than "of" in the departmental title.

Yours sincerely,

**Jayne Forster**

# Northern Ireland Federation of Housing Associations

Date: 16 December 10

## Consultation: Proposals to Update Legislation to Reform the Office of the Northern Ireland Ombudsman

### **Introduction**

The Northern Ireland Federation of Housing Associations (NIFHA) represents registered and non-registered housing associations in Northern Ireland. Collectively, our members provide 34,000 good quality, affordable homes for renting or equity sharing. Further information is available at [www.nifha.org](http://www.nifha.org)

### **General Comments**

NIFHA welcomes the opportunity to respond to this important consultation document. The Office of the Northern Ireland Ombudsman has served our society well and has acted as an independent advocate in resolving complaints and gaining redress for people's grievances with government departments and public bodies. However, it may be timely, because of changes in our political environment, in Northern Ireland, to update the legislation applicable to this office.

## Specific Comments

### **Question Number 1**

NIFHA broadly accepts the proposal to move to a single Ombudsman's office with powers to investigate complaints about government departments and public bodies in NI. We agree that the current dual system is confusing so a single Ombudsman's office seems a more sensible approach.

### **Question Number 4**

Our Federation has strong concerns regarding the new power of the Ombudsman to conduct investigations on his / her own initiative. Our members are already subject to a number of regulatory authorities, including the Department for Social Development so we would therefore have reservations around this proposal as it may have the potential for another layer of regulation. NIFHA does not condone maladministration but we would like more information on how this would work.

### **Question Number 8**

NIFHA has no concerns about increasing the number of bodies within the remit of the Ombudsman and we are not suggesting any additional bodies at this time.

### **Question Number 9**

NIFHA agrees that public sector employment matters should be excluded from the Ombudsman's jurisdiction.

### **Question Number 12**

Our Federation welcomes the proposal for the widening of options for submitting a complaint and sees this as a method of improving access to the provision of the service.

**Question Number 17**

Regarding the proposal for new powers to require the provision of (reasonable) facility, NIFHA has no objection to this as our members already provide information and facilities for other regulatory bodies.

**Question Numbers 28 & 29**

NIFHA does not express any views on the appointment process but we would prefer to see fixed term tenure with no further re-appointment.

**Question Number 32**

Our Federation agrees that arrangements for the Ombudsman to give account to Committees of the Assembly are reasonable.

I Hope you find our comments useful.

Submitted on behalf of NIFHA by:

Maire Kerr, Housing Policy and Research Manager

# Office of the First Minister and deputy First Minister



**Cathie White**  
Clerk  
Committee for OFMDFM  
Room 416  
Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST  
BT4 3XX

10 February 2011

Dear Cathie

## **CONSULTATION ON REFORM OF ASSEMBLY OMBUDSMAN AND NORTHERN IRELAND COMMISSIONER FOR COMPLAINTS**

I attach OFMDFM's response to the Committee's consultation on the legislation to reform the Office of the Assembly Ombudsman and Northern Ireland Commissioner for Complaints. I apologise that we did not meet the Committee's deadline of 17 December.

**Yours sincerely**

*Signed Gail McKibbin*

**GAIL MCKIBBIN**  
Departmental Assembly Liaison Officer



**OFMDFM Response to Committee of the office of the First Minister and deputy First Minister**

**‘Consultation on Proposals to update legislation to reform the office of the NI Ombudsman’**

**General Comment:**

- Several of the proposals (questions 5, 7, 15 and 17) would impact on public authorities and we would recommend that the Committee seek legal advice on the implications of this and consider consulting directly with all those bodies listed as authorities under the remit of the NI Ombudsman (as well as bodies proposed to be included at Question 8 of the Consultation document [paragraph 4.6 refers]) on the impact that additional powers for the Ombudsman may have on them. Specifically if public bodies will now have a statutory requirement to take account of the guidance of the NI Ombudsman. Advice should be sought from the Equality Commission (ECNI) and others on the resource and financial costs required and the practicalities of implementing this type of duty.
- There will be resource and financial implications for decisions taken in respect of Question 4, 10, and 19.

**OFMDFM response to Question 4**

**(Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?)**

OFMDFM would highlight that during the OFMDFM Committee consultation on the Commissioner for Older People Bill, concern was expressed about the need for the Commissioner to have investigatory powers.

The Department provided the Committee with evidence of a wide range of issues affecting older people that the Commissioner could address and possibly investigate and the Committee was satisfied with the need for the powers.



Members of the Committee also expressed a concern about the potential for duplication or overlap of the Commissioner's proposed investigatory power with that of other oversight bodies. The Department advised that this was addressed in a number of ways.

Firstly the Bill contains provisions (Clauses 5(4), 6(3), 7(4), 8(2), 9) the sole purpose of which is to avoid duplication of the Commissioner's investigatory work with that of other bodies that already possess the responsibility, expertise and publicly funded resources to act on a complaint raised by an older person. The legislation to establish a Commissioner for Older People in Wales (the Commissioner for Older People (Wales) Act 2006) contains provisions (Sections 16 and 17) requiring the Commissioner in Wales to inform and consult with other ombudsmen before carrying out an examination/investigation. The Department would strongly recommend that similar statutory provisions be considered for this legislation to prevent the duplication of systemic investigatory work by the Ombudsman with bodies such as the Comptroller and Auditor General, the Regulation and Quality Improvement Authority (RQIA), the Equality Commission, the Human Rights Commission, the NI Commissioner for Children and Young People (NICCY) and (when appointed in 2011) the Commissioner for Older People.

The Committee's consultation document refers to the 2004 Review of the office and suggests that any such new power should be subject to the condition that there must be consultation with the Comptroller and Auditor General (C&AG) to avoid duplication. It would seem appropriate to ensure that if the Ombudsman's office is given this power then other bodies including (but not restricted to) the C&AG and also for example the Commissioner for Older People should be similarly consulted with to avoid duplication.

Additional to the specific legislative provisions in the Commissioner for Older People Bill, OFMDFM committed to highlighting the importance of this issue to the Commissioner upon appointment, as well as the importance of agreeing memoranda of understanding (MOU) with appropriate oversight bodies to clarify roles and responsibilities. It would seem appropriate for the NI Ombudsman to pursue similar MOU with other relevant oversight and regulatory bodies.

Finally, the Commissioner for Older People Bill contains a review mechanism. The Commissioner will have a legal obligation to carry out reviews of the adequacy and



effectiveness of the legislation. The Commissioner can make recommendations to amend the legislation, if



that is considered appropriate. In the first instance, such a review must be carried out as soon as possible after three years of the Act coming into force and, at the latest, every five years thereafter. However, if significant difficulties arise, Ministers have committed that they will move ahead of the review process to address and to remedy the problems and, if necessary, to amend the Act.

As cited by the Committee deputy Chairperson on 16 November Consideration Stage Debate on the Commissioner for Older People Bill, a *“commissioner may be better placed to take an issue forward even though it is a different body’s statutory responsibility ... to ensure that the legislation is sufficiently robust and flexible to allow, for example, another ombudsman to ask the Commissioner for Older People to take a case forward as he or she might have better institutional knowledge and research for the case to be more effective rather than a different office having to reinvent the wheel”*. *‘That would give two offices the flexibility to work together seamlessly. It would not be a power grab of someone else’s turf by a new commissioner. We hope that in that situation, two commissions could work together in close harmony to make a judgement that office A is better placed to take a case forward even though office B may have strict formal statutory responsibility’*.

Given the potentially narrow focus of the NI Ombudsman investigations on maladministration and for example the wider focus of the Commissioner for Older People investigatory powers on the interests and rights of older people the Department would ask the Committee to consider statutory provision for joint or collaborative working and/or reporting with for example the Commissioner for Older People (once in post) to provide for a holistic approach to systemic reviews. The Committee may also wish to consider this route in respect of investigations by the NICCY and ECNI. Similar legislative provision has been provided for in the Public Service Ombudsman (Wales) Act 2005 (extract attached at [Annex A](#) to this note).

#### **OFMDFM response to Question 5**

**(Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?)**

If Committee decides to pursue the option that public bodies will now have a statutory obligation to take account of the guidance of the NI Ombudsman then advice should be

sought on both the resource and financial costs required and on the practicalities of implementing this type of duty/ regulatory role from the Equality Commission of NI (ECNI).



In addition a duty such as this would impact on listed authorities within the remit of the NI Ombudsman (and potentially those bodies proposed to be included at Question 8 of the Consultation document [paragraph 4.6 refers]) and as such the Department would suggest that, as best practice, they should be consulted with on any legislative changes proposed.

#### **OFMDFM response to Question 10**

**(Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?)**

There may be potential for duplication with the role of the NI Social Care Council, the General Medical Council and the DHSSPS Social Services Inspectorate. We would recommend that advice on this matter should be sought from DHSSPS.

#### **OFMDFM response to Question 12 & 13**

**(Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?)**

**(Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?)**

In response to these two questions the Department would suggest that the Committee seeks advice from the Office of the Legislative Council (OLC) before drafting this proposal as it is our understanding that this may already be provided for by the final paragraph [Section 46(1)] of the Interpretation Act 1954.

#### **OFMDFM response to Question 18**

**(Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?)**

This proposal would seem practical. However the Department would clarify with the Committee that this proposal goes beyond that considered in the 2004 Deloitte Review.



**OFMDFM response to Question 19**

**(Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?)**

The Commissioner for Older People legislation gives the Commissioner the power to make arrangements for the provision of conciliation services and this approach by the NI Ombudsman would be welcomed by the Department.

The Department has in the policy development of this been mindful of the Committee's concerns to avoid any potential duplication, specifically in Health and Social Care. DHSSPS '*Complaints in Health and Social Care: Standards and Guidelines for Resolution and Learning*' may therefore be of interest in consideration of this new power and the need to avoid duplication.

**OFMDFM response to Question 20**

**(Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?)**

The Department is mindful of the need to avoid duplication and overlap with other bodies and a cooperative and collaborative approach would be consistent with this.

In addition to this the Department considers it appropriate that the NI Ombudsman as with other regulatory and statutory bodies should work cooperatively and collaboratively with for example the ECNI, NICCY and the Commissioner for Older People (once in post) and would urge consideration of the legislative provision in the Public Service Ombudsman (Wales) Act 2005 (extract attached at **Annex A** to this note) which provides for joint or collaborative working and/or reporting. See also response to Question 4 above.

**OFMDFM response to Question 21 & 22 & 23**

**(Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?)**



**(Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?)**

**(Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?)**

Procedures for presenting reports from arms length bodies (ALBs) to the sponsoring Department are an essential corporate governance feature and a useful way to demonstrate transparency in the use of resources and financial propriety. There is no evidence to demonstrate that this has been in any way burdensome and it is a useful means of ensuring accountability and should not be diminished.

In the policy development of the Commissioner for Older People Bill, the Office of the NI Ombudsman office was, at that time, unable to provide the Department with a breakdown of complaints by category, for example number and or type of complaints from older people. It would be useful to avoid duplication with the investigatory work of the Commissioner for Older People and NICCY, if the NI Ombudsman Office could hold /make these figures publicly available.

**OFMDFM response to Question 25**

**(Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?)**

The Department agrees that the NI Ombudsman should have the power to share information for health and safety reasons with other public sector Ombudsman in the UK and ROI and with the Comptroller and Auditor General.

While allowing for retention of independence of the office and subject to FOI and data protection legislation, the Committee may also wish to consider if relevant information should also be shared, where applicable with ECNI, NIHRC, the proposed Commissioner for Older People and the NI Commissioner for Children and Young People. This could be achieved legislatively or through MOU or working protocols.



**OFMDFM response to Question 27**

**(Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?)**

This proposed approach ((a)) would be consistent with that taken by the Department in preparing legislation to establish the Commissioner for Older People and NICCY.

**OFMDFM response to Question 28**

**(What do you think about the proposed appointment process? Are there any other conditions you would like to see?)**

The Department is aware of good practice in relation to public appointments through advice provided by the Office for Public Appointments (NI) and any recruitment/appointment process should be in line with such good practice.

**OFMDFM response to Question 29**

**(Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?)**

The Department has no view on this but would clarify with the Committee that the recommendation from the 2004 Deloitte Review was that the term of appointment for the Ombudsman should be for 5 years with opportunity for reappointment.

Although not considered in this consultation document it is the Department's view that in line with the proposed review of the default retirement age the provision at Article 3 (2) (c) of the Commissioner for Complaints Order and Article 4 (2) (c) of The Ombudsman (NI) Order relating to the vacation of office at the age of 65, should be removed.



**OFMDFM response to Question 30**

**(Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?)**

The Department is supportive of secondment arrangements and is pursuing discussion with the ALBs that it sponsors in relation to shared arrangements. This may be a consideration for the Committee as a way for the NI Ombudsman's office to ensure sharing of knowledge and expertise and reduction in costs.

Similar provisions in relation to staffing exist within the legislation for the Commissioner for Older People and the NICCY. The caveat included in each of these, similar to the current arrangements within the NI Ombudsman legislation is that for any determinations that approval would be required from the body providing public funding (in this case OFMDFM) and from DFP. The Department would be of the view that to ensure proper and transparent use of public funds that this caveat should be retained.

**OFMDFM response to Question 32**

**(Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?)**

Proper accountability is essential and this is a useful means to ensure this. The NI Ombudsman office should also be accountable to the body providing funding to it from the public purse.

**Annex A****Extract from the: PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2005****Consultation and co-operation****25 Consultation and co-operation with other ombudsmen**

- (1) This section applies if, in making a decision under section 2(5) or conducting an investigation, the Ombudsman forms the opinion that any matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).
- (2) The Ombudsman must consult that ombudsman about the matter.
- (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.
- (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to any matter the subject of the complaint or investigation, including in particular—
- (a) the conduct of an investigation into the complaint;
  - (b) the form, content and publication of a report of the investigation.
- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may—
- (a) conduct a joint investigation into the matter;
  - (b) prepare a joint report in relation to the investigation;
  - (c) publish the joint report.
- (6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.
- (7) The ombudsmen referred to in subsection (1) are—
- (a) the Parliamentary Commissioner for Administration;
  - (b) the Health Service Commissioner for England;
  - (c) a Local Commissioner;
  - (d) the Scottish Public Services Ombudsman;
  - (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996 (c. 52);
  - (f) the Children's Commissioner for Wales.
- (8) The **[F1Welsh Ministers]** may by order amend subsection (7) by—
- (a) adding a person;



- (b) omitting a person;
- (c) changing the description of a person.

(9) An order under subsection (8) may add a person to subsection (7) only if the person appears to the **[F1Welsh Ministers]** to have functions relating to the investigation of complaints.

**[F2(10)**No order is to be made under subsection (8) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.]

**Annotations:**

**\* Amendments (Textual)**

**F1**Words in s. 25(8)(9) substituted by Government of Wales Act 2006 (c. 32), s. 160(1), **Sch. 10 para. 77(2)** (with Sch. 11 para. 22), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.

**F2**S. 25(10) inserted by Government of Wales Act 2006 (c. 32), s. 160(1), **Sch. 10 para. 77(3)** (with Sch. 11 para. 22), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.

**Commencement Information**

**1**S. 25 wholly in force at 1.4.2006; s. 25 not in force at Royal Assent see s. 40; s. 25(7)-(9) in force for certain purposes at 12.10.2005 and s. 25 wholly in force at 1.4.2006 by S.I. 2005/2800, arts. 3(a), 5(1)(3), Sch. 1 Pt. 1

**[F325A Working jointly with the Commissioner for Older People in Wales**

- (1) This section applies where it appears to the Ombudsman that—
  - (a) there is a complaint in respect of a matter which he is entitled to investigate; and
  - (b) the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales (the 'Commissioner').
- (2) Where the Ombudsman considers it appropriate, he must—
  - (a) inform the Commissioner about the matter; and
  - (b) consult him in relation to it.
- (3) Where the Ombudsman consults the Commissioner under this section, he and the Commissioner may—
  - (a) co-operate with each other in relation to the matter;
  - (b) conduct a joint investigation into the matter;
  - (c) prepare and publish a joint report in relation to the investigation.



**Annotations:****✖ Amendments (Textual)**

F3Ss. 25A, 25B inserted (14.10.2006) by Commissioner for Older People (Wales) Act 2006 (c. 30), ss. 22, 23, Sch. 4 para. 2(2); S.I. 2006/2699, art. 2

**25B Working collaboratively with the Commissioner for Older People in Wales**

(1) This section applies where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner (the 'connected matter').

(2) Where the Ombudsman considers it appropriate, he must inform the Commissioner about the connected matter.

(3) Where the Ombudsman considers that the complaint also relates to or raises a matter into which he is entitled to conduct an investigation himself ('the ombudsman matter'), he must also if he considers it appropriate—

(a) inform the Commissioner about the Ombudsman's proposals for conducting an investigation into the complaint; and

(b) consult the Commissioner about those proposals.

(4) Where the Ombudsman and the Commissioner consider that they are entitled to investigate, respectively, the ombudsman matter and the connected matter they may—

(a) co-operate with each other in the separate investigation of each of those matters;

(b) act together in the investigation of those matters; and

(c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.

(5) Where the Ombudsman considers—

(a) that the complaint does not relate to or raise a matter into which he is entitled to conduct an investigation himself, and

(b) that it is appropriate to do so,

he must inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

(6) In this section 'Commissioner' has the meaning given in section 25A.]

# Older People's Advocate

The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX

4 January 2011

Dear Ms. White

## **Proposal to Update Legislation to Reform the Office of the Northern Ireland Ombudsman**

I welcome the opportunity to make a few comments on the above consultation. I have no statutory powers and for this reason I will confine my comments to areas which in my experience has Older People's Advocate over the last two years appear relevant to the consultation.

- There is a potential to overlap and duplicate the efforts in relation to the bodies that already exist in Northern Ireland. Bodies such as the Children's Commissioner, the Human Rights Commission and the Equality Commission all have memorandums of understanding (MoU) in place with each other and with other organisations but I am aware that there is concern that the Ombudsman by being a party to an MoU has entered into agreements with bodies that he might at some stage be asked to investigate. The adoption of a well constructed MoU with other bodies would I believe be beneficial for the Ombudsman in defining roles and responsibilities as well avoiding duplication. This would include recognising in the MoU the Ombudsman's specific right to investigate if the other body was to be involved in a maladministration case.
- Ombudsmen are different from commissioners with specific remits, who represent the rights and interests of groups. Ombudsmen address issues of maladministration in the implementation of processes. Commissioners identify the impact on the members of the group they represent of the processes and their appropriateness in providing services or support. These are two very distinct roles.
- The Public Services Ombudsman for Wales is in the process of finalising memorandums of understanding with, for example, the Children's Commissioner for Wales and the Older People's Commissioner for Wales. He also has a statutory duty to consult the Older People's Commissioner if it is felt that a particular case could perhaps be investigated by both bodies.
- I see no reason why the Ombudsman should not have a power to conduct an investigation or systemic review on his/her own initiative so long as he/she does so together with or with the support of another body with responsibilities in the same area.
- In my experience of the last 2 years it has become apparent that neither the Ombudsman nor the Equality Commission can adequately meet the needs of older people, support them, advocate on their behalf or promote their rights and interests beyond actual acts of discrimination on the one hand or the proper implementation of agreed processes on the other. The Commissioner for Older People has a statutory duty to promote the rights and interests of older people and to ensure that practices and processes across all areas meet the needs of older people.
- I believe that even with an extension of powers the Ombudsman would not be able to meet the needs of older people in terms of their rights and interests but it would be very important that the Ombudsman and the Commissioner for Older people would work together to develop a protocol for working together and ensuring that their roles were complementary not in any way duplicating activity.

Yours sincerely,

**Dame Joan Harbison**  
Older People's Advocate

# Parliamentary and Health Service Ombudsman

From the Ombudsman Ann Abraham

Ms Cathie White  
The Clerk to the Committee  
Committee Office Room 404  
Parliament Buildings  
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Belfast BT4 3XX



Parliamentary  
and Health Service  
Ombudsman

16 December 2010

*Dear Ms White*

## PROPOSALS TO UPDATE LEGISLATION TO REFORM THE OFFICE OF THE NORTHERN IRELAND OMBUDSMAN

As UK Parliamentary Ombudsman I retain responsibility for the investigation of complaints of maladministration on the part of those functions that, although relating to Northern Ireland, are nevertheless reserved to the Westminster government. I therefore have an especially close interest in the work of the Northern Ireland Ombudsman and greatly appreciate the constructive working relationship that I have enjoyed with the current Ombudsman, Tom Frawley, and his colleagues.

Whilst respecting the autonomy of the Committee in respect of those matters within its jurisdiction, I aim in this response to draw upon the practical experience of my Office in order to assist the Committee in its further deliberations.

In general, I welcome the initiative taken by the Committee of considering ways of updating the legislation governing the work of the Northern Ireland Ombudsman. The Ombudsman institution in Northern Ireland plays a central part in strengthening both public administration and local democratic institutions. I am pleased to lend my support to any measures that will build on and enhance the Office's contribution.




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In particular, I support what I take to be the key proposals of creating a single office, of improving access and of strengthening democratic accountability. The implementation of these measures will, I believe, enable the Ombudsman to serve the people of Northern Ireland even more effectively by providing individual redress to citizens and improving the quality of public administration.

In respect of some of the specific questions asked in the Consultation Paper I have expressed reservations, based on my own experience. I entirely accept, however, that there may be particular circumstances in Northern Ireland that will warrant some measure of differentiation from my own jurisdiction.

I hope that the Committee finds my comments helpful.

*Yours sincerely*  


**Ann Abraham**  
UK Parliamentary Ombudsman and  
Health Service Ombudsman for England

**PROPOSALS TO UPDATE LEGISLATION TO REFORM THE OFFICE OF THE NORTHERN IRELAND OMBUDSMAN**

**RESPONSE FROM THE UK PARLIAMENTARY OMBUDSMAN AND HEALTH SERVICE OMBUDSMAN FOR ENGLAND TO THE CONSULTATION PAPER ISSUED BY THE NORTHERN IRELAND ASSEMBLY COMMITTEE FOR THE OFFICE OF THE FIRST MINISTER AND DEPUTY FIRST MINISTER**

**PROPOSALS FOR A SINGLE OFFICE**

*1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office were established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?*

Yes.

The arguments set out in paragraphs 2.1-2.3 persuasively make the case for merger in the interests of resolving any current confusion about access, jurisdictional coverage and remedy.

My own Office has benefited from a recent change in legislation that permits joint investigation with the Local Government Ombudsman for England, for example, in cases that cross the boundary between health and social care and which would previously have led to separate investigations.

*2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman or the Public Services Ombudsman for Northern Ireland?*

I have no views on this issue and consider that either title would be entirely suitable.

**PURPOSE OF THE OFFICE**

*3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?*

Yes.

I have found the improvement of public administration to be an important part of my work.

I have, for example, in recent years published a trilogy of guidance in the form of principles of good administration, of good complaint handling and for remedy. These have generally been well received and have, I believe, contributed to the improvement of public administration more widely.

*4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?*

My general position is that such a power can be a useful supplement to an Ombudsman's powers, especially in extending reach to sectors such as prisons and care homes that might not easily generate the referral of individual complaints..

I am conscious, also that internationally a number of Ombudsmen, including the Ombudsman in the Republic of Ireland, do have such a power and report using it to good effect.

*5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?*

Yes, although I am conscious that the Ombudsman has already published such guidance, which I would confidently expect to command respect from public bodies.

Having said that, I do not see any objection to making such a power explicit on the face of the legislation.

*6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?*

My own experience urges caution in respect of such a role.

Although I regard the operation of complaints processes as an area of special expertise for an Ombudsman, I consider that the best way of sharing that expertise is through the dissemination of guidance of the sort to which I have referred above..

There is, in particular, a significant risk of a conflict of roles if Ombudsmen become directly involved in designing or implicitly vouching for the quality of the complaints handling systems of bodies within their jurisdiction.

#### **REMIT OF THE OFFICE**

*7. Should the principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?*

Yes.

With the increased delivery of public services by private bodies, it is essential that, in the interests of public protection, the right of Ombudsman scrutiny should be extended to cover such outsourced services. Insofar as

the principle of 'following the public pound' secures such extension, I consider it to be a helpful formula.

*8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility for maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6. be added to the list?*

Yes.

My experience suggests it is important to maintain an up-to-date list of bodies within jurisdiction. In my case, there is an obligation on the Cabinet Office to conduct an annual jurisdictional review for this purpose. The proposal for giving the First Minister and deputy First Minister responsibility for maintaining such a list would replicate that arrangement, which I have found to be effective.

Although lacking local knowledge, I suggest the principle of 'following the public pound' entails that the bodies listed in paragraph 4.6 should be within the Ombudsman's jurisdiction.

*9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?*

Yes.

The inclusion of such issues within jurisdiction appears anomalous and is no doubt attributable to the historical causes identified in paragraph 4.12. The developments since 1969 cited in paragraph 12 make any such provision obsolete.

*10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?*

Consistency would dictate inclusion.

#### ACQUISITION OF CASES

*11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?*

Yes.

In an international context the filters imposed on the Ombudsman and on my own office are anomalous, replicated only in France, where a similar

filter has recently been removed. I have supported for some time the removal of the MP filter in my own case and would similarly support the removal of the MLA filter in the case of the Ombudsman in the interest of ease of access.

I can, however, see the attraction of the sort of 'dual track' approach that leaves a complainant the option of involving an MLA, if he or she so wishes. I consider that this represents a viable compromise and helpfully respects the established symbolic link between the legislature and the Ombudsman.

*12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?*

Yes.

In my view, it should be left to the Ombudsman's discretion to determine in any particular case whether a proposed form of submission is acceptable or not. I would encourage flexibility and avoid the prescription of particular methods of communication in the legislation, especially as the rate of technological change is likely to make any such prescription rapidly out of date.

*13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?*

No.

My experience suggests that flexibility and Ombudsman discretion are sufficient.

*14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?*

Yes.

In principle, I do not see an objection to any properly authorised representative being able to refer a complaint on behalf of someone else. The less restrictive formula in the Scottish and Welsh legislation is therefore preferable.

*15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and, if so, under what circumstances?*

No.

The basic principle is that the Ombudsman is a resource for the public not for bodies within jurisdiction. To enable referral by bodies within



jurisdiction would contravene that principle and potentially undermine the fundamental basis of the Ombudsman's role.

*16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?*

I appreciate that such a provision exists in Scotland. I do not have a similar provision and therefore have no experience to draw on in relation to this question.

#### **CASE HANDLING PROCEDURE**

*17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document to be included in the legislation?*

Yes, the existing powers should be continued.

I do not have the additional power mentioned and have not found it necessary.

*18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?*

Yes, but only in writing.

Good practice and natural justice would entail that both these conditions should be met in any event. To that extent, I am uncertain that their inclusion in primary legislation is necessary.

*19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?*

Yes.

My own legislation now explicitly enables me, for example, to make use of mediation as a means of resolving a dispute. In addition, it is my practice and that of most other Ombudsmen to deploy other measures to achieve

early resolution of complaints. In this regard, proportionality is the key. I consider that the formula used in Wales offers the necessary level of discretion.

*20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?*

Yes.

My own legislation now enables that sort of co-operation with the Local Government Ombudsman for England and with the Public Sector Ombudsman for Wales. Such flexibility is a necessary response to the actual patterns of current public service delivery. The extension of that approach to cover the relationships that most affect the Ombudsman, including with Ombudsmen in the Republic of Ireland, is likely to prove beneficial.

#### **REPORTING BY THE OMBUDSMAN**

*21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?*

Yes.

Most Ombudsmen operate a graduated system for reporting their findings and recommendations, depending on the response of the public authority concerned.

The Welsh model, set out in some detail in the relevant legislation, appears to have served its purpose well and appears suitable for adoption in Northern Ireland.

*22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?*

The Ombudsman should have discretion not to publish where there is no public interest in doing so, the public interest being the primary purpose of publication in the first place. The Welsh model allows for that possibility.

*23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?*

Yes.

If the Ombudsman is to protect the public interest and improve public administration, it is helpful to have discretion to publish reports not just on

an annual basis but periodically and on such issues as he/she judges necessary in the public interest.

*24. Should the Ombudsman be able to share information with other Ombudsmen in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?*

Yes.

If the Ombudsman is to serve the public interest and improve public administration, the ability to share information in the manner proposed is an important counter-balance to the need to respect privacy and should be exercisable at the Ombudsman's discretion.

*25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8?*

Yes, the Ombudsman should have such a power and it should be broadened as indicated at 7.8.

Again, and as described above, such a power is necessary in the public interest.

#### **ENFORCEMENT**

*26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his/her recommendations on redress following a finding of maladministration that has caused injustice?*

Yes.

This is in effect the arrangement in the case of my Office. I consider that it strikes the right balance in maintaining the non-enforceable quality of the Ombudsman's recommendations whilst at the same time enabling the Ombudsman to draw public attention to and generate democratic debate about unremedied injustice.

*27. Should the mechanism for allowing a complainant to seek compensation in the county court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?*

It should be removed completely.

As paragraph 8.2 notes, this mechanism is the result of unique circumstances and has, as far as I am aware, never been used. Since it is at odds with the general principle that an Ombudsman's mandate should be

one of influence not sanction, its removal will help maintain the integrity of that principle, without in practice diminishing the protection of the public.

#### **APPOINTMENT OF THE OMBUDSMAN**

*28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?*

Reflection on my own experience leads me to conclude that the Assembly should have a pivotal role in whatever selection process is adopted.

It is in any event important to ensure that the Ombudsman institution remains independent of party politics. In some countries where that independence has not been preserved, the credibility and effectiveness of the institution has been damaged.

*29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?*

Yes. My experience suggests that a single fixed term of at least seven years is the best option.

My own successors will in future be appointed for a single fixed term of seven years. I consider this sufficient to secure the Ombudsman's independence.

*30. Should the Ombudsman be able to employ staff directly to his/her Office and also to provide for secondment in his Human Resources Strategy?*

Yes.

It is important that the Ombudsman has sufficient independence to appoint the best staff available and to recruit from whatever sectors he/she chooses.

*31. Should the current link with the judicial salary scale be maintained?*

Yes.

This link provides an objective reference point. Importantly, it also ensures that the Ombudsman is independent of any performance assessment and bonus regime, which, although appropriate for civil servants, should not apply to judicial or quasi-judicial office holders.

*32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?*

Yes, but I consider the purpose of appearing before a Committee should be wider than that. I have found it important to have a close and productive working relationship with the legislature, not least as a means of helping to hold to account the executive. Appearance before a suitably constituted and informed Committee is both a sign of that constitutional position and a practical means of its exercise.

#### **OTHER ISSUES**

I favour the removal of the statutory bar. I am in fact supporting a similar proposal made by the Law Commission for England and Wales in respect of my own Office.

I also agree that the Ombudsman should have specific powers to obtain advice from any person he/she chooses. It is not feasible to maintain on a full-time basis experts in every area of public service delivery.

More generally, I consider that, whilst it is desirable to avoid duplication of roles, it is also important that an Ombudsman's functions are not so diluted that he/she loses the sort of expertise that goes with a measure of specialisation and that enables him/her to command public respect.

# Prisoner Ombudsman for Northern Ireland

The Clerk to the Committee  
Room 104  
Parliament Buildings  
Belfast  
BT4 3XX

8 November 2010

Dear Sir/Madam

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

Thank you for giving us the opportunity to comment on the above consultation exercise.

Parts 2, 3 and 4 of the paper make proposals for a single Ombudsman's office and seek views on the purpose and remit of the office.

Paragraph 4.5 states that "the Committee considers that it is appropriate to continue to centre the work of the Ombudsman on the established concept of maladministration about the type of complaint but it does seek opinions on which bodies and activities should be within the Ombudsman's remit".

In the subsequent list of bodies and activities, there is no reference to the Ombudsman taking over investigation of complaints from prisoners, a role currently performed by the Prisoner Ombudsman.

However, we have noted the Official (Hansard) Report of the Committee on 15 September 2010, when it was recorded as follows:

"Mr Spratt:

We have a plethora of commissioners, and there are overlaps between them. Are there any views in OFMDFM as to how we might control the overlaps?

Mrs Kerr:

Another issue that can be addressed through the consultation process is the relationship between the various ombudsmen. There is the potential to establish a single ombudsman office, embracing the role of the Prisoner Ombudsman as well. Ombudsmen are slightly different from commissioners, who represent the rights and interests of groups. Ombudsmen address issues of maladministration. Those are two slightly different roles. However, there are a number of ombudsman offices, and there is the potential to look into that issue as part of this exercise. That is one of the issues that have emerged following the 2004 review. The ombudsman himself has flagged up a number of issues that need to be addressed which were not relevant at the time of the 2004 review. Devolution, and the most recent devolution of justice and policing powers, have obviously had a very relevant impact on the scope of the legislation.

The Chairperson:

So there would be a tidying up to take account of that?

Mrs Kerr:

Yes"

Whilst specific reference is made in this paragraph to the Prisoner Ombudsman, no mention is made in the consultation document and we, like many other consultees are, therefore, working on the basis that no adjustments to the Prisoner Ombudsman's Office are currently being considered. In the event that this was to be considered at a future date we, and to our certain knowledge many other interested consultees, would expect this to be the subject of a separate consultation exercise.

The Office of the Prisoner Ombudsman for Northern Ireland was established on the back of the Steele Review of prisons which noted at the time that Northern Ireland was the only part of the UK which did not have a Prisons Ombudsman. The Steele Review believed that the establishment of such an office would "make a valuable contribution to defusing the tensions which are bound to arise in prisons" in Northern Ireland.

The Government agreed in principle in 1999 to the creation of a Prisoner Ombudsman and following a public consultation exercise the office was established in 2005.

The office has been operational for five years and in that time has dealt with 1657 complaints. The office has also investigated 21 deaths that have occurred in Northern Ireland prisons since September 2005. Three further investigations are ongoing.

As the Committee will be aware Prisoner Ombudsman Death in Custody investigations fulfil a number of important functions:

- They provide answers for families anxious to fully understand the circumstances of the death of a loved one
- They identify opportunities for organisational learning for the Northern Ireland Prison Service that will prevent other deaths and
- They inform the Coroner.

We believe that any consideration of the future of the Office of the Prisoner Ombudsman would require consultation with a wide range of stakeholders and interested parties including the Office of Prisoner Ombudsman, prisoners and their families.

We note the recent decision in England to retain the Prisons and Probation Ombudsman on the grounds that the office provides necessary transparency.

We would wish to make detailed written submissions to any consultation exercise on the future of the Office of the Prisoner Ombudsman.

Yours faithfully

**Pauline McCabe**

Prisoner Ombudsman for Northern Ireland

# Public Services Ombudsman for Wales Covering Letter

Our ref: PT/SMH  
Phone: 01656 641153  
Date: 14 December 2010  
susan.hudson@ombudsman-wales.org.uk

The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast  
CT4 3XX

Dear Clerk to the Committee

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

With reference to the above consultation, I am pleased to have the opportunity to provide a response. I do so in the light of the fact that a number of the proposals for the Northern Ireland Ombudsman office reflect the legislation for the Public Services Ombudsman for Wales. I offer my response in the light of my experience of working with that legislation. If the Assembly would find it useful, I would be more than happy to give evidence in person or co-operate with the Assembly in whatever ways would be helpful.

If you or your colleagues would like to discuss any of the issues raised in my paper, I would be grateful if they could in the first instance contact Susan Hudson (Policy & Communications Manager) on 01656 641153.

Yours sincerely



**Peter Tyndall**  
Ombudsman



DRAFT

**Response of the Public Services Ombudsman for Wales to the consultation on the Proposals to Update Legislation to Reform the Office of the Northern Ireland Ombudsman**

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. I also consider complaints that members of local authorities in Wales have breached their Code of Conduct.

I welcome the opportunity to comment on the proposals, particularly as a number of them reflect the arrangements for the Public Services Ombudsman for Wales. I hope that my experience of working within those arrangements will prove useful to the Northern Ireland Assembly's Committee.

I will begin by responding to the list of Consultation Questions and then turn to address the 'Other Issues' at Section 12 of the document.

1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?

In Wales, the establishment of a single Ombudsman's office has proved to be an effective means of eliminating confusion for members of the public and also enables complaints to be considered which cut across more than one public service provider.

2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?

Whilst having no real view on either of the names proposed, it is evident that the normal public practice is to shorten any lengthy official name and on that basis it may be appropriate to consider a shorter title such as 'Northern Ireland Ombudsman'.

3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?

The Public Services Ombudsman for Wales has such a power, and I work to improve the way public services are delivered. In order to reflect my work the phrase "Investigating Complaints/Improving Services" is used in much of my literature. One of the unique aspects of the work of ombudsmen is the capacity to use the lessons of complaints to drive improvement, not just in the service concerned but often across a whole service area or even public services in general.

The learning can be facilitated in many ways, whether directly through recommendations in reports, through work with regulators or professional bodies or with policy setters and even legislatures. In Wales, I also promote learning through publications such as case digests

4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?

The Public Services Ombudsman for Wales does not have own initiative powers, but I can see that there would be an advantage in having such powers, especially when there is evidence of systemic or cross organisational failings. In exercising such powers, the Ombudsman would need to avoid unnecessary duplication of the work of existing bodies such as certain regulators.

5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?

In Wales this has proven to be very valuable. Over recent years I have issued statutory guidance on topics such as the principles of good administration, principles for redress, and guidance on good complaint handling.

**6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

Ombudsmen, by the very nature of their work, develop views on effective complaints handling processes across the public sector. In Wales, I have led the development of a common complaints process for all public service providers, based on a health complaints process recently produced. Introducing common processes gives the citizen certainty as to process, allows cross-organisational complaints to be dealt with in a joined-up way, allows for standard training for complaints-handlers and provided the approach is a streamlined one, allows for the more efficient and effective handling of complaints. However, if the role of the Ombudsman is extended beyond design to include the approval or audit of individual complaints mechanisms for bodies in jurisdiction, this would have resource implications and the Ombudsman's office would need to be funded appropriately.

**7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

Yes. In Wales I consider complaints about services by the Welsh Assembly Government itself, its agencies, the NHS, local authorities and housing associations. I also look at complaints contracted out by public service providers and regularly investigate such complaints. I have been seeking to have the Public Services Ombudsman for Wales's jurisdiction widened in respect of self funding residents in social care settings. I believe there is a case for "following the public pound" and including bodies beyond those in jurisdiction. In general, however, I am less certain about the merits of an extension of jurisdiction to bodies such as charities who receive grants, but who do not deliver services on behalf of the Government or other bodies in jurisdiction.

**8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

Yes there is merit in having a comprehensive list of bodies within the Ombudsman's jurisdiction on the face of the legislation. In Wales, I have found it useful to be able to refer people directly to the list within my Act. I have also found it helpful that bodies in the schedule of listed authorities can be added to, deleted from or their description changed by the Welsh Assembly Government. As set out in response to 7 above, I believe it would also be appropriate to have a comprehensive approach in respect of the bodies listed at paragraph 4.6, but there would be cost implications

**9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

In Wales, most employment issues are covered by employment tribunals, however, as Ombudsman I can consider complaints about recruitment and appointment procedures because people do not have access to tribunals for these aspects.

**10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**

Social care complaints almost invariably contain issues of concern about the exercise of professional judgement. In my experience in Wales, including this within jurisdiction has been helpful for complainants as it often forms the focus of their concerns. Some of the more significant cases I have considered in this field have led to major improvements in the way

in which services are provided. Parity with clinical decisions involving the provision of health care is appropriate as in my experience the two areas frequently overlap.

**11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?**

In Wales, complainants can complain directly to the Ombudsman. However complainants can also seek the assistance of Assembly Members in making their complaints. The arrangement works well.

**12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**

Complainants should be able to make their complaint in any form acceptable to the Ombudsman. A requirement to submit a complaint in writing can be discriminatory, e.g. for people with learning disabilities and is increasingly at odds with current trends in communications.

**13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**

If all forms of communications are acceptable then such a definition would be unnecessary.

**14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**

Yes. These arrangements work well in Wales and complaints are often made on an individual's behalf by a family member or an advocate.

**15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**

There is a provision similar to this in the Ombudsman's Act in Wales. It is particularly useful in circumstances where an impasse has been reached between a public body and a complainant. It is also useful in circumstances where the public body has lost the confidence of the complainant and that the relationship has broken down (for example, between a doctor and a patient). However, a public body within my jurisdiction cannot make a complaint about another body within my jurisdiction.

**16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**

The Ombudsman's discretion to accept a complaint or to discontinue a complaint once accepted should be the same, regardless of how the complaint is first brought to the Ombudsman.

**17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**

In Wales, my investigations are conducted in private and I consider this to be an essential prerequisite in allowing me to discharge the functions vested in me. Many individuals are

reluctant to use a means of redress which might lead to often sensitive personal information about them coming into the public domain.

I have the power to require the provision of any facility from a person who may be able to provide information or produce a document and this is very helpful.

**18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**

In Wales, I achieve this by providing draft reports to parties involved for comment. I am not persuaded it should be enshrined in legislation.

**19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**

The Ombudsman in Wales has the power to take whatever steps are necessary to resolve a complaint and this is a very effective and efficient adjunct to the work of investigation. I am able to resolve complaints by 'quick fixes' and these are instances where injustices are remedied; I am also able to bring cases to a resolution via voluntary settlements where because of the circumstances it is impossible to remedy an injustice and that redress can take, for example, the form of an apology. It is also useful to know that mediation can be instigated but this is not something I have had frequent recourse to use.

**20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

Yes, there should be wide discretion to cooperate with others in the public good, in particular to be able to undertake joint investigations and produce joint reports.

**21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**

The reporting arrangements within the Ombudsman's Act in Wales are a very effective tool and flexible enough to allow proportionate responses to the seriousness and complexity of investigations, with shorter reports, often in the form of a letter, being appropriate for simpler cases while public reports are appropriate where there are matters of serious concern and potential wider learning.

**22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**

I would re-emphasise that our arrangements in Wales work very well for us.

**23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**

Yes. As well as annual reports I am able to produce themed reports. Whilst the power to produce this type of report is used sparingly, it is a very useful tool in relation to improving the services of public bodies.

**24. Should the Ombudsman be able to share information with other Ombudsmen in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**

Yes. Being able to share information with other Ombudsmen is helpful, particularly where cases overlap jurisdictions. The ability to share information in the interests of public health and safety is something I use very sparingly in Wales but on rare occasions I do find instances where we need to share information with others – for example, with the Coroner.

Being able to share information prior to the end of an investigation can be important where there are ongoing concerns regarding public safety and where systemic failures across multiple bodies have been identified. Collaboration with professional regulatory bodies can also be important – for example in respect of doctors, nurses or social workers where there is serious concern regarding the safety of their practice.

**25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**

Yes, for the same reasons as outlined at 24 above.

**26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

Yes, the Ombudsman should have a power in line with the situation in Wales. However, as yet, I have had no need to produce a special report because the reporting procedures are proving to be effective in securing compliance.

**27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

The Ombudsman does not have such a power in Wales as that set out above, and I would not wish to seek such a power in the future.

**28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**

The process of appointment by Her Majesty on recommendation of the majority of the members of the Assembly seems an entirely sensible process and mirrors the arrangements in Wales.

**29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**

This is the arrangement in Wales and the arguments for it seem to be well accepted.

**30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?**

Yes. Direct employment means that the Ombudsman can ensure he or she has the correct range of skills among the staff to properly discharge the function of the office.

**31. Should the current link with the judicial salary scale be maintained?**

There is a need to establish some objective basis for the salary scale of the Ombudsman; it seems sensible to adopt the approach of the Law Commission of placing the Ombudsman in the administrative justice landscape and thus linking the salary to link to the judicial salary seems most appropriate.

**32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**

I would suggest that in addition to the Ombudsman appearing before an appropriate committee of the Assembly for accountability reasons, this should be extended so that important messages concerning public services arising from the perspective gained from investigations can be imparted. It would also be particularly helpful if the Ombudsman could present the Annual Report to an appropriate committee of the Assembly.

## Other Issues

**Paragraph 12.1 – Removal of the Statutory Bar** – I am in favour of the Ombudsman having discretion to consider cases in these circumstances. In practice, as Judicial Review is available as a legal solution, in the Welsh context the Ombudsman has discretion to consider cases where he considers it unreasonable for the individual to have recourse to the law. In reality, such discretion is exercised in very many cases indeed, given the potential recourse to judicial review. The Law Commission for England and Wales have proposed the removal of the statutory bar, and I would welcome such a change. The Ombudsman should preferably be able to make a judgement as to whether a case is most suitable for investigation, or more likely or appropriately resolved in a court. There is also a proposal that courts should be allowed to stay cases and refer them to an appropriate ombudsman, which we would also support. I am aware of members of the judiciary already wanting to adjourn cases so that the Ombudsman can consider them, but that under the current arrangements they are unable to do so. If such a change were to be made, I would favour allowing the Ombudsman to continue to exercise discretion as to whether to commence an investigation, and once commenced, whether to discontinue it.

**Paragraph 12.2 – Obtaining Advice** – It is essential that an Ombudsman has power to obtain advice as he/she will never be in a position to retain a full range of the necessary expertise in the staff of the office. Being able to supplement investigation expertise with specialist professional advice enhances the quality of decision-making.

**Paragraph 12.3 – Local Government Standards** – The consideration of complaints in relation to the conduct of elected local authority representatives forms part of the duties of the Public Services Ombudsman for Wales. I can confirm that there is a commonality in the skills required between this type of investigation and the skills required for investigating complaints about public bodies. Such work can be controversial.

**Paragraph 12.4** – In the current economic climate clearly there is a need to avoid unnecessary duplication. If new advocacy bodies are to be created, it would seem inappropriate for them also to have investigative powers which duplicate those of the Ombudsman.

Public Services Ombudsman for Wales  
December 2010

# Response from Individual who requested name and contact details not be published

Address: committee.ofmdfm@niassembly.gov.uk

To: The Clerk to the Committee, Room 4040, Parliament Buildings, Belfast

Date: Friday 17 December 2010

**Topic: Proposals To Update Legislation To Reform The Office Of The Ni Ombudsman**

- 1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

**Question 1:**

Ultimately a more streamlined organisation with a clear remit would better serve the public. There is no discussion in this consultation document of the potential savings of merging the two offices and Committee may wish to consider this.

Better public service would be achieved with an effective outreach programme. It is surprising that even in the NI Ombudsman's new website (November 2010) that there is no reference to or a link to the OFMDFM Committee consultation on the proposals to change this office. This would seem a logical place for the public (that is the Ombudsman's customer base) to learn of potential developments which would impact on this service.

- 2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

**Question 2:**

Public Services Ombudsman NI.

This is quite a prescriptive and closed question - will it be clear to the public from either of the proposed options here that the new PSO NI deals with complaints?

- 3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?**

**Question 3:**

Yes. However paragraph 3.5 of the Consultation document demonstrates that the NI Ombudsman is already undertaking this role so no legislative amendment would be required.

- 4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies ?**

**Question 4:**

Given the role of the NI Ombudsman this seems sensible however given that there are other bodies within this jurisdiction that hold investigatory powers it would seem appropriate for there to be MOU and/or that specific statutory provisions be considered for this amended legislation to prevent the duplication of systemic investigatory work by the NI Ombudsman with bodies with specific expertise such as the Comptroller and Auditor General, the RQIA, the Equality Commission, the Human Rights Commission, the NI Commissioner for Children and Young People and (when appointed in 2011) the Commissioner for Older People.

It may be difficult given the specific focus on maladministration for the NI Ombudsman to fully conduct a systemic review without involving the sectoral expertise on rights and interest

of specific groups that would be held within an organisation such as the Children's or Older People's Commissioner. If the power to conduct systemic investigations is granted then consideration should also be given to legislative provision for collaborative or joint working between the Ombudsman and regulatory organisations such as the RQIA or other oversight bodies such as the ECNI or the Commissioners (as has been legislatively enshrined in Wales).

In taking any decision Committee may wish to consider further why (according to the information contained in the consultation document and provided to the Committee by the Assembly Research and Library Services on 15 September 2010) that in the update of the respective legislation in Scotland in 2002 and Wales in 2005 that the powers for systemic review were not granted to the Ombudsmen there.

**5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?**

**Question 5:**

Yes. The NI ombudsman appears to already provide this.

If this remit is extended so that public bodies are required to take into account the guidance issued by the office then surely the public bodies' potentially affected should be consulted with by Committee.

Consideration should be given to the impact on public bodies given current economic climate and charges of accountability fatigue and as to how this would be ensured and if public bodies did not fully comply how this would then be dealt with by the Ombudsmans office. [ECNI would be best to advise on this potential new role].

**6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

**Question 6:**

Yes. This seems logical for complaints processes only.

Would this have implications for resources of the office?

**7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

**Question 7:**

Yes but only if the word 'substantial' is retained.

As Assembly Research and Library Services advised the Committee on 15 September, this could place an undue burden on the ability of small voluntary and community groups to operate.

The consultation document does not provide any information on the potential quantum of complaints that this would then extend to - how would the NI Ombudsman office as currently constituted undertake and deal with the potential increase in volume of work. This would have implications for resources and cost – it would be useful if the Consultation document or the NI Ombudsman office could demonstrate evidence for justification for the need for this extension of remit.

Without the word 'substantial' retained this would likely have significant impact upon the resources of the NI Ombudsman's office.

Perhaps a better solution may be to ensure that any organisation in receipt of public funds, perhaps through the grant in aid process should be required as part of its considerations/



terms and/or letter of offer to ensure that they have a complaints process in place that is compliant with and in accordance with the guidance produced by the NI Ombudsman.

- 8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

**Question 8:**

Yes.

An updated version of those bodies listed at 4.6 could be included (the footnote in consultation document indicates that two of the bodies listed have been abolished or absorbed within another organisation). As best practice these bodies should be consulted prior to their inclusion.

- 9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

**Question 9:**

Yes. There would seem to be sufficient redress available.

- 10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**

**Question 10:**

No. Does this not potentially duplicate the role of the NI Social Care Council, professional social work bodies, the General Medical Council and the DHSSPS Social Security Inspectorate.

Concerns that if this is included would the decision on the panel of clinical advisors employed by the Ombudsman undermine clinical decisions. How independent would the clinical advisors be? How would the NI Ombudsman resource and finance this panel?

- 11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?**

**Question 11:**

The complaints process should be made as simple as possible for complainants.

However there should be no diminution in the constitutional role of elected members. The current situation with the role of elected members ensures that the complainant has an advocate alongside them when dealing with the impartial and independent NI Ombudsman office so if this is removed then there should be a role for NI Ombudsman office to make the complainant aware of or point them in direction of an MLA, MP or other advocate to assist them with complaint if required.

- 12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**

**Question 12:**

Yes. The complaints process should be made as accessible and as simple as possible for complainants.

- 13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**

**Question 13:**

This is not necessary on the face of the legislation and may end up 'dating' given the developments with technology.

If the bar on submitting complaints in writing is lifted and replaced with 'notice of a complaint' then it would automatically allow the NI Ombudsman to accept complaints submitted in any other format.

Would section 46(1) of the Interpretation Act 1954 cover this? It provides that "writing" includes typewritten, printed, photographed....or represented or reproduced by any mode of representing words in a visible form".

- 14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**

**Question 14:**

Yes.

- 15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**

**Question 15:**

There may be issues in relation to duplication.

This would impact on the listed authorities and as such they should be consulted with on any legislative changes proposed.

- 16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**

**Question 16:**

This would impact on the listed authorities and as such they should be consulted with on any legislative changes proposed.

- 17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**

**Question 17:**

Yes.

- 18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**

**Question 18:**

Yes – this seems sensible.

However this question goes beyond the intention of this consultation document, and seemingly beyond the Review on which it is based and selects a provision from the State of Queensland.

Committee may wish to consider further why in the update of the respective legislation in Scotland in 2002 and Wales in 2005 that this was not considered appropriate then. Any legislative amendment may have consequential implications for other Ombudsmen in the UK.

**19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**

**Question 19:**

This provision should be explicit as to what is meant. 'Any' action could legitimately extend to legal action and would have budgetary and resource implications for the office and ultimately the public purse.

The example cited is of mediation training. Whilst this would seem a sensible and cost effective approach there may be potential for duplication specifically in the Health and Social Care field and statutory limitations should be in place to prevent this. In practice an individual with a complaint in the Health sector will pursue this through frontline staff, the complaints manager, and also in the new DHSSPS procedures pursue conciliation. If there is no satisfactory resolution the complainant can then bring the complaint to the NI Ombudsman and it would seem circulatory to then be offered mediation again after it may already have been undertaken.

**20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

**Question 20:**

Yes. In the interests of both avoiding duplication and enabling joint and/or collaborative working.

The Public Services Ombudsman (Wales) Act (2005) has a specific section [Section 25] on 'Consultation and co-operation with other Ombudsmen' including the Children's Commissioner for Wales, and provides for consultation, co-operation, conducting of a joint investigation and publishing joint reports. In addition the PSO at Section 25A and Section 25B of the Act, is specifically empowered to work jointly with the Commissioner for Older People in Wales on investigations, sharing of information, consultation with the Commissioner and preparing and publishing joint reports.

Section 25B of this Act should be considered by the Committee as to how the NI Ombudsman might work collaboratively with the Commissioner for Older People here on complaints from older people that cover both maladministration and also extend to affect the rights and the interests of older people. This approach would surely better serve the public.

If similar legislative provision were included in the amended legislation proposed by the Committee then this would surely lead to improved vfm.

**21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**

**Question 21:**

Would the proposals included in section 7.1 of the report have issues of data protection? What about confidentiality – i.e. must the public body be informed if the person making the complaint which is not investigated does not wish that public body to know?

**22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**

**Question 22:**

It would seem at odds with accountability procedures for the Ombudsman's office to be involved in an investigation (given the time and resources devoted to that) and to not produce a report on that investigation whether or not the complaint is upheld or no evidence is found of injustice or hardship. Without a report how would the complainant, the public or the Assembly be able to fully assess the work of the Ombudsman's office?

Committee should consider the background to the policy decision in Wales to include this new provision before the current legislation would be amended.

The NI Ombudsman should also be required to hold and to make public figures on complaints received and who from by Section 75 category and how many/how these complaints have been resolved.

**23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**

**Question 23:**

No. Currently the NI Ombudsman may make a report following an investigation, or whenever he decides not to conduct an investigation, and also other reports as he sees fit as well as producing an annual report.

The statutory requirement for the production of these report(s) and presentation to the Assembly demonstrates transparency in process and accountability to the Assembly and is an important governance process that should not be diluted.

**24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**

**Question 24:**

Yes- subject to data protection the NI Ombudsman should be able to share information with other Ombudsman in the UK and ROI.

Yes- subject to data protection the Welsh provisions seem sensible.

Subject to FOI and data protection it would seem appropriate to ensure that the Ombudsman's office for health and safety cases should be able to share information with regulatory bodies such as the RQIA, and with bodies dealing with complaints from potentially vulnerable groups such as the Commissioner for Older People, the Commissioner for Children and Young People and also the NIHRC.

**25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**

**Question 25:**

The NI Ombudsman should have the power to share information for health and safety reasons with other public sector Ombudsman in the UK and ROI and with the C&AG.

However in addition the Committee may wish to consider if the NI Ombudsman should also be required to work in collaboration with other statutory bodies with investigatory functions with a remit in NI including ECNI, the proposed Commissioner for Older People and the NI Commissioner for Children and Young People.

- 26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

**Question 26:**

Yes. The NI Ombudsman should be able to make a special report. However what criteria would be used by the NI Ombudsman and his office to determine what is a 'satisfactory' response by a public body to the Ombudsman?

- 27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

**Question 27:**

There is no rationale provided in the consultation document to justify the second option offered in this question i.e. to retain the compensation clause in relation to local government bodies only.

If the argument presented in paragraph 8.1 of moral suasion holds tight then it would seem appropriate to remove this clause entirely.

- 28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**

**Question 28:**

If the appointment process is transferred from the Queen to the Assembly as proposed, then the Assembly should retain the statutory power (currently held by the Queen) to remove the Ombudsman from office for medical reasons.

In addition there should be legislative provision made that the Assembly should be able to vary the term of office or remove the Ombudsman from office if there is evidence that the Ombudsman is not fully performing his/her duties or has acted outside of his/her statutory remit.

- 29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**

**Question 29:**

This question suggests that the Ombudsman should be appointed for a single term of 7 years which from paragraph 9.1 is contrary to the Review of the office which recommended a tenure of a five year term with reappointment.

It seems odd in this instance to selectively divert from the Review that is given as justification for other changes proposed in this consultation document.

The Ombudsman's tenure of office should be in keeping with other UK and ROI Ombudsmen.

- 30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?**

**Question 30:**

The current legislation already allows (section 7) for the Ombudsman to appoint staff and numbers as he sees fit. No legislative amendment would therefore be required.

This provision has the caveat that the Ombudsman would appoint officers as he determines, with the approval of the Department. Committee may wish to consider if it is appropriate for

this check to be retained by the Department or the Assembly (if the legislation is changed) to ensure the proper use of public funds.

**31. Should the current link with the judicial salary scale be maintained?**

**Question 31:**

The judicial salary scales appear to range from £91k to £239k at it is not clear from the consultation document at what point the Ombudsman's salary is set.

The 2009/2010 Resource Accounts of the NI Ombudsman office (available on NI Ombudsman website) indicates that the Ombudsman post is currently remunerated at **£128,285.96** and with Social Security Cost and Other Pension costs totals **£171,733.96**. These figures seem a lot for an organisation in receipt of £1.4m with a staff of 21 people.

**32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**

**Question 32:**

Yes. This would seem an appropriate first step for accountability of the NI Ombudsman. Given the Ombudsman's current appearances before the Committee it does not seem necessary for any legislative amendment to enshrine this.

This question raises the issue of proper accountability of the Ombudsman to the Assembly and to the public which should be addressed before additional powers are granted and should be dealt with as part of this consultation.

With regard to accountability it will be important to maintain a proper balance between the development of new Ombudsman powers (if they are needed), and extending the remit of existing powers where that is both appropriate and possible and ensuring that a much strengthened organisation with a wider remit is accountable to the Assembly in its use of public funds and how it serves the public. Consideration should be given to the reason for additional powers and how they will add value to existing complaint schemes.

This position of last resort held by the Ombudsman may be perceived as a lack of accountability - Who watches the watchmen? The perceived lack of accountability has given rise in the UK to the development of Ombudsman Watch websites such as

<http://ombudsmanwatch.org/>

<http://scottishombudsmanwatch.org/index.html>.

[www.ombudsmanwatchers.org.uk](http://www.ombudsmanwatchers.org.uk)

In addition to this there appears to be no method available by which a member of the public can register a complaint into how they or their complaint has been dealt with by the NI Ombudsman or his/her staff. There is no easily affordable way to challenge or appeal the Ombudsman's decisions. Complainants approach the Ombudsman rather than the Courts because they are attracted by the way in which Ombudsmen are a free, timely, impartial alternative to the Courts. Whilst the complainants are not obliged to accept the decision of an Ombudsman, if they disagree with what is in effect the Ombudsman's personal view on the case the only way in which they could have this overturned is to apply for a judicial review. It would seem that the NI Ombudsman is subject only to the scrutiny of the Courts in the exercise of his functions.

## Section 12: Other issues

### **Collaboration and cooperation:**

- (i) Paragraph 12.1 of this section deals with the Ombudsman having the power to direct a complainant to an alternative form of remedy where it appears that another body is able to provide a more appropriate and proportionate remedy.

The Public Services Ombudsman (Wales) Act (2005) has a specific section [Section 25] on 'Consultation and co-operation with other Ombudsmen' including the Children's Commissioner for Wales, and provides for consultation, co-operation, conducting of a joint investigation and publishing joint reports. In addition the Welsh PSO at Section 25A and Section 25B of the Act, is specifically empowered to work jointly with the Commissioner for Older People in Wales on investigations, sharing of information, consultation with the Commissioner and preparing and publishing joint reports.

Section 25B of this Act should be considered by the Committee as to how the NI Ombudsman might work collaboratively with the Commissioner for Older People here on complaints from older people that cover both maladministration and also extend to affect the rights and the interests of older people. This approach would surely better serve the public.

If similar legislative provision to that in Section 25 of the Wales Act were included in the amended legislation proposed by the Committee then this would surely lead to improved vfm.

### **Avoiding potential conflict of interest:**

- (ii) The NI Ombudsman currently acts as the Interim Assembly Commissioner for Standards reporting to the Assembly Committee on Standards and Privileges.

There would however appear to be a conflict between these two roles. It seems odd that a body such as the NI Ombudsman which is held to account by the NI Assembly (through annual and special reports) is at the same time able to investigate the Assembly and hold Assembly members to account through reporting to the Committee on Standards and Privileges via the role as Interim Assembly Commissioner.

## Section 13: Next Steps

From:

### **Please note:**

1. In publishing any of this response I wish to have my name and contact details redacted.
2. I do not wish to be considered to give oral evidence to the Committee.

# Regulation and Quality Improvement Authority

Response to Questions Raised in Consultation Paper Issued by the Northern Ireland Assembly Committee for the Office of The First Minister and Deputy First Minister

**1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

RQIA agrees that a merger of the two statutory offices of NICC and AONI would help simplify and standardise referral mechanisms in the event that a person has reason to complain about different services provided by different bodies, in relation to linked events.

The benefit of the two statutory offices merging would simplify structures and mitigate the need for complainants to engage with two statutory offices and in terms of value for money, this proposal would appear to make for better use of resources.

Any change in the Ombudsman's powers would need to be made clear to the public to avoid any confusion in respect of complaints handling responsibilities and ultimate remedy.

**2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

RQIA would suggest the title should be the Northern Ireland Public Services Ombudsman in order to maintain consistency of title with other similar bodies.

**3. Do you think that the Ombudsman should not only have the power to resolve complaints but should seek to improve public administration as part of his / her work?**

There is a close alignment between resolving complaints and in encouraging improvement in public administration. However a review of the powers and responsibilities of all public bodies charged with improvement of public administration should be fully considered, before the powers of the Ombudsman are extended to incorporate to such a remit.

**4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?**

Traditionally the role of the Ombudsman is to investigate complaints and issue a report with recommendations to the agency, subject to the investigation.

Paragraph 3.3 highlights that the Ombudsman currently in Northern Ireland or in Great Britain has no power to conduct a systemic review on their own initiative, should information suggest there may be a problem, with a particular body or service. Currently the Ombudsman's intervention can only be triggered by a complaint. The impact of such an intervention might be the issuing of recommendations.

RQIA believes that any proposal to extend powers to enable the Ombudsman to undertake systemic reviews, would represent a major departure from current practice. The potential overlap with the role of other organisations, who have statutory powers and duty to undertake systemic reviews (e.g RQIA), in the context of HSC services, requires careful consideration and consultation with these relevant bodies, in order that no unnecessary duplication of statutory functions occur.

In relation to health and social care investigations under the Health and Personal Social Services (Quality, Improvement and Regulation)(Northern Ireland) Order 2003, RQIA can undertake reviews of Health and Social Care organisations . The impact of reviewing cases in the past e.g. C Difficile review, resulted in recommendations that had a beneficial effect for a large number of people and improvements in practice across Northern Ireland.



RQIA considers that regulatory bodies who have acquired specific expertise over a period of years, are best placed to conduct this type of review, given their knowledge of best practice and the means by which improvements can best be gained.

RQIA would suggest that there needs to be more widespread consultation with other relevant bodies in respect of this proposal to avoid any potential duplication in the role, task or function of these bodies which are also charged in improving public administration.

**5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?**

The Ombudsman already provides guidance in broad terms regarding good administrative practice and good governance to public bodies which are subject of his investigations.

RQIA does not believe that the office of Ombudsman require additional legislative powers in this area.

**6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

RQIA would suggest that the task of producing standardised complaints procedures for public bodies is the responsibility of the Government Department responsible for establishing such bodies. However, the Ombudsman's office, as suggested in 5 above, could provide broad advice / guidance to such Departments and to any arms length body under their sponsorship.

**7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

RQIA would suggest that the broad principle of 'following the public pound' is a reasonable basis in which to consider the efficiency and effectiveness of any public body. However arms length bodies appointed by government, already have a built in system of scrutiny and audit by their sponsor bodies. This begs the question about how big the Ombudsman office needs to be for maximum efficiency, effectiveness and responsiveness. The consultation paper does not spell out how the office of the Ombudsman, with any such proposed additional powers, would themselves be held to account, within the same democratically elected framework.

An example is provided in paragraph 4.7 of the inclusion of other complaints e.g privately arranged or funded social care. RQIA is mindful that such a proposal could potentially limit access to justice and choice for members of the public involved in such private contractual arrangements for social care. Some people may wish to consider a more direct legal route to resolve their complaints and this choice should continue to be afforded to them. It would be important, to provide clarity for the public, on all activities or matters, within the remit of the Ombudsman, if this should be considered in the future.

The oversight arrangement of bodies listed in 4.6 of this consultation document, may require further scrutiny and consideration and the benefits of them being included under the jurisdiction of the Ombudsman. Given that all of these organisations are funded from public monies, it would be necessary to consider on what basis they should be included under the umbrella of the Ombudsman, are the existing mechanisms for holding these bodies to account inadequate or ineffective?

**8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation, should the bodies listed at paragraph 4.6 be added to the list?**

This is a matter for office of the First/Deputy First Minister to determine.

**9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

Yes, insofar as the Industrial and the Fair Employment Tribunal and Equality Commission can deal with these type of complaints. RQIA recognises there are other well established routes for complaints concerning actions relating to contractual matters or commercial transactions which are excluded currently from the AONs jurisdiction.

**10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**

RQIA considers that issues regarding professional judgement in social care should be a matter for the Northern Ireland Social Care Council, who can provide a view in such matters in respect of social care practice and judgement.

**11. Should the legislation ensure that complaints to the Ombudsman do not need to be referred by a MLA but however allow for complainants, if they so wish, to ask their MLA to refer a complaint on their behalf?**

RQIA would suggest that if a case is assessed as having merit on its own, that in the interests of natural justice, complaints should not need to be sponsored and referred to the Ombudsman by MLAs. This practice could be discontinued but constituents should also be able to ask their MLA to refer a complaint on their behalf, if they so choose.

**12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**

RQIA would suggest that a requirement for submission of complaints in writing is good practice. Our experience indicates that receiving complaints in writing helps, to reduce the risk of receiving incomplete or incorrect information. It also helps to reduce the scope for disagreement or misunderstanding between a complainant and the body subject to the complaint.

Clearly some complainants can experience a barrier in submitting a complaint e.g the complainant may have a literacy problem. In these situations, they should be offered the support of an advocate similar to e.g. the type of Advocacy services offered to health and social care complainants or PCC or VOYPIC who advocate for young people who wish to make a complaint. The Ombudsman could consider using e.g. trained and skilled advocates to assist complainants in making their complaint who will support them through the whole complaints handling process as RQIA recognise, that it can be difficult for vulnerable people to often navigate their way through the complaints handling processes.

**13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**

RQIA would suggest that a definition does not require to be written into the legislation to specify that electronic submissions by email and website should be used to submit a complaint. The Ombudsman's office could have a website address e.g info@Ombudsman's office, where complaints could be received with an identified and dedicated complaints officer who will follow up any referrals received in writing. Whatever final process is agreed, it must clearly be compliant with the disability convention, in terms of ensuring appropriate access is available, without discriminating against complainants. RQIA would not suggest using texting as an appropriate means of submitting a complaint for investigation.

**14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**

RQIA would suggest that the provision as is currently written may be considered to be restrictive and should be reviewed in line with the Scottish and Welsh legislation.

**15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**

If local resolution is not first exhausted the Ombudsman could end up dealing with a number of issues that potentially could still be resolved at local level. RQIA would suggest that the principle of local resolution in line with e.g DHSSPS Standards and Guidelines for HSC organisations should be followed in order that the Commissioner does not duplicate existing processes for complaint resolution.

**16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part, to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**

The Scottish provision seems to represent a sensible and reasonable provision and if built into the legislation, RQIA believe this would be helpful.

**17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**

RQIA suggest that the existing powers in relation to the conduct of an investigation by the Ombudsman should continue. In addition RQIA agree that the additional power proposed, enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce documents should be included in the legislation.

**18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**

In the interest of natural justice, RQIA consider that complainants should be able to make representation on comments made about them. RQIA would suggest that their objection, if any could be included as an addendum to any final investigation report. RQIA uses this type of process when handling comments from registered providers who disagree with the findings of an Inspection Report.

**19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**

RQIA would suggest that the services of an independent trained advocate could be considered prior to the agreement to conduct of an investigation by the agency subject to a complaint, to help to bring a resolution to complex complaints. RQIA would suggest this is better dealt with at a local level prior to it coming to the attention of the Ombudsman.

The issue of financial support either for mediation, arbitration, or conciliation and the criteria for accessing any such service would also need to be agreed fairly and provided in compliance with the principle of equality.

**20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

Where it is deemed to be beneficial for learning or if the subject matter of any investigation might be in the public interest of other Ombudsmen e.g. a proprietor operating nursing home on both sides of the Border might be appropriate. However, any such power would need to

meet with the Data Protection Act 1998, the Freedom of Information Act and / or any other relevant legislation that requires consideration in such circumstances.

The circumstances in which such cooperation would be considered appropriate and the primacy for disseminating information arising from specific investigations would need to be clearly agreed and the complainant advised about the intentions of the 2 commissioners. There could perhaps be a Memorandum of Understanding with other Ombudsmen in relation to information sharing where there are areas of mutual interest or concern in terms of public interest or in the dissemination of learning.

**21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**

The proposal to publish reports from the Ombudsman on the website is acceptable providing the complainant is not identified and as long as any third party information is redacted. RQIA believe that organisations should notify the Ombudsman of the action they propose to take as a result of his findings in order that he can be assured that action is being taken as a result of the complaint. The provision for an alternative procedure in which reports are not published is fair but may require to be publicly consulted upon so this can be agreed.

**22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**

RQIA believes that in general investigations should be open and transparent and the results should be published. However, RQIA support the proposal that an alternative procedure could be considered in which reports should not be published in line with a,b,c, in section 7.2

**23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**

Yes, as is done internationally bearing in mind the need for anonymity.

**24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**

Yes, in accordance with Data Protection Legislation.

**25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**

RQIA would suggest that any finding of the Ombudsman investigation in relation to Health and Safety in HSC organisations should be co-ordinated by the DHSSPS and Public Health Agency and Board and shared with RQIA, in respect of any alert required to be issued to regulated sector services.

**26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

This could be raised with the sponsor body for the Agency concerned or the Commissioner for the service and could be dealt with in the normal way of an Annual Report laid before Parliament.

**27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

This is a matter for consideration by OFMDFM

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**28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**

No comment

**29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**

Given the nature of proposed powers of the Ombudsman, RQIA would suggest that the appointment could be for one year period with the option of renewing it for a second term of 3 years and subject to a satisfactory performance review it could be extended by another 4 years at maximum, subject to a satisfactory performance review.

**30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?**

In order to begin to build expertise, consistency and continuity of experience and corporate history, this would seem a reasonable proposal.

**31. Should the current link with the judicial salary scale be maintained?**

No comment

**32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**

Yes, in terms of modelling best practice. It is important that the public are assured that the office of the Ombudsman is performing effectively, similar to the expectations on all the other public bodies who have to produce annual accounts and a demonstration of added value in respect of scrutiny and accountability.

# Scottish Public Services Ombudsman

17 December 2010

The Clerk to the Committee  
Room 404  
Parliament Buildings  
Ballymiscaw  
Belfast

BT4 3XX

Dear Sir or Madam

**The Scottish Public Service Ombudsman's (SPSO's) response to the Northern Ireland Assembly Committee for the Office of the First Minister and Deputy First Minister's (the Committee's) proposals to update legislation to reform the Office of the Northern Ireland Ombudsman**

Thank you for the opportunity to contribute to the Committee's consultation.

I am very pleased to provide a response and to share with you the Scottish experience of ombudsman reform. It is heartening to note the Northern Ireland Assembly's interest in this important area of administrative justice. By way of preliminary comment, I would like to highlight the high regard with which the Office of the Northern Ireland Ombudsman (ONIO) is held. In my experience, it represents a touchstone for other UK ombudsmen offices in terms of the thoroughness of its work and clearly provides a solid platform for any eventual reforms.

The consultation document covers a comprehensive range of issues, many of which are relevant to all the public sector ombudsmen in the UK. The majority of the questions relate to extending the powers and expanding the role of ONIO. This raises fundamental considerations about ombudsmen's role in protecting citizens from injustice and scrutinising executive action. Deciding whether increases or changes in powers relating to these important matters should be made is, ultimately, a matter for elected representatives in the Northern Ireland Assembly.

Clearly, however, the experience of ombudsmen in other parts of the UK will be relevant to the Committee's discussion. I note from the consultation document that the position in Scotland has been given considerable thought and that consideration is being given to adopting measures that have been developed here. Recent developments in Scotland have involved two main components:

- The expansion of the SPSO's jurisdiction to cover complaints about additional public services (prisons and water); and
- The extension of the SPSO's powers in relation to public sector complaints handling.

In the paragraphs below, I have focused on providing an update on these developments. I have also commented on cooperation and information sharing between ONIO and other UK ombudsmen. I hope that this will provide helpful context for the Committee's discussions.

My office was set up in 2002 with the passage of the Scottish Public Services Ombudsman Act 2002 (the 2002 Act). This created a one-stop-shop for members of the public with a complaint about Scottish devolved public services. My jurisdiction includes central government, local government, housing associations, universities and colleges, and the National Health Service (NHS). As noted above, my jurisdiction has recently been extended to cover prison complaints and complaints about water providers are due to be included within my jurisdiction in 2011. Scotland has continued to lead the rest of the UK by being the first to bring these specialised areas under the jurisdiction of a classic public sector ombudsman.

In common with other UK ombudsmen, my office considers complaints of maladministration or service failure on the part of public bodies (and those providing services on their behalf) and provides redress where members of the public have suffered injustice. I also make recommendations in order to ensure that lessons are learnt from complaints and, as a result, my office plays an important part in driving public service improvement. As well as resolving specific complaints, my office works with public bodies in a number of broader ways to secure service improvements. This includes issuing guidance and advice, regularly meeting with service providers and providing training on complaints handling.

With the passage of the Public Services Reform (Scotland) Act 2010 (the PSR Act), my office has been given new powers to lead the development of simplified and standardised public sector complaints procedures in Scotland. This role of ‘design authority’ was given to the SPSO on the recommendation of a Scottish Government Action Group (FCSAG) which took forward the work of a wider independent Review<sup>1</sup>. The FCSAG Report<sup>2</sup> made a series of recommendations and specifically it recommended that:

*‘A set of principles based on the present SPSO guidance (Valuing Complaints) founded on consumer focus and simplification should form the basis of all public service complaints handling processes, which will be developed in partnership between the SPSO and service providers.*

*There should be a standardised complaints handling process for each public service sector based on these principles – so that, for example, all care homes have a process in common and all registered social landlords have their own common process.*

*[The SPSO should]...develop and approve, for each sector, standardised public service complaints handling systems which include realistic but challenging timescales and processes to keep all parties informed of progress.’*

The PSR Act requires the SPSO to publish a statement of principles on which all public service complaints handling procedures should be based. It requires public service providers under my jurisdiction to ensure that they have complaints procedures which comply with this statement of principles. The Act requires the SPSO to consult on this and to submit a final version to the Scottish Parliament for approval.

Accordingly, the SPSO submitted its draft statement of principles to the Parliament for approval in early November following a 12-week consultation. Ninety-two consultation responses were received, from a wide range of organisations and individuals including from bodies under the SPSO’s jurisdiction, professional and regulatory bodies, consumer and advice groups and members of the public.

The consultation also asked for views on the SPSO’s Guidance on model complaints handling procedures (model CHPs). The work of developing model CHPs is tasked to a small unit within the SPSO called the Complaints Standards Authority (CSA). The CSA will work with stakeholders to develop standardised and streamlined model CHPs for each public service sector. In the coming years, the CSA will also provide coordination, advice and leadership on all aspects of public sector complaints handling.

The role of the ‘design authority’ is set out in Sections 16A to 16G of the 2002 Act. These Sections were introduced to the 2002 Act by virtue of Section 119 of the Public Services Reform (Scotland) Act 2010. Section 16C of the 2002 Act states that public bodies must ensure that their complaints procedures comply with any model CHP which the SPSO has notified them is relevant to their organisation. Section 16D of the 2002 Act empowers the SPSO to issue a declaration of non-compliance where it considers that a body’s complaints

1 Report on ‘The Crerar Review: The Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland’, September 2007

2 Fit For Purpose Complaints System Action Group – Report to Ministers, July 2008

procedure is non-compliant. The CSA is placing emphasis on partnership and supporting bodies to meet the requirements of the legislation, and expect to use these powers as a last resort only.

Section 16G of the PSR Act also provides a duty on the Ombudsman to monitor and promote best practice, identify trends and encourage co-operation in complaints handling amongst public service providers, again placing a duty on providers to comply with this work.

As I noted in my most recent annual report, these developments represent a significant and radical extension to my office's powers:

*"This is a very ambitious programme, and one that will radically change our business in the coming years. We used to have one core function – handling complaints. In future we will have two functions, the second being to establish and maintain what we are calling the Complaints Standards Authority."*<sup>3</sup>

This new role is a first for UK public sector ombudsmen and will increase my office's ability to shape public sector complaints handling and, in this way, to drive improvement in public services. While we are at an early stage in implementing this programme, it is clear that it has great potential to improve citizens' experience of complaining about public services and we look forward to developing this agenda.

Finally, I would like to comment briefly on the consultation's proposals regarding cooperation and information sharing between ombudsmen and information sharing where threats exist to health and safety. My office is in favour of working collaboratively and sharing information with other ombudsmen where this is helpful or necessary to resolve citizens' grievances effectively. We, therefore, support any measures that can assist with this. It should be noted, however, that provisions on information sharing and cooperation need to be mutual between ombudsmen. The Committee may be interested to note the powers which my office currently has to cooperate and share information; these are set out in Section 21 of the 2002 Act.

On the question of health and safety, Section 19 of the 2002 Act currently grants my office powers in relation to sharing information only where there is a 'threat to the health and safety of patients' and only where it is in 'the interests of the health and safety of patients'. From April 2011, the 2002 Act will be amended and my office's powers broadened so that I will be able to share information where there is a threat to the health and safety of 'persons' and where it is in the interests of the health and safety of 'persons'. These changes have a similar intent to the provisions in the Public Services Ombudsman (Wales) Act 2005, which allows for the sharing of information where there is a health and safety threat to persons if this is in 'the public interest'.

I would be pleased to provide the Committee with further details about developments in Scotland, if that would be helpful. In the meantime, thank you once again for the opportunity to contribute to this consultation.

Yours sincerely

**Jim Martin**  
Ombudsman

Tel: 0131 240 8850 (Fiona Paterson, Personal Assistant)  
Email: fpaterson@spsa.org.uk

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3 SPSO Annual Report 2009-2010: <http://www.spsa.org.uk/files/webfm/Publications/Annual%20reports/SPSO%20Annual%20Report%202009-10.pdf>

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## South Eastern HSC Trust

- 1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

Yes it would simplify the process for the public. However the outworking of this arrangement would require clarity with regards to roles and responsibilities to ensure the range of responsibilities are clearly defined and appropriately addressed.

- 2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

Northern Ireland Public Services Ombudsman.

- 3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?**

In our experience of working with the Ombudsman we welcome his comments on recommendations and good practice. The Trust also feels that it would be beneficial where a complaint is not upheld that good practice would be identified and shared across relevant organisations.

- 4. Should the Ombudsman have a power to conduct an investigation or systemic review on his / her own initiative given the overlap with other bodies?**

The Trust would be concerned that this may cause difficulties in those cases that have been referred to other organisations such as PSNI.

- 5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required / expected to take into account?**

The Trust would welcome suggestions on good administrative practice.

- 6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

This would require further consideration given the integrated nature of Health and Social Care in Northern Ireland. This would also impact on the legislative requirements already in place.

- 7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?**

Yes this would seem to be reasonable approach.

- 8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?**

If listed in legislation, there may be unnecessary complications when change required following the establishment of any new public body. However, a list does need to be held and updated centrally and kept in the one place.

- 9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?**

The Trust considers the current system acceptable.

- 10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?**
- No – there are other fora that can address issues regarding professional judgement in social care.
- 11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish to ask their MLA to refer a complaint on their behalf and to be involved?**
- The Trust would agree that all complainants should be able to make their complaint directly to the Ombudsman.
- 12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?**
- Yes the Trust would agree. All complainants should have the opportunity to choose to make their complaint either orally or in writing. However, mechanisms should be in place to guide complainants and ensure accurate recording of the nature of the complaint.
- 13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?**
- Yes. Respect for Code of Confidentiality and Good Practice and Consent would need to be considered at all times.
- 14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?**
- Yes.
- 15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**
- Yes the Trust would agree with this approach where local resolution has been exhausted and has failed, but it should be with the complainant's consent.
- 16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?**
- Yes.
- 17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?**
- The Trust would respond 'yes' to both questions.
- 18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**
- Yes this is a fair and important approach.

- 19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?**  
Yes this would be welcome.
- 20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**  
Yes
- 21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?**  
Yes
- 22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**  
The Trust considers the current model in Northern Ireland has worked well to date and do not believe there is a requirement to move to the Welsh model.
- 23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?**  
Yes. It would be helpful for this to focus on the learning to enable sharing across organisations.
- 24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**  
Yes
- 25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?**  
Yes
- 26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**  
In the spirit of openness and honesty we do not feel that a special report to deal with this situation would be in the best interests of the organisations involved, however the adaptation of a learning letter such as that used by the DHSSPS Quality Unit may be much more helpful and avoid the development of a blame culture.
- 27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**  
The Trust believes this should be removed completely.
- 28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?**  
The current process is satisfactory.
- 29. Should the Ombudsman be appointed for a single fixed term of seven years or what length of term should it be?**  
A single fixed term would provide consistency but yet ensure independence and accountability.

**30. Should the Ombudsman be able to employ staff directly to his/her Office and also to provide for secondment in his Human Resources Strategy?**

All employment to the Ombudsman's office should follow current recruitment practices of the Public Sector.

**31. Should the current link with the judicial salary scale be maintained?**

Yes

**32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?**

Yes

December 2012

# Thompson, Brian

By Brian Thompson, Senior Lecturer,  
School of Law, University of Liverpool and  
Member of the Administrative Justice and Tribunals Council

1. I welcome this opportunity to respond to the Committee's consultation paper. The legislation under which the office of the Northern Ireland Ombudsman operates is very out-dated, as the Review instigated by the Office of First Minister and Deputy First Minister in 2004 confirmed. It is accordingly a most valuable use of the Committee's power to initiate legislation to update and reform the office which I strongly support.
2. Bearing in mind the proximity to the Assembly elections in May 2011, it will be a tight timetable in which to secure the passage of this much needed legislation and I urge the Committee to use its best endeavours to achieve this objective.
3. To that end I would suggest that this is not the opportunity to seek to restore the Ombudsman to the forefront of practice, as was the case at the inception of the two offices in 1969. I think that it is clear from the position with the Ombudsman's counterparts in the UK and Ireland, reflected in the 2004 Review as updated by the committee's consultation paper, that necessary powers and arrangements can be identified and implemented, leaving for the next two-three years further reform and perhaps a return to the vanguard of 'Ombudsmanry'.
4. At the end of the paper, in a kind of appendix, I group together the questions and my answers in summary form to facilitate the Committee's analysis of consultation responses. I provide reasons and discussion in the main body of my response.

## **Merger into a Single Office**

5. I support this proposal which will improve the accessibility of the office by making it easier for everyone to understand who the Ombudsman is and what the office can do for people who have a grievance with a public body. While it was clever thinking to use the 'brand' Northern Ireland Ombudsman as an umbrella term for the two separate offices, the fact that they have separate jurisdictions means a name change and a shared location, is a limited response, when the more radical step of a full merger is required. This is the analysis in para 2.2-2.3 of the consultation paper and it is supported by the research which I have done with my colleagues into ombudsmen in the UK, Ireland, Australia and New Zealand, (T. Buck, R. Kirkham and B. Thompson, *The Ombudsman Enterprise and Administrative Justice*, (Ashgate, January 2011). Their experience demonstrates the utility of reducing the number of separate offices. Thus the position in Scotland and Wales mirrors that of the states in Australia, which is attuned to the different levels of government, a 'federal' Ombudsman and one which combines local government with a higher sub-state level of government, be it nation or region.
6. I prefer the title recommended in the 2004 Review, the Northern Ireland Public Services Ombudsman.

## **Purpose of the Office**

7. One of the striking findings from the research published as *The Ombudsman Enterprise and Administrative Justice*, was the unanimity of the ombudsmen's views in two continents about the complementing of their twin objectives of Resolving Complaints and Promoting Good Administration.
8. They all say that their core business is to resolve complaints, which is not to say that they are the complainants' champion. Rather they are impartial, but if they champion anything, it is good administration. The resolution of complaints provides an excellent base on which to synthesise guidance on good practice which can then be shared with all public bodies.

9. Simply producing and disseminating advice/and guidance on good administration is unlikely to lead to the desired improvement, rather it should be part of a structured, co-ordinated approach to the promotion of good administration in which public bodies participate in groups, workshops or forums not only with bodies delivering similar services, but also with providers of different ones, as this can produce extremely useful lessons. It is preferable not to impose too many conditions on bodies to avoid them ticking boxes rather than engaging in the activity covered by the check-list. It may be enough to promote an expectation of public bodies taking Ombudsman guidance into account rather requiring it, but it is a matter which can be kept under review. It is, however, important, that bodies inform the Ombudsman what they are proposed to do and in what timescale when responding to a complaint in which injustice has been found as a consequence of maladministration (see par 31 below)
10. In our interviews with the ombudsmen in Australasia, they were extremely surprised to learn that ombudsmen in the UK did not have a power to conduct an investigation without first having received a complaint. They simply could not conceive of doing their job without having that power. The 2000 Collcutt *Review of the Public Sector Ombudsmen in England*, resisted calls to recommend such a power on the basis that it would be a distraction from resolving complaints. This view was mistaken then and now completely out of step with the position in Europe and indeed throughout the rest of the world. It is true that if a systemic investigation is to be done properly, it will need to be planned carefully drawing on the information which the Ombudsman office has gathered and analysed, and then conducted meticulously, but the Australasian experience is that they can be worthwhile.
11. Closer to home the Irish legislation provides in section 4(3)(b) of the Ombudsman Act 1980 that the Ombudsman may investigate if in regard to the circumstances it is warranted and this has been used to important effect, particularly in relation to social care for the elderly.
12. The 2004 Review did recommend such an own initiative, systemic investigative power but subjected it to the requirement of consultation with the Comptroller and Auditor General (CAG). If this requirement is designed to manage work, to avoid a public body being subjected to simultaneous or consecutive scrutiny by the Ombudsman and the CAG, then it is good sense. However, if it served as an impediment and certainly if a veto, then it is unacceptable in principle and in practice. As the consultation paper notes at para. 3.4, both of these officers share an interest in promoting good administration, the CAG's value for money audits, or performance audits as they call them in Australia, are similar to an Ombudsman's systemic investigation, but there are differences. It is certainly the case that the two offices could and should work together to everyone's benefit.
13. The question as to whether or not the Ombudsman should play the role of 'design authority' in relation to complaints-handling processes is an interesting one. It has happened only recently in Scotland and Wales, so there is not much experience to draw on. Certainly the Ombudsman should do more than produce a guide to Good Complaints Handling. Training in complaints-handling has been provided by the Local Government Ombudsman in England for some years, and for the past year or so in Scotland. It is also carried out in some of the Australian states. A major project was conducted by the Queensland Ombudsman. As to whether 'design authority' means a uniform complaints procedure, or a common approach to complaints is unclear. One might think that given the scale of Northern Ireland a uniform complaints process would be easier to implement, however, that confuses scale with population size, the important factor is how diverse are the public services and their providers? Is it possible or indeed desirable to adopt a 'one size fits all' approach?
14. The 'design authority' role is not just linking to resolution of complaints but also to improving administration as good complaints-handling practice emphasises that the 'lessons be learned' form the complaint in order to prevent recurrence Insofar as the 'design authority' role is anew function, then it may require additional resources as it involves research and analysis.

### Remit of the Office

15. It is peculiarity of the ombudsmen legislation that it does not present a definition of its key terms, maladministration, and injustice. The Ombudsman is to offer redress for *injustice* caused by *maladministration* but neither of these two key terms is defined in the legislation. In the original Westminster statute the Parliamentary Commissioner Act 2967, this was done deliberately and set the template for future development, allowing the concept of maladministration and injustice to develop. It is suggested that this has worked well, however, in the merged Public Services Ombudsmen legislation in Scotland and Wales, and in the English Local Government and Health Service Ombudsmen legislation two new terms have been added *service failure* and *hardship*. It seems they were introduced when clinical complaints about the Health Service was added but not in the Northern Irish legislation when that jurisdictional competence was added. I am not sure that causing hardship through service failure adds anything, but it may be considered prudent to keep in conformity with those other ombudsmen.
16. If the two separate statutory offices and jurisdictions are merged, then this should also mark a new start by operating on the principle of following, as the consultation paper terms it at para.4.8, the public pound, so that there is a presumption that public bodies are within jurisdiction unless specifically excluded. If one has a list of bodies within jurisdiction then when they are changed, or reconfigured, it means that there has to be an amendment to the list. It is therefore more proportionate to list only those excluded and to revise the changes of excluded bodies.
17. In the 2004 Review it was pointed out that other bodies relied on the list of public bodies in the Schedule to the Ombudsman's legislation and so it was useful and transparent. This may be likened to 'the tail wagging the dog'. There should be a list of public bodies maintained by OFMDFM, which can be circulated and posted on a website and thus available for those who wish to consult it. When there are changes in the bodies excluded from the Ombudsman's jurisdiction, the schedule in the legislation can be amended This would minimise the need for legislation, and provide an opportunity through the legislative process to check the justification for this exclusion.
18. The consultation paper asks in Questions 9 and 10 if public sector employment issues should be excluded and if professional judgement in social should be included? To which the answers to both questions are Yes.
19. As the consultation paper points out, at para. 4.12. There is a well developed system of industrial and fair employment tribunals dealing with employment issues. If the justification for the original inclusion of this matter was a concern about discrimination by public authorities then that has been addressed by the development of employment law by the tribunals and the courts.
20. Currently it is only in Wales that the 'merged' Public Services Ombudsman can consider the professional judgement exercised in social care and as the consultation points out at para 4.13, since health and social care are delivered together it is appropriate to include this matter within jurisdiction.

### Acquisition of Cases

21. It is a major anomaly that the Assembly Ombudsman cannot accept a case unless it has been referred by an MLA, made all the odder when the same person acting as Commissioner for Complaints can accept complaints direct from complainants about local government and health following their first resort to the relevant complaints procedure. So if a person had been injured and had hospital care and social care and was claiming social security benefit, all of which were linked in an episode of maladministration then the complainant would have to involve an MLA in order for the complaint about benefits to be re-directed to the Ombudsman.

22. The suggested reform of 'dual track' access, allowing complainants to approach the Ombudsman directly following dissatisfaction with the outcome of the relevant complaints procedure, or at their choice to complain to an MLA is appropriate. It is also the reform proposed for the Parliamentary Ombudsman in a consultation paper by the Law Commission for England Wales (*Public Services Ombudsmen LCCP 196*) released just before the committee's own consultation paper.
23. It may be that the best way to proceed with respect to the submission of complaints is for the legislation to specify that they be written but also to confer discretion on the Ombudsman to be able to dispense with that requirement. The Ombudsman's literature and website should indicate those formats which count as written, rather than place a definition in the legislation. Therefore the key point to have in the legislation is the Ombudsman's discretion.
24. The definition of aggrieved person should be comparable to that in the Scottish and the Welsh legislation since it improves the Ombudsman's accessibility.
25. Article 10A of the Commissioner for Complaints Order 1996 is strange as it allows a health or social care body to refer a case to the Ombudsman. It is not clear what purpose this serves. If injustice has been caused then the body should take steps to remedy it rather than to delay matters by referring to the Ombudsman. If the complaint is dissatisfied with the handling of the complaint by the body then the Ombudsman may be approached. Perhaps, it is meant as a kind of systemic investigation but if that power is granted then there seems little point to this provision which I therefore suggest should not be included in the new legislation.
26. I do not support the inclusion of a provision equivalent to the Scottish one which authorises the Ombudsman to accept cases referred by bodies within jurisdiction. I think that such circumstances as are specified in the provision are matters for the public bodies to resolve themselves.

#### **Case-Handling Procedure**

27. The current provisions for the conduct of investigations are mostly consistent with those of other Ombudsmen, but the reality is that most complaints handled by ombudsmen are not subjected to an investigation as they can be resolved by intervention short of an investigation. In this regard the Northern Ireland provisions were in advance of the other ombudsmen in the UK until 2005. The consultation paper at para.6.6 proposes that the provision in the Welsh legislation should be adopted and I support this as it is a very flexible power, indeed, it is also being held out as the model for reform of the Ombudsmen in England in the Law Commission's proposals.
28. The Welsh legislation also contains an interesting provision authorising the Ombudsman to be able to require the provision of information, the production of a document or the provision of a facility. I support the proposal to include a similar power.
29. There is an odd provision in the Commissioner for Complaints Order, article 12(7) which offers a hearing to a person who may be subjected to adverse comment in the Ombudsman's report. The right to a hearing which could allow for examination and cross-examination parties, seems disproportionate. It would be contrary to the common law rules of natural justice/duty to be fair not to provide an opportunity for comment if the Ombudsman was to publish a report in which adverse comment was made about a person and the Queensland provision proposed in the consultation paper at para. 6.3 seems most appropriate.
30. Where there is an overlap of jurisdiction between the different Ombudsmen in the UK and Ireland, it would be detrimental not to have a power to enable their co-operation. This will also require a power to share information.



### Reporting by the Ombudsman and Enforcement

31. It is interesting that in relation to reporting obligations which the Ombudsman should have, the Welsh legislation has again served as model both for the committee's proposal and those of the Law Commission. The Law Commission propose first that, if a case is not accepted or a investigation is discontinued, then there should a statement of reasons sent to the complainant, and to other interested persons. The Law Commission is proposing that there be three types of report, the last of which is about enforcement:
- (a) 'Short form' report (modelled on s.21 PSOW Act 2005) used where no injustice or hardship is found, or where it has been but the public body has agreed to remedy it and the Ombudsman is of the view that it is in the public interest to publish a report but it is not in the public interest to follow the procedure in (b);
  - (b) 'report' (modelled on ss.16-19 PSOW Act 2005) in which the report is published and the body is to make it available, must consider it and then inform the Ombudsman what it proposes to do and when this action will be carried out;
  - (c) 'Special' report (modelled on s.22 PSOW Act 2005) where the Ombudsman has not received notification from the body of the action it proposes to take, or the Ombudsman is not satisfied with the action proposed or taken, or the Ombudsman does not think that the action proposed to be taken will be completed in the permitted period set in the original report.

This graduated response based on the Welsh provisions seems proportionate and fair and I support its application to Northern Ireland, although I do not think that it is necessary to use the term 'short form report for (a).

32. In 1986 with C. Campbell I was commissioned by the Department of the Environment to conduct research into *Decisions of the Local Ombudsmen* (unpublished 1987) in England, Scotland, Wales and Northern Ireland. This was to assist the Department in developing its response to the *Report of the Committee on the Conduct of Local Authority Business* (chaired by D. Widdicombe, Cmnd 9797, 1986), which had included in its proposals a recommendation that there should be a provision similar to that in the Commissioner for Complaints legislation allowing for an action to be taken in the court where the council had not or inadequately remedied the injustice caused by maladministration as reported by the Ombudsman.
33. I carried out a study of the Commissioner for Complaints for this project and found that in the vast majority of occasions on which it had then been used, it was in the public sector employment jurisdiction. We recommended that it would be inappropriate to enact a similar provision and the Department proceeded with legislation which required the council to publicise the Local Government Ombudsman's second or further report (similar to the special report outlined in para. 31 above) and, if it chose, to give its reasons why it was not proposing to implement its recommendations to remedy the injustice caused by maladministration.
34. The consultation paper notes that this power authorising a court action has not been resorted to in Northern Ireland for 26 years. I suggest that the special report is sufficient. The consultation paper notes that the special report power has yet to be exercised in Scotland and Wales, and this in contrast to the situation in the 1980s when there were cases in which councils did not remedy injustice to the satisfaction of the Ombudsmen and the Scottish and Welsh Local Government Ombudsmen (and their English counterparts too) were inclined to ask for an equivalent provision to that in the Commissioner for Complaints legislation.
35. With my colleagues we published an article on non-compliance with Ombudsmen's recommendations, focussing on the position of the Parliamentary Ombudsman, in which we suggested that 'enforcement' of an Ombudsman's recommendations should be a matter of political pressure rather than a court order or award. The Law Commission in recommending

that there should be no change in this situation cited our article (R. Kirkham, B. Thompson, T. Buck 'When Putting Things Right Goes Wrong: Enforcing the Recommendations of the Ombudsmen' [2008] *Public Law* 510).

#### **Appointment of the Ombudsman**

36. I support the proposals on appointment and agree that the length of the single fixed term should be seven years.

#### **Staffing and Finance**

37. When the Ombudsmen offices were first established, the practice was that the staff were all seconded. While the establishment of the office is not large, which militates against a career in the office, there can be difficulties in planning an efficient use of the staff. I therefore support the proposal that the Ombudsman should have the power to employ staff directly as well as to have secondees for the reasons given in para.10.3 of the consultation paper. It is also necessary that the Ombudsman should have the power to seek and pay for specialist expertise and advice. I also agree that that the common practice in the UK to align the Ombudsman's salary with the judicial scales is appropriate, as the constitutional role of the Ombudsman is akin to that of the judiciary which is reflected in the next point.

#### **Governance and Accountability**

38. It is very important to establish the correct balance of independence for the Ombudsman with accountability for the use of resources approved by the Assembly. It is imperative that the only challenge to the Ombudsman's decisions and reports on complaints should be in the courts. As I mentioned earlier the Ombudsman is impartial but the complainant and the complained against body and their supporters are not.
39. In our book my colleagues and I argue that it is desirable and useful that there should be a good relationship between the Ombudsman and a parliamentary committee both to scrutinise and support the Ombudsman. In the House of Commons the Public Administration Committee considers the annual reports of the Parliamentary and Health Service Ombudsman and, on the rare occasions when a department does not remedy the injustice thus causing the Ombudsman to make a report to Parliament, that committee conducts its own inquiry and, if it agrees with the Ombudsman, as it has always has done, then it adds its weight and influence to seeking a satisfactory remedy.
40. We were impressed by the arrangements in New Zealand which separated the sponsorship role from the scrutinising role. The sponsorship role involves appointment and determining the resources and budget and is carried out by the Officers of Parliament Committee which oversees the Controller and Auditor General, the Ombudsman and the Parliamentary Commissioner for the Environment. This committee is chaired by the Speaker, does not have a government majority and seeks to act in a non-partisan fashion. The scrutinising role dealing with reports, considering policies and administration of the government was carried out by a different committee, in the case of the Ombudsman, the Government Administration committee.
41. In a paper I contributed to the publication commemorating the institution's 40th anniversary (*An Innovator in Need of Reform*), I suggested that the Ombudsman should have arrangements similar to those of the CAG a fellow Officer of the Assembly. I suggest that the Audit carries out aspect of the 'sponsorship' role in relation to the CAG and it should not be too disruptive and most appropriate to add to it another Officer of the Assembly, the Ombudsman. As for the Assembly's scrutinising role of the Ombudsmen the Assembly may wish to consider alternative ideas, either establishing (i) a new Public Administration Committee or, (b) a Public Accounts and Administration Committee which would have two sub-committees Public Accounts and Public Administration which in their work in examining the accounts and administration of public bodies would be assisted by the relevant Officer of the Assembly.

42. The Ombudsman should also appear before other committees when necessary, perhaps a report has been issued indicating a problem with a particular public body then the committee overseeing that department might wish to follow up the report with the public body and the Ombudsman.

#### **Other Issues**

43. The Law Commission have proposed that the statutory bar on the Ombudsmen in England and Wales be reformed. The statutory bar is a provision which stipulates that where a complainant has or has had resort to an alternative remedy, that the Ombudsman shall not accept the complaint unless in the exercise of discretion the Ombudsman is of the view that it would be unreasonable to expect the complaint to have or have had resort to that alternative remedy. The statutory bar is also to be found in the legislation for both the Assembly Ombudsman, article 10 (3),(4), and the Commissioner for Complaints, article 9(3),(4). The proposal made by the Law Commission is that there should be a presumption that the Ombudsman may accept a case (or as they term it, open an investigation) coupled with a broad discretion to decline to accept a case. I support that proposal in England and Wales, and strongly recommend its inclusion in the proposed new legislation for the Northern Ireland Ombudsman.
44. The Assembly may wish to review the number of Commissioners and Ombudsmen that it has with a view to rationalising them. This is a process which the Scottish Parliament has undergone in relation to its Commissioners, including the Ombudsman. There are various functions which could be rationalised and reconfigured: Administrative Justice, that is redressing maladministration and promoting good administration; Standards in Public Life, Freedom of Information/Data Protection and different models which could be adopted. Is there a need for 'sectoral' Ombudsmen? Should bodies have investigative powers if they also have advocacy powers? Should investigative powers be dispersed or concentrated? These are important questions which will need to be addressed but to return to my opening point, improving the redress for people aggrieved at the (in)action of public bodies should not be further delayed by these wider considerations.

### **Summary of Answers to the Consultation Questions**

1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland? **YES**
2. If a merged office was created, should it be called **the Northern Ireland Public Services Ombudsman** OR the Public Services Ombudsman for Northern Ireland?
3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work? **YES**
4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies ? **YES**
5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account? **YES**
6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes? **YES**
7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction? **YES**

8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? **NO - LIST THE BODIES EXCLUDED ONLY** Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? **YES** If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list? **YES**
9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction? **YES**
10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction? **YES**
11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved? **YES**
12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available? **NO- GIVE THE OMBUDSMAN DISCRETION TO ACCEPT IF NOT WRITTEN**
13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint? **YES**
14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation? **YES**
15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances? **NO**
16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation? **NO**
17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? **YES** Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation? **YES**
18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included? **YES**
19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation? **YES**
20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions? **YES**
21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient? **YES**
22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?

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23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit? **YES**
  24. Should the Ombudsman be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted? **YES**
  25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above? **YES**
  26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice? **YES**
  27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be **(a) removed completely** or (b) retained only in relation to local government bodies?
  28. What do you think about the proposed appointment process? **I SUPPORT** Are there any other conditions you would like to see? **NO**
  29. Should the Ombudsman be appointed for a single fixed term of seven years **YES** or what length of term should it be?
  30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy? **YES**
  31. Should the current link with the judicial salary scale be maintained? **YES**
  32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary? **YES**

# Northern Ireland Ombudsman - Analysis of consultation responses

An Analysis of the Responses to the OFMDFM Committee's Consultation Paper on Legislation to Update and Reform the Office of the Northern Ireland Ombudsman

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9. Appointment of the Ombudsman
10. Staffing and Finance
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**1. Introduction**

- 1.1 The Northern Ireland Assembly's Committee (the Committee) for the Office of the First Minister and deputy First Minister has considered the issue of reform of the office of the Northern Ireland Ombudsman (the Ombudsman). The Committee has conducted research in this area and has taken evidence from the current Ombudsman Dr Tom Frawley and his deputy, Mrs Marie Anderson on 2 June 2010 and again on 27 July 2010. The Committee discussed the issue of reform again on 15 September 2010, although the Ombudsman was not present.
- 1.2 The Committee decided on 23 June 2010 that it will use its powers to initiate legislation in order to carry out the reforms identified by the Deloitte Review (2004) and initiated a consultation paper on the 25 July 2010. A public consultation exercise in relation to the proposed reforms as outlined in that paper was launched on that day. The consultation has been conducted under the auspices of the Committee. The consultation closed on Friday 17th December 2010 and a total of 33 responses have been received from a wide range of organisations and stakeholders. The Ombudsman has been invited by the Committee to outline his views on the consultation responses as he did not, as a matter of probity, submit a formal consultation response.
- 1.3. This paper outlines the Ombudsman's views on the responses to the consultation questions and his analysis of those responses in broad terms. This paper should be read in conjunction with the Committee consultation paper as the latter contains the detailed research conducted on behalf of the Committee to inform the debate on the legislative reforms. This paper has therefore followed the outline and structure of the consultation document. Each of the 33 consultation questions has been repeated and the numerical order preserved (for ease of reference) with a brief statistical breakdown of the responses provided. A list of respondents is attached at Appendix 1 and a table outlining in broad terms a statistical analysis of the responses is attached at Appendix 2. This is a very basic table and some of the responses were inconclusive so therefore had to be interpreted. Where there was any ambiguity in response in the interests of achieving as wide a view as possible this ambiguity has not been interpreted as implicit consent to a question and the response has been treated as 'no comment' on that particular issue. Where it is considered helpful a brief Ombudsman's commentary on this data is also provided.
- 1.4 At the conclusion of the consultation document there was a general section on 'Other Issues' and consultees were invited to provide more general comments. The Ombudsman has provided a commentary on these issues also. To supplement this paper and the views and data recorded herein the Ombudsman has accepted an invitation to give evidence to the Committee at its meeting on 12 January 2011.
- 1.5 The Ombudsman welcomes the opportunity to give evidence on the consultation responses and notes that in the main the majority of respondents support the proposals in the Committee's Consultation Paper on reform of his office. There are some areas which may require further debate arising from the consultation responses and the Ombudsman's views are set out at section 13. However the Ombudsman is aware that in respect of all of these matters, the final proposals will be decided by the Committee as regards the shape and content of any draft legislation and the ultimate decision will be that of the Assembly.

## **2. Merger into a Single Office**

### **Consultation Questions**

#### **Q1. Do you agree that people in Northern Ireland are likely to be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?**

**Data:** Of 33 respondents 21 considered that there should be a single office. Only one respondent considered that this merger should not occur and the remaining 11 respondents made no comment.

**Response:** The Ombudsman welcomes this positive response to the proposal to merge the two offices as recommended by the Deloitte Review. The Ombudsman would remind the Committee that in merging the two offices issues such as the MLA filter will be an important consideration.

#### **Q2. What should the title of a merged office be, the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?**

**Data:** There was no widespread agreement on a title for the office and 22 respondents did not comment on this point at all. There were 6 respondents in favour of the title of the Northern Ireland Public Services Ombudsman and 4 favoured the title Public Services Ombudsman for Northern Ireland. It is noted that the Welsh Ombudsman considered that an appropriate title would be the Northern Ireland Ombudsman.

**Response:** The Ombudsman does not have any strong views on the title which he considers is a matter for the OFMDFM Committee to propose and ultimately for the Assembly to legislate upon.

## **3. Purpose of the Office**

### **Consultation Questions**

#### **Q3. Do you agree that the Ombudsman should not only resolve complaints but seek to improve public administration?**

Of the 33 respondents the majority 17 agreed that the Ombudsman's role should extend beyond the resolution of complaints to seeking to improve public administration. Only 3 respondents did not agree with this extension of remit of the office of Ombudsman in Northern Ireland and 13 respondents did not comment.

**Ombudsman's Response:** Currently the Ombudsman has no specific legislative role to improve public administration, neither has he power to act on his own initiative, to provide guidance or to act as a design authority. However, where the Ombudsman makes a finding of maladministration against a public body he must consider an appropriate remedy. In some instances this may include a recommendation for a change in practice on the part of the body complained of or indeed a comment regarding good practice. In this way he does within the scope of existing legislation seek to bring about an improvement in administration in a particular case. The Ombudsman does consider that his ability to play a part in improving public administration would be greatly enhanced by the addition of a specific role in relation to improving public administration.

#### **Q4. Do you agree that the Ombudsman should have a power of own initiative investigation/systemic review?**

**Data:** Out of 33 respondents 15 agreed that the Ombudsman should have the power to conduct a systemic review on his own initiative, although there was a divergence of views expressed on how this power would operate. Some respondents made the point that there should be a clear link between casework and the exercise of this power. Some respondents agreed with the Deloitte Review that such power should be exercised only in consultation



with the Comptroller and Auditor General (C&AG) and others stated the need to ensure there was no overlap with other body's powers. However, 7 respondents stated that they did not consider this power was necessary and 13 respondents did not comment at all on whether the Ombudsman should have this power.

**Ombudsman's Response:** this is set out at page 26 under Other Issues.

**Q5. Do you agree that the Ombudsman should provide guidance on good administrative practice which public bodies should be required/expected to take into account?**

**Data:** The majority of respondents agreed that the Ombudsman should provide guidance on good administrative practice (21 out of the 33 respondents). Only 1 respondent did not agree and 11 did not comment at all.

In relation to the issue of bodies should be required to follow such practice the majority (12) said yes and 4 disagreed with 17 not commenting on this issue.

**Q6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?**

**Data:** The majority of respondents (13) agreed that the ombudsman should have such a role, 14 made no comment and only 5 disagreed with his having this role.

**Response:** The evidence of the Scottish and Welsh Public Services Ombudsmen on this point is significant. In Wales the Ombudsman has led the development of a common complaints process. In Scotland there has been a specific legislative power under which the Ombudsman can act as a design authority and also issue a declaration of non-compliance where they consider a complaints process is non-compliant.<sup>1</sup>

**Ombudsman Response:** Currently the Ombudsman has no specific legislative role to improve public administration, neither has he power to act on his own initiative, to provide guidance or to act as a design authority. However, where the Ombudsman makes a finding of maladministration against a public body he must consider an appropriate remedy. In some instances this may include a recommendation for a change in practice on the part of the body complained of or indeed a comment regarding good practice. In this way he does within the scope of existing legislation seek to bring about an improvement in administration in a particular case.

The Ombudsman does consider that his ability to play a part in improving public administration would be greatly enhanced by the addition of a specific role in relation to improving public administration.

The Ombudsman does consider that if he were to be given a specific power to issue guidance on good administrative practice which he considers appropriate as in section 31 of the Public Services Ombudsman (Wales) Act 2005, this practice should have the same status as the Codes issued by the Equality Commission in that they could be considered in the event of any proceedings arising.

The Ombudsman considers that it is important to maintain flexibility and would prefer to adopt the PHSO approach. A rider is at the end of each set of the Principles of Good Administration as follows:

'These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair and proportionate results in the circumstances. The Ombudsman will adopt a similar approach in deciding whether maladministration or service failure has occurred.'

1 Section 16D of the Public Services Ombudsman (Scotland) Act 2002 as introduced by section 119 of the Public Services Reform (Scotland) Act 2010

#### 4. Remit of the Office

##### Consultation Questions

#### Q7. Do you agree that the broad principle of 'following the public pound' should be the basis on which bodies will be included within the Ombudsman's jurisdiction?

**Data:** The majority of respondents agreed with this principle (14 out of 33 said yes and only 5 did not agree with this principle. A number of respondents did not comment however (14). Some respondents considered that the phrase 'publically funded' should be prefixed by the phrase 'substantially' but these were not in the majority. There was concern for instance on the part of the ECNI for instance that without this limitation that the volume of cases would be excessive for the Ombudsman to consider.

**Ombudsman's Response:** The Ombudsman has given evidence to the effect that he considers the bodies should be included in the list on the basis of 'following the public pound'.

Ultimately it is the question of public money funding public services and of maintaining the standard of services to be provided regardless of the status of the provider.

#### Q8. Should bodies in the jurisdiction be listed in the Ombudsman's legislation and maintaining an up to date list will be the responsibility of OFMDFM? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation, should the bodies at paragraph 4.6 of the consultation document be added to the list?

**Data:** The majority of those who commented (13 out of 33) agreed that there should be a list on the face of the legislation of the bodies in jurisdiction in the interests of transparency. It was recognised by ECNI and other respondents that such a list assists in the designation of the bodies that should also be the subject of section 75 of the Northern Ireland Act 1998.

In relation to the question as to who should maintain the list, 20 respondents did not answer this question and the majority that did answer agreed with this proposal (11 in total).

Of the 9 respondents who answered the question regarding additional bodies agreed with this proposal, 8 agreed. It is interesting to note in relation to jurisdiction that complaints about the higher education sector are covered by the Welsh and Scottish Ombudsmen.

**Ombudsman's Response:** The Ombudsman has given evidence to the effect that he considers the bodies should be included in the list on the basis of 'following the public pound'.

Ultimately it is the question of public money funding public services and of maintaining the standard of services to be provided regardless of the status of the provider.

#### Q9. Do you agree that public sector employment issues should be excluded from the Ombudsman's jurisdiction?

**Data:** The majority of respondents agreed with this proposal. It is noted that 17 of the 20 respondents who answered this question said yes.

Q10. Do you agree that professional judgement in social care should be included in the Ombudsman's jurisdiction?

**Data:** Of the total (disappointingly) 21 respondents did not comment on this proposal. However, of the 11 who did respond, 7 agreed that it should be included and 4 did not agree. It is noted that there is specific provision in the Welsh legislation for social care to be included.

**Ombudsman's Response:** The Ombudsman has given evidence to the effect that he considers the bodies should be included in the list on the basis of 'following the public pound'.

Ultimately it is the question of public money funding public services and of maintaining the standard of services to be provided regardless of the status of the provider.

**Ombudsman's Response:** The Ombudsman has already given evidence to the effect that employment matters should not in his view be in jurisdiction; this is widely supported by respondents and, in particular, supported by the evidence from the PHSO, BIOA and Brian Thompson. The Ombudsman sees merit in the argument that complaints about maladministration in the recruitment and selection process would not be dealt with elsewhere (see ECNI and also PSOW responses). Ultimately this is a matter for the Committee to decide as a matter of policy and for the Assembly to legislate upon.

The Ombudsman considers there is an accountability gap in relation to education and social care. These are within the remit of PSOW and [higher and further] education is also covered in Scotland. The Ombudsman supports the extension of this jurisdiction.

## 5. The Acquisition Of Cases

### Consultation Questions

#### Q11. Do you agree that complaints should not be required to be referred by a MLA but that complainants may ask their MLA to refer a complaint or for their MLA to be involved?

**Data:** The majority of respondents (22) agreed with this proposal and there no respondents who disagreed, although 10 did not comment.

**Response:** The Ombudsman considers that a twin track approach is necessary as stated in his evidence to the Committee on 27 July 2010.

#### Q12. Do you think that complainants may choose to submit their complaints either orally or in writing and that new telecoms should also be available as a means of submitting complaints by complainants?

**Data:** The majority of respondents who answered said yes (15) and 8 did not agree and of these a number said there should be a discretion on the part of the Ombudsman to accept a complaint in any form (see notably Brian Thompson's response). It is noted that 10 respondents did not answer this question.

#### Q13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?

**Data:** Out of 20 respondents who answered this question 14 said yes and 7 did not agree with this proposal. One respondent stated that such a definition was unnecessary given the provisions of the section 46(1) of the Interpretation Act 1954 which provides for a definition of 'writing' to include typewritten, printed, photographed or represented or reproduced by any mode of representing words in visible form.

**Response:** The Ombudsman would agree with those responses to Question 12 that he should have discretion about when to accept a complaint and in what form given ongoing advances in technology and also in the interest of accessibility , a flexible approach would be preferred.

#### Q14. Should the definition of a person aggrieved's representative be amended to match that in the Scottish and Welsh legislation?

**Data:** The majority of persons who answered (15) this question agreed that it should be extended and the Ombudsman accepts this majority. Notably, 18 respondents did not comment on this issue.

**Response:** The Ombudsman agrees that the extension of the definition of person aggrieved in any new legislation will greater scope for appropriate third parties to present a complainant in making a complaint to his office.

**Q15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?**

**Data:** There was a more balanced response on this issue with 8 persons agreeing with this proposal and 6 disagreeing. A total of 19 respondents made no comments.

**Ombudsman's Response:** There is a current provision in the Commissioner for Complaints legislation allowing for this referral. To date this has not been used and therefore the Ombudsman considers this provision should not be included in any new legislation.

**Q16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals. Should a similar provision be included in the new Northern Ireland legislation?**

**Data:** The majority of respondents (12 out of 33) did agree with this proposal and only 2 did not agree although 19 respondents did not comment.

**Ombudsman's Response:** There is a current provision in the Commissioner for Complaints legislation allowing for a referral to the Ombudsman. Given that to date this has not been used, the Ombudsman considers the Scottish provision should not be included in any new legislation. Although he accept that this is a proposal which the Committee may consider is appropriate given the consultation responses.

**6. Case Handling Procedure**

**Consultation Questions**

**Q17. Do you agree that the existing powers in relation to the conduct of an investigation by an Ombudsman be continued with the addition of a power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document?**

**Data:** The majority of the respondents (17) agreed that existing investigative powers should be replicated and 15 agreed that bodies should be required to provide a facility to the Ombudsman.

**Ombudsman's Response:** The Ombudsman considers that all existing powers are necessary and should continue. This is especially true for the power to refer to the court for contempt proceedings where there has been a refusal to co-operate with the investigation or indeed obstruction. The additional requirement on bodies in jurisdiction to provide a facility to assist investigations, as outlined in the Consultation Paper would be useful.

**Q18. Do you agree that a person about whom an adverse comment might be made in an Ombudsman's report should have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?**

**Data:** Although 16 respondents did not make any comment in relation to this issue, the majority (17) did agree that such an opportunity should be given. A small number of respondents called for the removal of the provision in the Commissioner for Complaints legislation allowing for a party to have legal representation to test by way of examination and cross examination any evidence that may adversely affect them - article 12(7) refers . These respondents included Brian Thompson, University of Liverpool, and also BIOA.

**Ombudsman's Response:** The Ombudsman accepts that fairness requires that any person against whom an adverse comment is made should have an opportunity to make representations in writing to the Ombudsman about that finding and that he should consider same. He considers however that the provision which exists only in Commissioner for Complaints legislation should be removed as it is unique in Ombudsman legislation and

provides those who can afford legal representation with an unfair advantage. Accordingly the inclusion of a power equivalent to the Queensland provision discussed in the Consultation Paper would seem most appropriate

**Q19. Do you agree that the Ombudsman should be authorised to take any action to resolve a complaint in addition to, or instead of conducting an investigation?**

**Data:** The majority of respondents (17) agreed with this proposal and only 3 did not agree that this should be included in any future legislation. Although 12 did not make any comment.

**Ombudsman's Response:** The Ombudsman would welcome legislation a power equivalent to section 3 of the Public Services Ombudsman (Wales) Act 2005 which would enhance his ability to achieve an early resolution of complaints.

**Q20. Do you agree that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?**

**Data:** The majority of respondents (21) agreed with this proposal and there were no dissenting views. The remaining 12 respondents did not make any comment.

**Ombudsman's Response:** The Ombudsman would welcome these provisions which would facilitate the investigation of cases involving North South bodies or indeed UK wide bodies who carry out their functions in NI and who are subject to the jurisdiction of the Parliamentary Commissioner for Administration.

The Ombudsman notes that a number of respondents consider that he should enter into Memorandums of Understanding with other regulators and Commissioners within Northern Ireland. The Ombudsman is currently considering an Information Sharing Protocol with RQIA and notes the recognition of his referral of cases to the GMC.

**7. Reporting by the Ombudsman**

**Consultation Questions**

**Q21. Do you think the proposals for the arrangements for making and publicising reports are sufficient?**

**Data:** The majority of respondents (13) agreed that these arrangements were sufficient, although 20 respondents did not comment on the question.

**Ombudsman's Response:** The Ombudsman does not agree that the proposal is sufficient and prefers the Welsh model which he notes is also suggested by the Law Commission for adoption in England. The Ombudsman is willing to expand on his reasons for this view at the meeting on 12 January but he is mindful of the evidence of the Welsh Ombudsman as to how that model currently operates in practice.

**Q22. Do you agree with the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?**

**Data:** The majority of respondents did not make comment (11) but of those that did the majority thought the alternative model was suitable.

**Ombudsman's Response:** The Ombudsman considers the alternative arrangements in the Welsh model to be appropriate and suitable for inclusion in the Committee's Bill.

**Q23. Do you agree with the proposal for annual reports and other reports on the discharge of functions in such manner and in such frequency as he thinks fit?**

**Data:** The majority of respondents (15) agreed with this broad discretion being conferred on the Ombudsman.

**Ombudsman's Response:** The Ombudsman would agree that such discretion is appropriate and confers on him the flexibility to make such reports on any aspect of his functions that he thinks fit. This will become more significant if he is given the broader powers suggested at section 2.

**Q24. Do you agree that the Ombudsman should be able to share information with other Ombudsman in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?**

**Data:** The majority of respondents agreed with this proposal (19 out of 33 with no dissenting responses).

**Ombudsman's Response:** The ombudsman would welcome such a power in the interest of public benefit in assisting public bodies to discharge their statutory duties and powers. It is essential to include the necessary protections. This would complement the power to co-operate with other Ombudsman (see question 20 above).

**Q25. Do you agree that the information sharing power for health and safety should be broader as indicated at 7.8 in the consultation document?**

**Data:** The majority of respondents (15) agreed with this proposal and no respondents disagreed although 18 did not comment.

**Ombudsman's Response:** The Ombudsman would welcome such a power in the interests of health and safety of individuals provided the necessary protections were in place for any disclosure of personal information. The Ombudsman considers that the Welsh legislation provides the best model for this sharing of information and notes in particular the GMC's positive stance on the inclusion of such a provision.

## **8. Enforcement**

### **Consultation Questions**

**Q26. Do you agree that the making and publicising of a special report is the appropriate way to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?**

**Data:** The majority agree with this power (17 and only 3 did not agree).

**Q27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be (a) removed completely or (b) retained only in relation to local government bodies?**

**Data:** Of 33 respondents, 12 were in favour of abolition of this provision and 5 respondents did not agree with this.

**Ombudsman's Response to Q26 and Q27:** The issue of a complainant 'enforcing' an Ombudsman's report finding maladministration causing injustice in the county court seem to be the most tricky, in the sense that opinion is divided amongst significant respondents. Those who do not support the proposal in question include, amongst others, a former Ombudsman Dr M. Hayes, the Law Society of Northern Ireland, and the Equality Commission. A point they make is that while there has been no resort to this remedy in such a long time, this may well be because, bodies within the Commissioner for Complaints' jurisdiction, are aware of it and take it into account in determining their response to a report which upholds a complaint.

The Northern Ireland Ombudsman's view remains that it is inconsistent with the ombudsman model in the UK and Ireland, Europe and the rest of the world, and also his Assembly Ombudsman's legislation, which is that it is the moral suasion of the ombudsman which

secures compliance with an upheld complaint. In the UK and in the Ombudsman's current legislation there is the power to make a special report which can be laid before the Assembly (or Parliament) and when this unusual step is taken, the publicity and political pressure it exerts succeeds in bringing about an outcome which the relevant Ombudsman considers to be a satisfactory outcome. The Parliamentary Ombudsman has issued six such special reports in 43 years. Five resulted in satisfactory outcomes and the other one a promise of legislation in the current Coalition Government's Agreement (Programme for Government) to provide compensation to the complainants. Neither the Scottish nor Welsh Public Services Ombudsmen used their power to lay such a special report as a satisfactory outcome has been achieved.

The Ombudsman points out that a former Northern Ireland Ombudsman, Mrs Jill McIvor, recalled in her response that she laid a special report under her Assembly Ombudsman powers which did lead to a satisfactory outcome. It should also be remembered that the office of Ombudsman was created as an alternative to the courts, that injustice caused by maladministration is wider than a breach of the law and that recourse to the Ombudsman is free. It is surely inappropriate that a successful complainant should have to find the funds to seek a remedy in the county court. It is suggested that the special report is the appropriate response to deal with a failure to remedy the injustice caused by maladministration as detailed in an ombudsman's report. This view is shared by all of the Public Services Ombudsmen in the UK and Ireland and also by the Law Commission for England and Wales in its reports on Ombudsmen and the Northern Ireland Ombudsman commends it to the Committee.

## 9. Appointment of the Ombudsman

### Consultation Questions

#### Q28. Do you agree with the proposed appointment process?

**Data:** There was a majority of respondents in agreement (11) and only 5 were not in agreement, although 19 respondents did not comment.

**Ombudsman's Response:** The Ombudsman has given evidence to the Committee on this point and, having considered all of the consultation responses, remains of the view that this is an appropriate method of appointment.

#### Q29. Do you agree with the proposal for the appointment of the Ombudsman to a single fixed term of seven years?

**Data:** There was a majority of respondents in agreement (14). 2 were not in agreement with mixed views on length of tenure, and 17 respondents had no comment to make.

**Ombudsman's Response:** The Ombudsman has given evidence to the Committee on this point and considers that it is the norm in England and Wales for such appointments to have a fixed term. Therefore he supports this proposal although ultimately this is a matter for the Committee and Assembly.

## 10. Staffing & Finance

### Consultation Questions

#### Q30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his Human Resources Strategy?

**Data:** The majority of respondents (15) were of the view he should appoint staff directly and no respondents disagreed.

**Ombudsman's Response:** The Ombudsman notes and welcomes this response and has set out his detailed view at page 27.

**Q31. Do you agree that the current link with the judicial salary scale should be maintained?**

**Data:** The majority of respondents (7) were of the view that this would be appropriate although there were 4 who disagreed. Much of the contention appeared to be around the question of length of tenure.

**Ombudsman's Response:** As the Deloitte Review noted current practice in the UK and Ireland is to align the Ombudsman with judicial salary scales and as the Welsh Ombudsman commented in his response, this is appropriate as the Ombudsman is engaged in providing redress for injustice across a wide range of public services.

**11. Governance & Accountability**

**Consultation Questions**

**Q32. Arrangements for the Ombudsman to appear before a Committee of the Assembly?**

**Data:** There was strong support for this. 17 respondents were of the view that this would be appropriate. No respondent took an opposite view and 16 made no comment.

**Ombudsman's Response:** The Ombudsman agrees wholeheartedly with this Review recommendation and has given evidence to that effect. It is of course a matter for the Assembly to determine how it organises the work of its Committees, but one of the respondents made an interesting proposal which would treat the Ombudsman in a similar fashion to the Comptroller and Auditor General.

**12. Other Issues**

In the Consultation Paper, Section 12 sought responses on four specific issues. In addition to the responses on these points (1-4), the opportunity is taken to discuss other issues raised in the responses or by the Northern Ireland Ombudsman.

**1. Statutory Bar**

A couple of the consultation responses (the Public Services Ombudsman for Wales and an academic, Brian Thompson) mention the statutory bar. This is a provision which stipulates that where a complainant has or has had resort to an alternative remedy including the courts, that the Ombudsman shall not accept the complaint unless, in the exercise of discretion, the Ombudsman is of the view that it would be unreasonable to expect the complainant to have or have had resort to that alternative remedy. The statutory bar is a feature of all of the UK's ombudsmen's legislation and the local provisions are in the Assembly Ombudsman Order, article 10 (3),(4), and the Commissioner for Complaints Order, article 9(3),(4). The Law Commission for England and Wales have proposed a reform, that there should be a presumption that the Ombudsman may accept a case (or as they term it, open an investigation) coupled with a broad discretion to decline to accept a case. The Law Commission made this proposal in a Consultation paper issued in September 2010 (*Public Services Ombudsmen* LC CP 196) and it goes further than their previous proposal in 2008 in *Administrative Redress: Public Bodies and the Citizen* (2008) LC CP187). The Ombudsmen in England and Wales have welcomed this proposal.

**Ombudsman's Response:** The Ombudsman agrees with his colleagues' support for the Law Commission's proposal and suggests that the Committee include such a provision in the Bill. The Welsh Ombudsman also supports the Law Commission's proposal that the courts be given a power to stay a case and refer it to an ombudsman, for the ombudsman to decide if the case should be accepted.

The Ombudsman thinks that this is an interesting proposal but would not wish to recommend it without the Lord Chief Justice being consulted.



## 2. Power to seek advice

The Welsh Ombudsman and the Parliamentary Ombudsman recommended that the Ombudsman should have power to obtain advice as he/she will never be in a position to retain a full range of the necessary expertise in the staff of the office.

**Ombudsman Response:** The Ombudsman agrees with his colleague's view and suggests that the Committee include such a provision in the Bill.

## 3. Local Government Standards

The Welsh Ombudsman commented that his duties included the investigation of complaints about breaches of the statutory Codes of Conduct for Local Councillors. He said that the investigative skills of the office were suited to this task but noted that the work can be controversial.

**Ombudsman's Response:** The Ombudsman notes that there is a consultation on local government including proposals on standards which would confer on the office an investigation role similar to that of the PSOW. It is felt appropriate that the issue be dealt with as part of that other consultation exercise to which the Ombudsman will be responding in due course.

## 4. Ombudsmen and Commissioners and Duplication

The Welsh Ombudsman commented that care should be exercised in creating bodies and he was of the view that it was inappropriate to equip an advocacy body with investigative powers. An academic (Brian Thompson) suggested that in a couple of year's time it would be appropriate for the Assembly to follow the course taken by the Scottish Parliament and conduct a review of Commissioners and Ombudsmen with a view to rationalising their numbers and roles.

**Ombudsman's Response:** The Ombudsman reiterates his views as stated in evidence to the Committee on 30 July 2010 that advocacy is incompatible with an advocacy role and that the crowded landscape of ombudsmen and commissioners be reviewed.

## 5. Older Persons

The response from the Older Persons Advocate, Dame Joan Harbinson, could be considered to deal with point 4 above as well as the general issue in Question 20 about co-operation with other Ombudsmen and focused on a perceived gap in the protection of the rights and interests of older people provided by the current Ombudsmen and Commissions/Commissioners in Northern Ireland. Dame Joan appreciated that it is a tricky matter for an Ombudsman to conclude a Memorandum of Understanding with a body within jurisdiction, but thought that the situation in Wales might repay some study where the Ombudsman and the Older Persons Commissioner are finalising a protocol. In principle Dame Joan thought that it would be possible to draft such a Memorandum to provide for co-operation and to define roles and responsibilities with a view to avoiding duplication. This would include recognising in the MoU the Ombudsman's specific right to investigate if the other body was to be involved in a maladministration case.

Dame Joan was supportive of the proposal to confer on the Ombudsman an own initiative power of investigation, providing that it was done together with or with the support of any body which had responsibilities in the same area.

**Ombudsman's Response:** The Ombudsman welcomes the support for co-operation and for the own initiative power. The situation in Wales should be considered in order to ascertain if the MOU avoids giving the perception to the public that the Ombudsman's independence and impartiality would be adversely affected by virtue of an agreement covering co-operation with other bodies.

**6. Officer of the Assembly**

The Ombudsman suggests that the Committee include in the Bill a provision specifically declaring the Ombudsman to be an Officer of the Assembly.

**7. Sign-posting Duty**

The Ombudsman suggests that the Committee include in the Bill a provision requiring bodies within jurisdiction to provide information about the right to make a complaint to the Ombudsman which would be the equivalent of sections 22 and 32 in the Scottish and Welsh legislation respectively.

**8. Transfer of Staff, Property and Liabilities and Undetermined Complaints**

The Ombudsman's Office is currently staffed mainly with secondees from the NICS and some secondments from the wider public sector. This practice has evolved although the Ombudsman in both pieces of legislation<sup>2</sup> has a power to '*appoint such officers as he may determine with the approval of the Department as to numbers and conditions of service*'. The Ombudsman has sought legal advice and this has confirmed his view that these provisions do permit him to employ staff directly. The position already has been recognised by one consultee in the responses.

Although it has been his practice to date to staff his office through the use of secondments, the majority of consultees [numbers out of 33] recognise the need for the Ombudsman to employ staff directly. If the Committee decides to proceed with a Bill creating a merger of the two offices and the creation of a single office, the draughtsman will need to consider appropriate provisions to ensure the transfer of staff, property, liabilities and unresolved complaints as in the Scottish legislation of 2002<sup>3</sup> and the Welsh equivalent of 2005<sup>4</sup>

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2 Article 7(1) of the Ombudsman (NI) Order 1996 and Article 61 of the Commissioner for Complaints Order 1996.

3 Section 26 and Schedule 7 of the Scottish Public Services Ombudsman Act 2002.

4 Section 37 Schedule 5 of Public Services Ombudsman (Wales) Act 2005.

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## Appendix 1

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

#### List of Respondees

- A2B Access to Benefits
- Age NI
- Response from Individual who requested name and contact details not be published
- Austrian Ombudsman Board
- Brian Thompson, University of Liverpool
- British and Irish Ombudsman Association
- Central Procurement Directive
- Colleges of Further Education in Northern Ireland
- Department for Enterprise, Trade and Investment
- Education and Library Boards
- Equality Commission for NI
- General Medical Council
- General Teaching Council for Northern Ireland
- HSC Patient and Client Council
- Jill McIvor (former Ombudsman)
- Law Society for NI
- Lisburn City Council
- Loughs Agency
- Maurice Hayes (former Ombudsman)
- Newtownabbey Borough Council
- Northern Ireland Audit Office
- Northern Ireland Certification Office
- Northern Ireland Civil Service HR Branches
- Northern Ireland Federation for Housing Associations
- Older Persons Advocate
- Parliamentary and Health Service Ombudsman
- PSO for Wales
- Regulation and Quality Improvement Authority
- Scottish Public Service Ombudsman
- South Eastern HSC Trust
- The Prisoner Ombudsman
- Utility Regulator

## Appendix 2

## Summary of Answers to the Consultation Questions

Question	Yes	No	No Comment
1. Would the people of Northern Ireland be more effectively served in the future if a single Ombudsman's office is established, with powers to investigate complaints about government departments and public bodies in Northern Ireland?	21	1	11
2. If a merged office was created, should it be called the Northern Ireland Public Services Ombudsman OR the Public Services Ombudsman for Northern Ireland?	6 4 1 (NIO)		22
3. Do you think that the Ombudsman should not only have the power to resolve complaints but should also seek to improve public administration as part of his/her work?	17	3	13
4. Should the Ombudsman have a power to conduct an investigation or systemic review on his/her own initiative given the overlap with other bodies?	15	7	11
5. Do you want the Ombudsman to have the power to provide guidance on good administrative practice that public bodies would be required/expected to take into account?	21 12	1 4	11 17
6. Do you think that the Ombudsman should play a 'design authority' role in public sector complaints processes?	13	5	14
7. Should the broad principle of 'following the public pound' be the basis on which bodies will be included within the Ombudsman's jurisdiction?	14	5	14
8. Is it necessary to list the bodies within the Ombudsman's jurisdiction on the face of the legislation or could the list be made elsewhere? Should the Office of the First Minister and deputy First Minister have responsibility of maintaining an up to date list? If it is necessary to list the bodies within the Ombudsman's jurisdiction in the legislation should the bodies listed at paragraph 4.6 be added to the list?	13 11 8	4 2 1	16 20 24
9. Do you think that public sector employment issues should be excluded from the Ombudsman's jurisdiction?	17	3	13
10. Do you believe that professional judgement in social care should be included in the Ombudsman's jurisdiction?	8	5	20
11. Should the legislation ensure that complaints to the Ombudsman would not need to be referred by a MLA but would allow for complainants, if they wish, to ask their MLA to refer a complaint on their behalf and to be involved?	22		11

Question	Yes	No	No Comment
12. Do you think that the person making the complaint should be able to choose to submit their complaints either orally or in writing and what means of submission should be available?	15	8	10
13. Should a definition be written in the legislation to specify that electronic submissions by email and website form and text messages may be used to submit a complaint?	12	7	14
14. Should the definition of a person's aggrieved representative be amended to match that in the Scottish and Welsh legislation?	15		18
15. Should bodies within jurisdiction be able to refer a complaint to the Ombudsman and if so under what circumstances?	8	6	19
16. In Scotland the Ombudsman legislation allows for a listed authority to refer a case to the Ombudsman where there had been a public allegation that injustice had been caused by maladministration on the listed authority's part to one or more individuals and that the listed authority had unsuccessfully sought to resolve the matter. In Scotland if the Ombudsman was not satisfied that both of those conditions were met, the case would not be accepted. Should a similar provision be included in the new Northern Ireland legislation?	12	2	19
17. Should the existing powers in relation to the conduct of an investigation by an Ombudsman be continued? Should additional power enabling the Ombudsman to require the provision of any facility from a person who may be able to provide information or produce a document be included in the legislation?	17	2	14
18. Should a person about whom an adverse comment might be made in an Ombudsman's report have the opportunity to make representations on the proposed comments and if such an adverse comment remains in the Report, that the person's representations are fairly included?	16	2	15
19. Do you want the Ombudsman to have the power to take any action needed to resolve a complaint in addition to, or instead of conducting an investigation?	17		16
20. Do you think that the Ombudsman should be authorised to co-operate with other Ombudsmen in the UK and Ireland in matters which overlap their jurisdictions?	14	4	15
21. Do you think the proposals on the arrangements for the making of and publicising of reports are sufficient?	21		12
22. Do you have any views on the proposals for the alternative arrangements in which there would be no (published) report as in the Welsh model?	13		20
23. Should the Ombudsman be able to make annual reports and other reports on the discharge of functions in such manner and in such frequency as he/she thinks fit?	11	4	18
	15	3	15

Question	Yes	No	No Comment
24. Should the Ombudsman be able to share information with other Ombudsmen in the UK and ROI and also that the equivalent Welsh provisions relating to cases involving health or safety be adopted?	19		14
25. Should the Ombudsman have a power to share information for health and safety and that it should be broadened as indicated at 7.8 above?	15		18
26. Should the Ombudsman make and publicise a special report to deal with the situation where the Ombudsman is not satisfied with a body's response to his recommendations on redress following a finding of maladministration that has caused injustice?	16	2	15
27. Should the mechanism for allowing a complainant to seek compensation in the County Court where a body had failed to implement a recommendation of the Ombudsman be <b>(a) removed completely</b> or (b) retained only in relation to local government bodies?	12	5	16
28. What do you think about the proposed appointment process? Are there any other conditions you would like to see?	11	3	19
29. Should the Ombudsman be appointed for a single fixed term of seven years?	14	2	17
30. Should the Ombudsman be able to employ staff directly to his Office and also to provide for secondment in his/her Human Resources Strategy?	15		18
31. Should the current link with the judicial salary scale be maintained?	7	4	22
32. Should there be arrangements for the Ombudsman to appear before a Committee of the Assembly to give an account in relation to his performance, resources and salary?	17		16



Northern Ireland  
Assembly

Appendix 4

# 2012 Consultation Paper and Responses





## Appendix 4 - 2012 Consultation Paper and Responses

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## Chairperson to Key Stakeholders 17.07.2012

**Mike Nesbitt MLA, Chairman**

**Committee for the Office of the First Minister and deputy First Minister**

[First Minister and Deputy First Minister]

[Assembly Commission (Speaker c/o Tony Logue, Clerk to the Commission)]

[Committee Chairs (including PAC and Audit Committee)]

[Ombudsman]

[Equality Commission]

[Human Rights Commission]

17 July 2012

Dear Stakeholder,

**Committee Legislative Proposals - Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints**

As you will be aware the Committee for the Office of the First Minister and deputy First Minister has been working to develop legislation to update and reform the offices of the Assembly Ombudsman and Commissioner for Complaints – currently provided for in the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996.

The current position was reviewed in a report from Deloitte in 2004 commissioned by OFMDFM. The Ombudsman engaged with the Committee in 2010 and asked it to consider taking the matter forward. Consequently the Committee carried out a consultation exercise between September and December 2010. The Committee also engaged with OFMDFM who were reviewing the Deloitte recommendations. OFMDFM indicated by letter that they would not be bringing forward legislation, due to resource constraints and competing priorities, but were in support of the Committee pursuing the matter.

As a result of its deliberations the Committee has agreed in principle to bring forward legislation to establish a single office to be known as the Northern Ireland Public Services Ombudsman. The legislation will broadly cover the range of powers, responsibilities and duties contained in the two current pieces of legislation.

The Committee has now reached a point where it wishes to consult with a number of key stakeholders on the Committee's decisions to date on a range of policy issues and on a small number of outstanding issues – set out in Appendix 1 to this letter.

Accordingly, I should be grateful for your organisation's views on the policy decisions set out in Appendix 1 and any other policy areas where you consider decisions are required.

Your response should be forwarded to [committee.ofmdfm@niassembly.gov.uk](mailto:committee.ofmdfm@niassembly.gov.uk) to reach the Committee office no later than Friday 28 September 2012.

Yours sincerely,



**MLA**  
**Committee Chairman**

# Appendix - Policy Proposals.docx

## Appendix 1

The proposed Bill should provide for the combining of the present offices of the Assembly Ombudsman and the Commissioner for Complaints into one new office to be known as the Northern Ireland Public Services Ombudsman (NIPSO), and,

SUBJECT TO THE MATTERS SET OUT BELOW

provide that the new office of NIPSO should have the same powers, responsibilities and duties as are currently provided for in the Commissioner for Complaints (Northern Ireland) Order 1996 and the Ombudsman (Northern Ireland) Order 1996.

### 1. **Appointment and removal of Ombudsman and vacancy in the office**

- a. The Bill would provide for the Assembly Commission to undertake the necessary recruitment and selection exercise to identify a preferred candidate.
- b. In relation to the final, formal appointment stage, the Committee is taking advice from the Draftsperson on the competence of the Bill in relation to a range of appointment options:
  - by Her Majesty
  - by Her Majesty on nomination by the Assembly
  - by the Assembly
  - by the Assembly Commission
- c. The Bill would provide for removal of the NIPSO due to ill health or misconduct.
- d. The Bill would also provide for circumstances where a vacancy in the office of NIPSO arose.
- e. The NIPSO would be an officer of the Assembly in the same way as the Comptroller and Auditor General is.

### 2. **Duration of appointment**

- a. NIPSO appointment should be for a single, non-renewable, seven year term

### 3. **Ineligibility of certain persons for appointment**

- a. Bill should include a mechanism to deal with potential conflicts of interest (modelled on the legislation for the Ombudsmen in Scotland and Wales).
- b. Persons disqualified from appointment as NIPSO (ie they would be required to resign before taking up appointment) would include
  - i. MPs, MLAs, MEPs
  - ii. Listed Authorities,
  - iii. members/staff/officers of Listed Authorities,
  - iv. and those disqualified from election as MLAs,
- c. Person holding office as NIPSO would be disqualified from appointment or election to:
  - i. any of the above positions;
  - ii. family health service provider and,

- iii. holding any other office or employment in respect of which remuneration or expenses are payable. (Draftsman will be requested to encompass all types of service and rewards)
- d. NIPSO leaving office may not, without the approval of the [Assembly/Assembly Commission] be appointed [or elected] to
  - i. any office which is a listed authority,
  - ii. membership of a listed authority,
  - iii. employment/office holder/staff member of listed authority,
  - iv. Appointment to a paid office by a listed authority.

This restriction starts when the person ceases to hold office as Ombudsman and ends on the expiry of the financial year following the one in which it started.

#### **4. Salary and Pension**

- a. Bill should provide that NIPSO salary (or salary scale) and pension would be determined by the Assembly - for new appointments only.

#### **5. Appointment of Staff & Expenses (+ Transfer of Property/Staff)**

- a. As at present except the Bill should provide for approval of the Assembly (or relevant Assembly Committee) wherever approval of OFMDFM is required at present.
- b. Bill should provide for NIPSO budget to be submitted to the Assembly's Audit Committee for approval.
- c. Bill should provide for transfer of all current Ombudsman/Commissioner for Complaints staff and property to the new office of NIPSO and transition arrangements for staff currently on secondment (the option of returning to civil service or becoming NIPSO employees).

#### **6. Bodies subject to investigation by NIPSO**

- a. Bill should provide for bodies subject to NIPSO jurisdiction to be listed in a schedule with a duty on the Department of Finance and Personnel to keep the schedule up to date subject to Assembly approval.
- b. Bill should provide that all bodies currently within jurisdiction of the Assembly Ombudsman and the Commissioner for Complaints, including North/South bodies, would be within NIPSO's jurisdiction.
- c. The Committee is continuing to consult with the Minister of Education in relation to the Bill providing for schools to be included within the NIPSO's jurisdiction.
- d. Bill should provide for Further Education and Higher Education bodies to be included in the NIPSO jurisdiction.

#### **7. Investigations**

- a. Matters subject to investigation should remain the same except the Bill should provide for the removal of public sector employment issues from NIPSO's jurisdiction.
- b. Bill should provide NIPSO with power to initiate a systemic inquiry (where he or she believes systemic maladministration is taking place) subject to the NIPSO giving detailed reasons and evidence in a notice to the relevant Member of the NI Executive.
- c. Investigation of professional/clinical judgments in the area of health and social care. Bill should provide for the NIPSO to exercise the current power of the Commissioner for

Complaints to investigate complaints about the exercise of clinical judgment in health care – making use of a panel of suitably qualified experts and keeping the relevant professional body informed.

- d. Bill should also provide for the NIPSO to investigate exercise of professional judgement in relation to complaints about social care without requirement to first find maladministration.

## **8. Complaints mechanisms**

- a. Bill should provide that complaints may be made to NIPSO by the individual who suffers injustice or by an MLA on their behalf or by an aggrieved person's representative (person who appears to the Ombudsman to be appropriate)
- b. Bill to provide that NIPSO should have discretion to accept complaints referred by a listed authority.
- c. Bill should provide that complaints can made in writing or orally and that a complaint made orally should be reduced to writing by NIPSO within 10 working days and approved by the complainant.
- d. Bill should remove the residency requirement stating that only those resident in NI may complain.

## **9. Time limit for complaints**

- a. Bill should provide that complaints must be made within six months of the complainant receiving the listed body's final decision in writing on his or her complaint and that this decision represents the conclusion of the final stage of the body's internal complaints procedure.
- b. Bill should place a duty on a listed body, when informing a complainant of the listed body's final decision at the conclusion of any internal complaints procedure, to inform a complainant in writing of his or her right to refer the matter to the NIPSO and details of how to do so.
- c. Bill should provide NIPSO with discretion to investigate complaints outside the six month time limit on same basis as at present, namely, where NIPSO "considers that there are special circumstances which make it proper to do so."

## **10. Reports on investigations**

- a. The Bill should provide for the Ombudsman to send his or her reports on investigations (or statement of reasons for not investigating/discontinuing) to
  - i. the head of the department/body being complained about;
  - ii. any other person alleged to have taken the action complained of;
  - iii. the person who made the complaint
  - iv. any Assembly member assisting the Complainant
  - v. anybody else that the NIPSO feels appropriate.
- b. Existing discretionary reporting powers should be retained.

## **11. Application for compensation (by complainant)**

Bill should provide, in respect of all listed bodies (including Health Service Providers), that where NIPSO finds that a complainant has sustained injustice in consequence of maladministration by a listed body, then the Complainant may apply to the county court for an order for damages to be paid to him or her by that listed body – (on same basis as currently in the Commissioner for Complaints (Northern Ireland) Order 1996).

**12. Application for relief (by Commissioner for Complaints)**

Bill should provide this power for NIPSO in respect of all bodies within the NIPSO's jurisdiction – namely, the current power in the Commissioner for Complaints Order to request the Attorney General to apply to the High Court for the grant of relief where the Commissioner believes that a body is likely to continue to engage or has previously engaged in conduct that amounted to the maladministration complained of. The High Court may then place injunctions or restraints on the body in question to prevent it engaging in such conduct again.

**13. Reports to the Assembly (Special Reports)**

- a. Bill should provide for the NIPSO to lay reports before the Assembly – as currently provided for in the Ombudsman (Northern Ireland) Order 1996 - including the ability for the NIPSO to lay a special report where he or she is not satisfied with a body's response to recommendations for redress.
- b. Bill should provide that the OFMDFM Committee may request to be briefed on any report laid or other matter.
- c. Ombudsman reports should be presented to the OFMDFM Committee. The OFMDFM Committee may refer a report to any Assembly Committee with responsibility for the issues dealt with in a report.

**14. Disclosure of Information**

- a. The current position in Northern Ireland is that the Secretary of State or a head of department can give notice to the Ombudsman that, in his or her opinion, that disclosure of certain information would be prejudicial to the safety of NI or the UK or otherwise contrary to the public interest. Where such notice is given nothing in the legislation shall authorise or require the Ombudsman to communicate the said information or documents (or classes of information or documents) to any person.
- b. The Committee is considering whether the Bill should refer to a Northern Ireland Minister (to include the First Minister and deputy First Minister) giving such notice rather than "head of department".
- c. The Committee is also considering whether the Secretary of State's power to give such notice remains necessary, including any areas which might require the retention of the Secretary of State's power to give notice - where the NIPSO's jurisdiction and investigations may overlap with matters for which the Secretary of State/UK Ministers retain responsibility.
- d. The Committee is seeking clarification and advice in relation to these issues

**15. Legal Privilege**

- a. The current position under the Ombudsman Order is that legal privilege cannot prevent the Ombudsman having access to papers.
- b. Bill should make similar provision in relation to all bodies within the NIPSO's jurisdiction. The draftsman will be asked to advise on the effect of this in conjunction with extension of the county court enforcement mechanism.

**16. Information Sharing/Co-operation**

- a. Bill should provide for the sharing of information by the NIPSO on the basis provided for in the existing Orders.
- b. Bill should also provide for the NIPSO to share information not only with the Information Commissioner but also with other Ombudsmen throughout the UK and the Republic of Ireland, to be listed in a schedule to the Bill

- 
- c. Bill should allow NIPSO to co-operate with other Ombudsmen throughout the UK and the Republic of Ireland in matters which overlap their jurisdictions.

**17. Financial accountability of the Ombudsman**

- a. Bill should provide for the NIPSO to appear before a Committee of the Assembly to give an account in relation to his or her performance, resources and salary.
- b. Bill should provide for submission by NIPSO of estimated expenditure to relevant Assembly Committee (Audit Committee) [5 months] in advance of relevant financial year.
- c. Bill should provide for scrutiny of NIPSO accounts by the Comptroller & Auditor General and additionally to allow the C&AG to conduct reviews of the economy, efficiency & effectiveness of the NIPSO (but not his or her policy objectives) and report to the relevant Assembly Committee.
- d. Expenses/allowances (mileage/subsistence etc) would mirror NI Civil Service rates.

**18. Public Procurement**

- a. Bill should provide for investigation of public procurement complaints (on the basis provided for currently in the Commissioner for Complaints (NI) Order 1996) in respect of all bodies within the NIPSO's jurisdiction and without any statutory bar of the sort currently found in the Ombudsman (NI) Order 1996.

**19. Requirement to Provide Facilities**

- a. Currently, where the Ombudsman believes that a body may be able to supply information or documents relevant to an investigation there is no requirement for the body to provide any facilities (eg photocopiers, computers) that would assist the Ombudsman in investigating the complaint.
- b. In Wales the Ombudsman may require a body he or she believes is able to supply relevant information to also "provide any facility [the Ombudsman] may reasonably require".
- c. Bill should make similar provision in relation to NIPSO.

# Health Committee Response

**Committee for Health  
Social Services and Public Safety**

Room 410  
Parliament Buildings  
Tel: +44 (0) 28 90521841

**From:** Kathryn Bell

**To:** Alyn Hicks, Clerk of the Committee for OFMDFM

**Date:** 18 September 2012

**Subject:** Legislative Proposals for the Office of the Ombudsman

At its meeting on 12 September 2012 the Committee discussed your correspondence seeking views on Legislative Proposals for the Office of the Ombudsman.

Members expressed the view that the Ombudsman should be given sufficient power to be able to make an impact on issues and should have the power to reverse decisions and issue substantial levels of compensation.

Kathryn Bell

Clerk



# Education Committee Response

**Committee for Education**

Room 241

Parliament Buildings

Tel: +44 (0)28 9052 1821

Fax: +44 (0)28 9052 1371

**To:** Alyn Hicks

Clerk to the Committee for the Office of the First Minister and deputy First Minister

**From:** Peter McCallion

Clerk to the Committee for Education

**Date:** 21 September 2012

**Subject:** Legislative Proposals for the Office of the Ombudsman

At its meeting of 19 September 2012, the Committee for Education noted your correspondence of 18 July 2012 regarding legislative proposals for the Office of the Ombudsman.

The Committee expressed some concern that the proposals did not appear to include an Ombudsman for primary and post-primary education. Members would therefore ask to be kept informed regarding the development and the progress of the proposals for Northern Ireland Public Services Ombudsman.

Peter McCallion

Committee Clerk

# Employment and Learning Committee Response

## Committee for Employment and Learning

Room 416  
Parliament Buildings  
Tel: +44 (0)28 9052 1448  
cathie.white@niassembly.gov.uk

**To:** Alyn Hicks, Clerk to the Committee for the Office of First Minister and deputy First Minister  
**From:** Cathie White, Clerk to the Committee for Employment and Learning  
**Date:** 19 September 2012  
**Subject:** Committee for Employment and Learning response Legislative Proposals for the Office of the Ombudsman and Commissioner for Complaints

Alyn,

At its meeting today, the Committee for Employment and Learning considered the Legislative Proposals for the Office of the Ombudsman and Commissioner for Complaints and agreed to forward their views on these proposals.

The Committee is in agreement with the proposed legislation but would like to comment on some specific policy areas.

### **Bodies subject to investigation by NIPSO.**

At sub-paragraph (d) the suggestion that the bill should provide for Further Education and Higher Education bodies to be included in the NIPSO jurisdiction.

The Committee strongly believe that the Ombudsman and Commissioner for Complaints should have jurisdiction of Further Education and Higher Education institutions as they currently have nowhere to lodge complaints except through the tribunal route.

### **Investigations**

At sub-paragraph (b) it is suggested that the bill provide NIPSO with the power to initiate a systematic inquiry into perceived systematic maladministration subject to the provision of detailed reasons and evidence.

The Committee support the suggestion that there is a need to have a mechanism where a detailed inquiry can be carried out.

### **Complaints mechanisms**

The Committee agree with the suggested provisions for the lodging and processing of complaints to the Ombudsman and Commissioner for Complaints

### **Time Limit for Complaints**

The Committee support the time limits suggested, as they provide the complainant with a degree of flexibility following the conclusion of the internal complaints procedure and with the fact that the listed bodies final decision informs the complainant of his/her right to refer the matter to the NIPSO.

I should be grateful if you would bring the attached correspondence to the attention of your Chairperson and Committee.

Regards,



**Cathie White**

## Culture Arts and Leisure Committee Response

**From:** Wilson, Lucia

**Sent:** 21 September 2012 16:48

**To:** Hicks, Alyn

**Subject:** Response to the OFMDFM Committee on legislative proposals for the Office the Ombudsman

Dear Alyn

At the CAL Committee meeting of 20 September, the Committee decided to make a nil response on the legislative proposals for the Office of the Ombudsman.

If you need further information, please let me know.

Regards

Lucia

Lucia Wilson  
Asssembly Clerk  
CAL Committee  
Room 416  
Tel: 028 90521783  
Mobile: 07769 557262

# Committee for Finance and Personnel Response

**Committee for Finance and Personnel**

Room 419

Parliament Buildings

**From:** Shane McAteer

Clerk to the Committee for Finance and Personnel

**Date:** 26 September 2012

**To:** Alyn Hicks, Clerk to the Committee for the Office of the First Minister and deputy First Minister

## **Legislative Proposals for the Office of the NI Ombudsman**

The Committee for Finance and Personnel, at its meeting on 26 September 2012, agreed the following response to the Committee for the Office of the First Minister and deputy Minister.

The Committee for Finance and Personnel has been concerned about the disparity in the roles of the Ombudsman in relation to dealing with complaints about the actions of Government departments and the actions of public bodies. This is due to limitations on the Ombudsman's ability to investigate procurement issues as The Ombudsman (NI) Order 1996 contains a statutory bar excluding the Ombudsman from investigating procurement complaints about Departments and their agencies. There is no such bar contained within the Commissioner for Complaints (NI) Order 1996. Members welcome the proposal from the OFMDFM Committee that this anomaly will be addressed.

The Committee discussed this legislative anomaly during a briefing from the Ombudsman on 1 February 2012. During this session, members also heard about the proposed change to the current two-office model into a single-office model, such as that which operates in the Scottish Parliament and Welsh Assembly, and which may improve the efficiency of the office. The Ombudsman also briefed members on the proposal that ombudsmen in the NI, Scottish and Welsh jurisdictions could initiate joint investigations. In addition, the Committee also noted a proposal to give the Ombudsman the power to launch "own-initiative" investigations similar to the power held by the Ombudsman in the Republic of Ireland.

The Committee for Finance and Personnel welcomes the opportunity to contribute to deliberations on this important issue and would request that it is updated on the progress of this review.

**Shane McAteer**

**T 21843**

# Public Accounts Committee Response

## Public Accounts Committee

Mr Mike Nesbitt  
Chairperson of the OFMDFM Committee  
Room 412  
Parliament Buildings

Room 371  
Parliament Buildings  
Ballymiscaw  
BELFAST  
BT4 3XX

Tel: (028) 9052 1208  
Fax: (028) 9052 0366  
E: pac.committee@niassembly.gov.uk  
aoibhinn.treanor@niassembly.gov.uk

26 September 2012

Dear Mike,

### **Committee Legislative Proposals - Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints**

Thank you for your letter of 18 July 2012.

The Public Accounts Committee wished to respond to endorse the widespread support for increasing the powers of the Ombudsman.

Members discussed the interface of the Ombudsman's work with that of the Comptroller and Auditor General in terms of following public money, and will be interested to see the existing liaison between the two offices develop as the new arrangements are finalised.

The Committee is in favour of the option that the Ombudsman be granted new discretionary powers, inter alia to initiate proactive inquiries, as an important addition to the governance arrangements of this office.

The Committee works closely with the Comptroller and Auditor General, who is also an Officer of the Assembly, a position which grants him independent status but also affords the Assembly via, primarily, the Public Accounts Committee the wise counsel of a trusted scrutiny partner.

It is to be hoped that your Committee too will benefit from the support and advice of the Ombudsman as officer of the Assembly.

Yours sincerely,



**Michaela Boyle**  
**Chairperson of the Public Accounts Committee**

# Memo to Public Accounts Committee

**Committee for the Office of First Minister  
and deputy First Minister**

Room 435  
Parliament Buildings  
Tel: +44 (0)28 9052 1904

**From:** Alyn Hicks

Clerk to the Committee for the  
Office of the First Minister and deputy First Minister

**Date:** 6 November 2012

**To:** Aoibhinn Treanor, Public Accounts Committee Clerk

**Subject:** Legislative Proposals for the Office of the Ombudsman

Thank you for the Public Accounts Committee's response to the OFMDFM Committee's policy proposals for legislation regarding the Assembly Ombudsman and the Northern Ireland Commissioner for Complaints, which the Committee considered at its meeting on 24 October 2012.

At that meeting the Committee considered a number of other responses from key stakeholders and one of the issues raised was the inclusion of the C&AG and the Assembly Commission on the list of bodies that would be within the jurisdiction of the proposed NIPSO.

The response from the Ombudsman indicated that the C&AG has expressed a wish that in relation to complaints of maladministration the Northern Ireland Audit Office would come within the Ombudsman's jurisdiction. By way of background I note that the Accounts Commission for Scotland, Audit Scotland and the Auditor General for Scotland are listed bodies within the jurisdiction of the Scottish Public Sector Ombudsman. (Sch.2, Part 2, Scottish Public Services Ombudsman Act 2002)

I should be grateful for the Public Accounts Committee's view on the inclusion of the C&AG within the proposed NIPSO's jurisdiction.

**Alyn Hicks**

**Committee Clerk**

# Public Accounts Committee Response

**Public Accounts Committee**

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**From:** Aoibhinn Treanor

Clerk to the Public Accounts Committee

**To:** Alyn Hicks, Clerk to the OFMDFM Committee

**Date:** 13 November 2012

**Subject:** Extension of Remit of Ombudsman to NIAO

1. The Committee considered it your memo of 6 November at last week's meeting and consulted the C&AG, who was in attendance at the meeting.
2. Both the Committee and the C&AG agreed that to bring the NIAO within the remit of the Ombudsman would be a welcome development.
3. Please do not hesitate to contact me, Alyn, if there is anything further I can clarify.

Aoibhinn

# Speaker's Response

FOR THE OMBUDSMAN

COMMITTEE

## The Speaker



Northern Ireland  
Assembly

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**Mr Mike Nesbitt MLA**  
**Chairman**  
**Committee for the Office of the First Minister and deputy First Minister**  
**Room 435**  
**Parliament Buildings**

**25 September 2012**

Dear Mike,

### **Committee Legislative Proposals – Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints**

The Assembly Commission welcomes the opportunity to respond to the Committee's considerations relating to legislative proposals for the reform of the offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints into one new office to be known as the Northern Ireland Public Services Ombudsman (NIPSO). The Commission recognises the role of your Committee in taking forward this worthwhile piece of legislation.

The Commission considered the content of your proposals and agreed their response at their meeting on the 25 September 2012. The Commission felt that many of the areas raised in the consultation document related to wider policy issues which would not be appropriate for the corporate body of the Assembly to comment on, however, following an examination of the governance elements raised within the consultation, the Commission wished to respond to the following matters, namely:

- **Eligibility and Future Appointments**

The Commission noted the desirability of establishing eligibility criteria for the NIPSO. In this regard, the Commission would draw the Committee's attention to the Commission's recent experience of devising similar criteria and in conducting similar recruitment exercises. The Committee may wish to consider the need to balance the requirement for confidence in the independence and probity of the office with the desirability of attracting the best possible field of potential candidates for the role. In addition, it might be more appropriate for the approval mechanism for the NIPSO's future appointments to rest with an appropriate Committee (as opposed to the Assembly Commission or the whole Assembly).

- **Recruitment, Selection and Appointment**

The Commission noted that in essence, beyond the Assembly itself, there is no obvious appropriate alternative other than the Assembly Commission for the recruitment, selection and identification of a preferred candidate. The Commission has agreed that it

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could provide the appropriate support for the recruitment and selection process having recently managed the recruitment of the Comptroller and Auditor General and the Assembly Commissioner for Standards.

- **Salary/Financial Autonomy**

The Commission noted that should the legislation proceed on the basis that the position of the NIPSO would operate as an officer of the Assembly, it may be appropriate for the Assembly Commission to consider the most appropriate process for determining the salary and pension arrangements for the post. The Commission seeks the Committees consideration of this matter.

In relation to the governance and accountability of NIPSO, the Commission agrees that approval should be granted from the Assembly and that the NIPSO should submit their budget to an appropriate Committee for consideration and approval.

- **Staff / Expenses**

The Commission noted the Committee may wish to review the range of issues that are likely to arise should staff transfer from one entity to another. These issues can include TUPE considerations, general issues related to terms and conditions of employment, preservation of staff pension entitlements, etc. The Commission also noted that the Bill proposes that expenses/allowances of NIPSO (e.g. mileage or subsistence rates, etc) could mirror Civil Service rates. Given that NIPSO will be an officer of the Assembly, it might be more appropriate that the rates payable should be as defined by NIPSO or, alternatively, by the Commission rather than the NICS.


- **Resources / Costs**

The Commission is content to incur costs associated with the recruitment and selection process for the NIPSO and with the drafting of the proposed Bill. The Commission would ask the Committee to give active consideration to the budgetary implications associated with the establishment of the NIPSO. The Commission recognises that the Bill will contain a financial and explanatory memorandum but the scope of the role could lead to an increase in costs and the Commission would encourage the Committee to assure itself that these costs have been accurately identified.

I again thank you for the opportunity to respond and hope that the Committee find the enclosed comments useful in its deliberations.

I look forward to future contact in the development of this piece of legislation.

Best regards,



**Mr William Hay MLA**

# Chairperson to Speaker



Northern Ireland  
Assembly

**Mike Nesbitt MLA, Chairperson**

**Committee for the Office of the First Minister and deputy First Minister**

Mr William Hay MLA  
Speaker of the Assembly  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

30 October 2012

Dear William

## **RE: OFMDFM COMMITTEE BILL ON THE OMBUDSMAN**

Thank you for your response to the Committee's policy proposals in relation to proposed legislation regarding the Assembly Ombudsman and the Northern Ireland Commissioner for Complaints.

At its meeting of 24 October 2012, the Committee considered responses from a number of key stakeholders to the policy proposals and one of the issues raised was the inclusion of the C&AG and the Assembly Commission on the list of bodies that would be within the jurisdiction of the proposed NIPSO.

The Committee agreed to seek the Assembly Commission's views on the inclusion of the Commission on the list of bodies within the jurisdiction of the proposed NIPSO.

The Committee noted that the Scottish Parliamentary Corporation is within the jurisdiction of the Scottish Public Services Ombudsman and the Welsh Assembly is within the jurisdiction of the Welsh Public Services Ombudsman.

The Committee also noted your suggestion that the mechanism for releasing the NIPSO from the post-appointment restriction rest with an appropriate Committee. Were the Commission to be one of the bodies which the Ombudsman could investigate then your suggestion would appear to address any potential conflict of interest arising in that regard.

*Committee for the Office of the First Minister and deputy First Minister  
Room 435, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX  
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SPEAKER'S OFFICE

However, the Committee would welcome your view on the inclusion of the Commission on the list of bodies within the proposed NIPSO's jurisdiction. In particular, the Committee would welcome the Commission's view on any conflict of interest which could arise as a result of the Commission's envisaged role in the recruitment and selection process and how any such potential conflict could be addressed.

Yours Sincerely

A handwritten signature in black ink that reads "Mike Nesbitt". The signature is written in a cursive style with a horizontal line underneath the name.

Mike Nesbitt MLA  
Chairperson OFMDFM Committee

**Committee for the Office of the First Minister and deputy First Minister**  
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# Speaker's Response

## The Speaker



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**Mike Nesbitt MLA**  
Chairperson  
Committee for the Office of the First Minister and deputy First Minister  
Room 435  
Parliament Buildings

**12 November 2012**

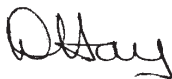
Dear Mike,

### **OFMDFM COMMITTEE BILL ON THE OMBUDSMAN**

Thank you for your letter dated 30 October 2012. You have raised a number of issues in relation to the role of the Assembly Commission within the proposed draft legislation, as set out above. It is my intention to take the views of the Assembly Commission on the issues raised, at the earliest opportunity.

I will provide you with a fuller response following that consultation.

Yours sincerely,



**William Hay MLA**

# Speaker's Response

**Mike Nesbitt MLA**  
**Chairperson**  
**Committee for the Office of the First Minister and deputy First Minister**  
**Room 435**  
**Parliament Buildings**

**27 November 2012**

Dear Mike,

**Committee Legislative Proposals – Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints**

Thank you for your letter dated 30 October 2012 in which you raised two issues for consideration by the Assembly Commission. I can confirm that the Assembly Commission met on 6 November 2012 and gave consideration to the matters raised. On the question of the inclusion of the Assembly Commission on the list of bodies to come within the jurisdiction of NIPSO, the Assembly Commission agreed that it should be included.

The second point raised relates to potential conflict of interest in any recruitment and selection role for the Assembly Commission in the establishment of NIPSO. The Assembly Commission is of the view that, as the Corporate Body of the Assembly, it is best placed to perform this function. The Assembly Commission has acted in a similar capacity in the appointment of the Comptroller and Auditor General and the Assembly Commissioner for Standards whilst ensuring openness and transparency in the process.

If you have any other issues in this regard please do not hesitate to contact me.

Yours sincerely,

**William Hay MLA**

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# Ombudsman Response



Northern Ireland  
**Ombudsman**

Mr Mike Nesbitt MLA  
Chairman Committee for OFMdfM  
Northern Ireland Assembly  
Room 435  
Parliament Buildings  
Ballymiscaw  
Stormont  
BT4 3XX

28 September 2012

Dear *Mr. Nesbitt*,

**RESPONSE TO OFMDFM COMMITTEE LEGISLATIVE PROPOSALS TO REFORM THE OFFICE OF THE ASSEMBLY OMBUDSMAN FOR NORTHERN IRELAND AND THE NORTHERN IRELAND COMMISSIONER FOR COMPLAINTS**

Thank you for the opportunity to comment upon the legislative proposals of the Committee of the Office of the First Minister and deputy First Minister (the Committee) as set out in your letter and consultation document of 17 July 2012.

I have detailed my response to the Committee's proposals in a separate document attached for your consideration. I would be happy to provide further clarification if you consider that would be helpful or answer any queries you or the Committee may have in relation to the paper.

Yours sincerely

**TOM FRAWLEY CBE**  
Northern Ireland Ombudsman

ASSEMBLY OMBUDSMAN FOR NORTHERN IRELAND  
NORTHERN IRELAND COMMISSIONER FOR COMPLAINTS

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# Ombudsman Response



## Response to July 2012 OFMDFM Committee Consultation on Legislative Proposals to Reform the Office of the Assembly Ombudsman for Northern Ireland the Northern Ireland Commissioner for Complaints

28 September 2012

### Response to OFMDFM Committee Legislative Proposals

#### Introduction

The Ombudsman welcomes the opportunity to provide commentary and his views on the policy decisions reached to date set out in Appendix 1 of the letter from the Chair of the Committee for OFMDFM (the Committee) dated 17 July 2012. The Ombudsman welcomes the proposal to merge the offices of Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints into a single office to be known as the Northern Ireland Public Services Ombudsman.

The Ombudsman notes that his existing powers, responsibilities and duties currently provided for in the Commissioner for Complaints (NI) Order 1996 and the Ombudsman (NI) Order 1996 (the 1996 Orders) are to remain subject to the matters set out in Appendix 1. The Ombudsman welcomes this approach with one exception of the issue of the removal of the statutory bar on Ombudsman investigations where the complainant has a legal remedy or right of appeal or review as recommended by the Law Commission for England and Wales (the Commission) in its report on Public Services Ombudsman<sup>1</sup>. The Ombudsman's views on this and other relevant Commission proposals are set out at Part 2 of this paper. Part 1 of this paper records the Ombudsman's views on the matters set out in Appendix 1. For ease of reference, the subject headings set out in Appendix 1 will be followed by the Ombudsman in structuring his response to the July 2012 consultation document.

#### Part 1 - Ombudsman's Response to the Matters set out in Appendix 1

##### 1. Appointment and Removal of Ombudsman and Vacancy in the Office

- (a) Subject to the Committee's decision on the possible inclusion of the Assembly Commission in the Ombudsman's jurisdiction as recommended by the Deloitte Review (2004) [the Review], the Ombudsman welcomes the proposal that the Assembly Commission will be responsible for the relevant recruitment and selection process to identify a preferred candidate. The issue of the Assembly Commission's coming within the Ombudsman's jurisdiction is dealt with at section 6 below.
- (b) In relation to the final, formal appointment stage, the Ombudsman notes that the Committee is awaiting advice from the draftsman on the competence of the Bill in relation to the identified appointment options. In relation to the range of appointment options identified below, it is the Ombudsman's view that the preferred option would be appointment by Her Majesty on nomination by the Assembly.

1 Law Commission No 329 HC 1136

- (c) The Ombudsman agrees that the Bill should provide for the removal of NIPSO due to ill health or misconduct. The Ombudsman notes that those are two of the current grounds for removal of the Ombudsman from office. The additional grounds in the 1996 Orders are that the Ombudsman may, at his own request, be relieved of office by Her Majesty and further that the Ombudsman may be removed from office by Her Majesty in consequence of an address from the Assembly; and shall in any case vacate office in completing the year of service in which he attains the age of 65 years. With the introduction of age discrimination legislation it is no longer acceptable for an age limit to apply and if it were to remain this would make it difficult for the proposed term of seven years to operate in practice. The Ombudsman considers that the additional ground in the 1996 Orders of removal from office at his own request may also be appropriate for NIPSO as this option exists in the Public Services Ombudsman Wales Act<sup>2</sup>.
- (d) The Ombudsman commends the proposal that the Bill should address the circumstances that should apply when a vacancy for the office of NIPSO arises. The Committee will note that there is currently provision in the 1996 Orders for such an event<sup>3</sup> and for the appointment of an 'acting' Ombudsman. The Ombudsman considers that the Committee should consider replicating these provisions in the Bill.

In addition, the Committee may wish to consider a provision to allow separately for the appointment to a post of Deputy Ombudsman, which is not currently in the 1996 Orders. This would ensure continuity in the NIPSO office in the event that there is an interregnum between the appointment of a new NIPSO and the premature departure for any reason of the incumbent NIPSO. It would also address the problem that may arise where the NIPSO is on an extended absence eg serious illness. The Deputy Ombudsman post would also deal with any matters in the event that an actual conflict or perceived conflict situation arises and the NIPSO is for that reason unable to act. While the 1996 Orders make no specific provision for a Deputy Ombudsman appointment, there is provision<sup>4</sup> to appoint such officers as the Ombudsman may determine with the approval of the Department (OFMDFM) as to numbers and conditions of service. It is noteworthy that the Scottish legislation provides for the appointment by the Parliamentary Corporation of up to three Deputy Ombudsmen whose tenure is term limited (five years). The Scottish Ombudsman's functions may be exercised by a Deputy if the Office of the Ombudsman is vacant or the Ombudsman is for "any reason unable to act". This would deal with the instances where there is an actual or perceived conflict of interest. A further example of the Deputy Role is the Data Protection Act 1998 where there is specific provision for the Information Commissioner to appoint one or more Deputy Commissioners. The Deputy Commissioner role in that legislation is not term limited although the Information Commissioner's appointment is for a fixed term.

The Ombudsman considers that while there are differing models, the Deputy Ombudsman role is particularly beneficial where there is an interval between the departure of the former and the arrival of the newly appointed NIPSO as it will provide business continuity for the NIPSO office.

- (e) The Ombudsman welcomes the proposal that NIPSO should be an officer of the Assembly in the same way as the C&AG.

## 2. Duration of Appointment

- (a) The Ombudsman welcomes the proposal for an appointment for a single, non-renewable term of seven years.

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2 Paragraph 3 (3) (a) of the

3 Article 6 of the Ombudsman (NI) Order 1996 and article 5 of the Commissioner for Complaints (NI) Order 1996

4 Article 7 of the Ombudsman (NI) Order 1996 and article 6 of the Commissioner for Complaints (NI) Order 1996



### 3. Ineligibility of certain persons for appointment

- (a) The Ombudsman notes the proposal that the Bill should include a mechanism to deal with potential conflicts of interest (modelled on the legislation for the Ombudsmen in Scotland and Wales). The Ombudsman notes, as above, that there is a specific provision in the Scottish legislation<sup>5</sup> for the Ombudsman to delegate to a Deputy Ombudsman where the Office is vacant or is for any reason 'unable to act' which would include actual or perceived conflicts of interest. There is no specific provision in the Welsh legislation for dealing with conflicts of interest although there is a general power for the Welsh Ombudsman to delegate his functions to a member of staff at his discretion<sup>6</sup>. The Ombudsman welcomes proposals for provisions of the Bill to deal with actual or potential conflicts of interest.
- (b) The Ombudsman notes and welcomes the proposal to disqualify certain persons from appointment as NIPSO and notes that this reflects similar arrangements for the Public Services Ombudsman for Wales. The Ombudsman is aware of developing proposals that would, if agreed, provide for the functions of a Judicial Appointments Ombudsman to be transferred to the NIPSO. This may require consideration of possible differing disqualifications as provided for in the Justice Act 2002<sup>7</sup> for the NIPSO or his or her Deputy Ombudsman.
- (c) The Ombudsman notes the circumstances in which family health service providers and any office or employment would be disqualified from appointment or election to any of the positions of MPs, MLAs, MEPs, listed authorities, members of officers of listed authorities. The Ombudsman welcomes this proposal.
- (d) The Ombudsman welcomes the proposal for a restriction on appointments that NIPSO may undertake on leaving office. However, the Ombudsman considers that the requirement that such matters be subject to the approval of the Assembly Commission is potentially problematic. The fact that such an appointment would be subject to the Approval of the Assembly Commission may give rise to potential or possible conflict of interest if the Assembly Commission were to be a body within the jurisdiction of NIPSO.
- (e) The Ombudsman welcomes the proposal that NIPSO would be an officer of the Assembly in the same way as the Controller and Auditor General (C&AG). The Ombudsman considers that this status is important as both he and the C&AG have unique and "complementary" roles in scrutinising the performance of public bodies as key elements of the architecture of accountability in Northern Ireland. The Ombudsman considers that it is important in relation to those roles that there is no duplication of work and there is the opportunity for the Ombudsman to undertake systemic reviews following full consultation with the C&AG<sup>8</sup>.

### 4. Salary and Pension

- (a) The Ombudsman notes the proposal that the Bill should provide that NIPSO's salary or salary scale and pension should be determined for the Assembly for new appointments only. The Ombudsman would draw the attention of the Committee to the Part 2 of the Review which considered, in detail, the salary of the Ombudsman. It was noted in the Review that the comparability of the office of the Ombudsman to the status of Permanent Secretary which had continued from 1969 to 1988 was inappropriate. The Review document records the fact that in 1988 there was a linkage of the Ombudsman salary to the Civil Service Grade 3 and latterly the Senior Civil Service Grade of Deputy Secretary. Further, the Review established that the office of the Ombudsman

5 Section 1(4) of Scottish Public Services Ombudsman Act 2002

6 Paragraph 13 of Schedule 1 of the Public Sector Ombudsman (Wales) Act 2005

7 Paragraph 2 of Schedule 3A of Justice Act (NI) 2002

8 Deloitte Review paragraph 8.28

has never been evaluated under JESP and this remains the position. However, the Review questioned the validity of applying JESP for the SCS to the quasi-judicial and independent office of the Ombudsman and considered a salary linkage to the SCS scale to be inappropriate. As a result, the Ombudsman's salary was placed on a judicial scale. The Review considered an analysis of the Ombudsman's remuneration to other public services posts as follows:

- with the exception of Scotland, all other Ombudsmen in the British Isles have a salary linked to judicial offices and their salaries are higher than that of the NI Ombudsman;
- the salary of the Scottish Ombudsman is significantly out of line at the time of the Review;
- the salary of the NI Ombudsman is currently between PTR and HPTR points in the NICS Deputy Secretary pay band and is within the pay range of NI Permanent Secretaries [MA to check with TF];
- the NI Ombudsman's salary is less than that of the C&AG for NI;
- the NI Ombudsman's salary is linked to judicial group 6.2 salary.

The comparative salary position of the Ombudsman as identified by the Review should take account of the judicial salary scales for 2012-13<sup>9</sup>. The Ombudsman considers that given the proposal to extend the remit and jurisdictions of NIPSO and to add the functions relating to the proposed Local Government ethical Standards require that the salary of the Welsh Ombudsman (currently at Group 5) is an appropriate comparator. The Review did recommend this approach. The rationale for the link to judicial salary flows from the quasi-judicial nature of the work of the Ombudsman and this also underscores the independence of the role, ensuring that the NIPSO is not compromised on the conduct of any of his/her statutory functions. The Ombudsman agrees with the conclusions of the Review and is strongly of the view that the link to judicial salary is an appropriate mechanism for determining the salary of NIPSO. The Ombudsman's salary is set by Statutory Rule and the Review considered that the Ombudsman's salary should be a matter for resolution of the Assembly based on advice from Corporate HR Group, at the time of the Review, of DFP. At the time the salary of the C&AG was set by the Assembly, it is currently set by the Audit Committee.

## **5. Appointment of Staff and Expenses (plus transfer of property/staff)**

- (a) The Ombudsman notes that as at present except where the Bill requires approval of the Assembly or a relevant Assembly Committee, OFMDFM approval should be required in relation to appointment of staff, terms and conditions and expenses. The Ombudsman considers that in order to underscore his "independence" and to ensure there is no perception of lack of independence from a Department he oversees that the existing provisions in the 1996 Orders requiring approval of the Department of the OFMDFM for numbers and conditions of service of Ombudsman staff is inappropriate. It follows that the Ombudsman considers this would be inappropriate for the new NIPSO model and notes that no such provision exists in the C&AG legislation.
- (b) The Ombudsman notes and welcomes the proposal that the NIPSO budget should be submitted to the Assembly's Audit Committee for approval.
- (c) The Ombudsman agrees that the Bill should provide for the transfer of all current staff and property to the new office of NIPSO and for relevant transitional arrangements for staff currently on secondment to be agreed. Of particular relevance are provisions in relation to staff of the Ombudsman's offices and their pensions. Currently a project has commenced in the Ombudsman's office to consider whether the transfer of staff would attract the TUPE regulations. Legal advice has been obtained and further substantive work on this issue is being undertaken. The Bill should also provide for the transfer of

all outstanding complaints and information obtained by the Ombudsman in relation to ongoing investigations under the 1996 Orders.

## 6. Bodies subject to investigation by NIPSO

- (a) The proposal is that the Bill should provide for bodies subject to NIPSO to be listed in a schedule and that the Department of Finance and Personnel (DFP (NI)) should be responsible for keeping the schedule up to date subject to Assembly approval. The Ombudsman welcomes the proposal that there be a list of bodies in the NIPSO's jurisdiction and also that DFP (NI) should have the duty to maintain the list of bodies within the NIPSO jurisdiction. This was the position before the Transfer of Functions (NI) Order 1999. The reasoning being that when a new body is created or an extant body is removed, DFP(NI) would always be informed given its treasury functions and it is considered appropriate that DFP (NI) should be 'gatekeeper' for the NIPSO schedule of bodies in jurisdiction. However, the 1996 Orders do not make provision for a requirement that Assembly approval is obtained before a new body can be added to the list and this may simply be a reference to the existing requirement that the actual legislation creating a new body must have been through the Assembly legislative process. The Ombudsman considers that any additional Assembly approval for additions to or removals from the list would be unnecessary.
- (b) The Ombudsman agrees that all bodies currently within the jurisdiction of the Assembly Ombudsman including North/South bodies should remain within the jurisdiction of NIPSO subject to the bodies referred to at (c) and (d) of this section (schools and subject to further consultation and colleges of further and higher education). The Ombudsman would draw the Committee's attention to the additional bodies outlined in paragraph 4.6 of the Committee's 2010 consultation document and he considers it important that these bodies should be included in the NIPSO's jurisdiction. Notably the bodies include the Assembly Commission and the Northern Ireland Audit Office. In particular the C&AG has expressed a wish that in relation to complaints of maladministration that the Northern Ireland Audit Office should be subject to the jurisdiction of the Ombudsman and awaits the Ombudsman Bill as an appropriate vehicle for this. The Ombudsman is unclear if these bodies were considered for inclusion and that the Committee has decided to exclude these bodies. The Ombudsman considers that these bodies do provide public services and should be in the NIPSO's jurisdiction as proposed by the Review. At paragraphs 4.7 and 4.8 of the 2010 consultation document, the issue of the appropriate test for bodies to be included in the NIPSO's jurisdiction was explored. There does not appear to be a decision made by the Committee in this regard.
- (c) In relation to the issue of the consultation with the Minister of Education, the Ombudsman will provide his comments on this proposal in separate correspondence.
- (d) The Ombudsman welcomes the proposed inclusion of the Further Education and Higher Education sectors in the jurisdiction of the NIPSO.

## 7. Investigations

- (a) The Ombudsman welcomes the proposal to maintain existing investigation powers and also the removal of employment issues from NIPSO jurisdiction.
- (b) The Ombudsman considers that there is a need to clarify the proposed power to investigate systemic failure which he considers is a power he already has under the 1996 Orders where he receives a complaint from an individual who alleges that he or she has sustained an injustice. The Review recommended an investigation on the '**NIPSO's own initiative**', this relates to circumstances where the NIPSO has not received a complaint but where he/she considers there is evidence of administrative failure that warrants investigation by him. The Ombudsman accepts the proposal that

the NIPSO should offer an explanation for the commencement of such an investigation to the relevant Minister.

- (c) The 2010 consultation document at paragraph 12.2 raised the issue of NIPSO obtaining advice from relevant professional advisors. The Ombudsman considers that the power to seek advice should extend to all of the NIPSO's investigations. The Local Government and Welsh Ombudsmen seek advice from a range of professionals in the areas of planning, surveying and social care where they consider specialist expertise is necessary in order to make an informed judgment on a complaint.
- (d) The Ombudsman welcomes the proposal that the NIPSO should be able to accept complaints relating to the exercise of judgement in social care cases, without first establishing "maladministration".

## **8. Complaints Mechanisms**

- (a) The Ombudsman welcomes the proposed twin track approach and removal of MLA filter for complaints made to NIPSO.
- (b) The Ombudsman welcomes the power for NIPSO to accept a complaint from a body in his jurisdiction and considers this should be at NIPSO's discretion and subject to the same conditions outlined in section 6 of the Public Services Ombudsman for Wales Act 2005 as follows:

### *6. Requirements: complaints referred to the Ombudsman*

- (1) *The requirements mentioned in section 2(3)(b) are that—*
  - (a) *the complaint must have been made to the listed authority by a person who would have been entitled under section 4 to make the complaint to the Ombudsman;*
  - (b) *the complaint must have been made to the listed authority before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matters alleged in the complaint;*
  - (c) *the complaint must be referred to the Ombudsman in writing;*
  - (d) *the complaint must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority.*
- (2) *It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.*
- (c) The Ombudsman agrees that a complaint should be made orally or in writing and the question as to whether a complaint is duly made is a matter to be decided by the NIPSO as at present under the 1996 Orders. However, he considers that the proposed ten day time limit for an oral complaint to be produced in written form may prove difficult in practice where individuals may be ill or vulnerable for reasons such as learning disability or poor mental health. This time limit does not exist in any other Ombudsman legislation. It is important that the NIPSO should have discretion as to acceptance of the form of communication used for submitting a complaint given the ongoing advances in technology and communication.
- (d) The Ombudsman welcomes the proposed removal of the residency requirement.

## **9. Time Limit for Complaints**

- (a) The reduction in the period from 12 months to six months from the date of the body's decision on a complaint is outwith existing provisions and with other Ombudsman legislation. The Ombudsman would urge the Committee to reconsider this proposal as he believes it disadvantages the most vulnerable or those who are unable to act

promptly in bringing a complaint due to personal circumstances. In this respect, the Ombudsman would invite the Committee to consider retaining the 12 month time limit with discretion in relation 'special circumstances'.

- (b) The Ombudsman welcomes a proposed duty for government bodies, agencies and public authorities to signpost complainants to the NIPSO.
- (c) The Ombudsman welcomes the discretion as provided for in the 1996 Orders for a discretion to extend the time limit in "special circumstances" which make it proper to do so but considers that as stated at 9a this time limit should be as at present set at twelve months to ensure maximum accessibility to the NIPSO.

## 10. Reports on Investigations

- (a) The Ombudsman welcomes the proposed extension of the power for the NIPSO to disseminate reports or a statement of reasons for not accepting a complaint or continuing an investigation.
- (b) The Ombudsman notes and welcomes the proposal that all existing discretionary powers should be retained in relation to NIPSO reports. In addition, the Ombudsman would seek the power to publish his reports in the public interest. This is a power which the Welsh Ombudsman<sup>10</sup> uses effectively to highlight issues that he considers have significant public interest. An example of a public interest report was identified by the Welsh Ombudsman in his evidence to the Committee on 15 June 2011<sup>11</sup> in relation to a system failure to recall cancer patients for review<sup>12</sup>. The Welsh Ombudsman has informed the Ombudsman that he publishes between 13-16 public interest reports per annum. These serve to increase public awareness of the Ombudsman's office, while disseminating the learning from complaints to relevant public bodies in order to improve public administration.

## 11. Application for Compensation

- (a) The Ombudsman considers that the proposed extension of the County Court enforcement mechanism to all bodies will not necessarily result in greater compliance with NIPSO recommendations as there is already an established pattern of compliance by almost all bodies in his jurisdiction. The County Court mechanism is a feature of the 1969 Act when the Northern Ireland Commissioner for Complaints was the sole route for redress for individuals who had suffered discrimination in allocation of jobs, housing or local government services. The Ombudsman considers that the removal of the employment jurisdiction calls into question the need for this enforcement mechanism given the alternative routes available to a complainant to claim discrimination in the courts, tribunals, the Northern Ireland Human Rights and Equality Commissions and Labour Relations Agency. Further, the Ombudsman considers that the existence of the mechanism may result in a greater reluctance to meet the recommendations of NIPSO for financial redress as a recalcitrant body could simply ignore the NIPSO recommendation and rely on the threat of legal costs and stress of litigation as a deterrent to a complainant to pursue the case in the County Court. The Ombudsman considers the County Court mechanism will increase uncertainty in the process which can be lengthy and unless legally aided, the individual would risk a potential further costs penalty. Given the proposed continuation of the power to "issue a special report" and the proposed extension of the Attorney General's power to seek relief in the High

10 Section 16 of the Public Sector Ombudsman (Wales) Act 2005

11 Hansard Record of 15 June 2011 Committee of the Office of First Minister and deputy First Minister - Legislation to Reform the Office of the Northern Ireland Ombudsman <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2011-2012/June-2011/Legislation-to-Reform-the-Office-of-the-Northern-Ireland-Ombudsman1/>

12 Case 201000665 – <http://www.ombudsman-wales.org.uk/en/investigations/public-interest-reports-listed-by-subject.aspx>

Court in certain cases, it is considered this County Court mechanism is unnecessary. The Ombudsman considers that the appropriate forum for dealing with issues of non-compliance by a body is the Assembly on an appropriate Committee of the Assembly as enforcement of Ombudsman recommendations is a matter for the political rather than judicial arena. This approach has been endorsed by the Law Commission of England and Wales and their recommendation's Public Services Ombudsmen report of 20011 as follows

## Recommendation 12

### **We recommend that recommendations of the public services ombudsmen continue to be part of the political process.**

Should the Committee seek to research this issue further support for this enforcement model can be found in the academic article of R Kirkham, B Thompson and T Buck, "When putting things right goes wrong: enforcing the recommendations of the ombudsman"<sup>13</sup>

#### **12. Application for Relief by Attorney General**

- (a) The Ombudsman notes the proposed extension of the provisions for the application for relief by the Attorney General for Northern Ireland to all bodies in jurisdiction of the NIPSO and welcomes this proposal.

#### **13. Reports to the Assembly (Special Reports)**

- (a) The Ombudsman welcomes the confirmation that NIPSO will have power (which exists in the 1996 Orders) to issue a special report where the NIPSO is not satisfied with a body's response to his recommendation.
- (b) The Ombudsman welcomes the proposal that OFMDFM would support other Assembly Committees being briefed on the NIPSO's "special" reports.
- (c) The Ombudsman considers that the NIPSO should lay his annual report before the Assembly and that he should present all of his reports to a special sub committee of the Assembly for these purposes such as a sub committee of the PAC. This will ensure that his reports are part of the same scrutiny architecture as the C&AG.

#### **14. Disclosure of Information**

- (a-d) The Committee is seeking advice on the issues outlined in these subparagraphs and the Ombudsman awaits that advice and the Committee's deliberations on receipt of that advice.

#### **15. Legal Privilege**

- (a-b) The Ombudsman welcomes the extension of this provision to all bodies in the jurisdiction of the NIPSO.

#### **16. Information Sharing/Co-operation**

- (a) The Ombudsman welcomes the continuation of existing powers to share information with the Information Commissioner and also in health and social care cases the power to share information where the NIPSO has identified a potential risk to the health and well being of any individual.
- (b) The Ombudsman commends the provisions of the Welsh Legislation in relation to joint investigations and sharing of information. The Ombudsman welcomes the proposal to extend the joint investigation and information sharing powers to other Ombudsman in

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13 [2008] *Public Law* 510,

UK and Republic of Ireland and suggests that this power should include the C&AG, all Commissioners and regulators carrying out functions in Northern Ireland where the NIPSO may consider it appropriate to avoid overlap or duplication of investigation or activity.

- (c) The Ombudsman welcomes the proposal to have the power to co-operate with other Ombudsman and is of the view that again this should be extended to other Commissioners and regulators (As in the Welsh Legislation) carrying out their functions in Northern Ireland and in addition this power should extend to the C&AG.

#### **17. Financial Accountability of NIPSO**

- (a) The Ombudsman welcomes the proposal for NIPSO to appear before the Audit Committee of the Assembly to give an account for the financial performance of his Office.
- (b) The Ombudsman notes this proposal however he is concerned at the practical implications for his office of meeting the 5 month deadline.
- (c) The Ombudsman notes and welcomes the proposals for the scrutiny of accounts of NIPSO by C&AG which exists at present and the proposal to permit the C & AG to conduct efficiency reviews.
- (d) The proposed expenses rate for the NIPSO and staff of NICS at present is accepted by the Ombudsman.

#### **18. Public Procurement**

- (a) The Ombudsman welcomes the proposal for the removal of the statutory bar for complaints relating to commercial and contractual matters (including procurement) about Northern Ireland Departments and their agencies.

#### **19. Requirement for Facilities**

- (a-c) The Ombudsman welcomes the proposal for the introduction of a similar provision as currently applies in Wales which would allow bodies to provide any facility for the NIPSO and staff during the course of an investigation.

## **Part 2 - Response of Northern Ireland Ombudsman to Committee for OFMdFM Consultation Document**

### **1. Consultation Questions**

- (a) The Ombudsman notes that the 2012 consultation document does not make reference to a number of the consultation questions that were raised in the 2010 consultation. In particular, the Committee has not included in the proposed NIPSO Bill the authority to take any action to resolve a complaint<sup>14</sup>. The Ombudsman believes this is a necessary tool in remit which offers the potential for early resolution of less complex complaints without the need and related cost for a full investigation. This authority is provided for in the Welsh legislation and the Welsh Ombudsman has informed the Ombudsman that it has proved valuable in offering an effective means of resolving more straightforward complaints such as those involving housing repairs or benefit claims.
- (b) Question 3 of the 2010 consultation also made reference to a role in the NIPSO seeking to improve public administration. This is an important part of an Ombudsman's role as it is essential that bodies learn from complaints and to understand more fully

<sup>14</sup> Equivalent to section 3 of the Public Services Ombudsman (Wales) Act 2005

what constitutes good administration so that good practice can be disseminated across all sectors.

- (c) At question 5 of the 2010 consultation, the power to issue guidance on good administrative practice was identified. The Ombudsman considers that such an authority is important to ensure that the learning from complaints is disseminated to all bodies in jurisdiction again with a view to improving public administration. This power to issue guidance has been provided for in the Welsh and Local Government Ombudsman legislation. The failure to take such guidance into account as in the Welsh legislation should in the view of the Ombudsman possibly constitute a further instance of maladministration.
- (d) 'Follow the public pound' – this issue has not yet been resolved in the proposals that have thus far been developed. There was much debate and evidence taken at Committee in June 2011 from the other Ombudsmen as to how this should be dealt with in the NIPSO Bill. The Welsh Ombudsman has advised<sup>15</sup> that he considers that the focus should not be on the nature of the body providing a public service as to whether they are public or a private provider but rather on the fact that a public service is provided and this would bring the body in jurisdiction. That would be the case in relation to private sector adult social care providers that are now in the jurisdiction of the Local Government Ombudsman and it is proposed that a similar provision will be introduced into the Welsh Ombudsman's remit. This approach if adopted by the Committee would also bring the care and treatment that is publicly funded by hospices under the NIPSO remit. Again this proposal is being developed in Wales. A focus on the provision of public services (whether provided by a public or private entity) would rule out smaller community and voluntary groups who are funded to undertake specific tasks such as providing outings and refreshments for the elderly.
- (e) Formal Hearings – the Ombudsman is strongly of the view that this right should be removed entirely from NIPSO Legislation. It is an adversarial tool in the midst of an inquisitorial role and as such is outwith the classic Ombudsman model. Formal hearings can cause delay and legal expense for the Ombudsman, the body complained of and the complainant. The removal of the employment jurisdiction makes this additional testing of evidence (by way of examination and cross examination) which was originally included to allow officials to test allegations of discrimination in employment matters, to be unnecessary. As proposed in the 2010 consultation document, the right to a formal hearing may be replaced with a right of comment such as that provided for by the Local Government Act<sup>16</sup> and the Ombudsman Act 2001 in the State of Queensland<sup>17</sup>.

Other Issues – A section of the 2010 consultation document dealt with a number of other issues. Paragraph 12.1 of that document made reference to the removal of the statutory bars as recommended by the Law Commission of England and Wales in July 2011. Further, paragraph 12.4 of the consultation document also raises general issues such as the fact that the proposed Ombudsman Bill could be seen as foundation legislation given the need to make provision for other functions to be added such as the proposed jurisdiction in relation to Local Government Standards and the functions of the Judicial Appointments Ombudsman.

Statutory bars - In the Law Commission Report of July 2011 the document made reference to a removal of statutory bars and colleagues in the Ombudsman Association have commented that this should be considered given the Law Commission consultation on the issue, see extract attached at Appendix 1. These proposals may require further consideration and consultation but given the present opportunity presented by the proposed Ombudsman Bill,

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15 AJTC Seminar 'Review of Public Services Ombudsman' London 20 June 2012

16 Section 28(4) of the Local Government Act 1974

17 Section 55 of the Ombudsman Act 2001 State of Queensland

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these proposals are worthy of further Committee consideration so as to ensure that the NIPSO legislation will be the most current in UK and Ireland and will “stand the test of time”. This will, in the Ombudsman’s view, also place Northern Ireland at the forefront of legislative developments in the European and International Ombudsman community.

Local Government Standards – The Review recommended that as in Wales that breaches of the Local Government Statutory Code of Conduct of legislative representatives be investigated by the Ombudsman. This proposal is being developed by the DOE minister and scope for the Ombudsman Bill to include this function should be considered by the Committee.

## Appendix 1

### Extracts from the Law Commission Report Comm 329, 2011 HC 1136 of 2010-12

#### 'STATUTORY BARS

##### **Consultation paper proposals**

- 3.23 By "statutory bars", we mean the statutory provisions, based on section 5(2) of the Parliamentary Commissioner Act 1967, whereby a public services ombudsman cannot open an investigation where the complainant has or had the possibility of recourse to a court, tribunal or other mechanism for review, unless it was not reasonable to expect the complainant to resort or to have resorted to it<sup>18</sup>.
- 3.24 Such a statutory provision does not exist for the Housing Ombudsman; consequently, the discussion following does not affect it.
- 3.25 The first statutory bar was enacted in the Parliamentary Commissioner Act 1967, its purpose being to prevent an overlap between the jurisdiction of the courts and that of the ombudsmen.
- 3.26 Since then, however, there has been a considerable expansion in the ambit of judicial review, such that there is now a clear overlap between the jurisdiction of the ombudsmen and the courts. However, the approach adopted in each of the public services ombudsmen's current statutory bars is identical to that adopted originally in 1967. The effect of this is to create a preference in favour of the Administrative Court, where (but for the existence of the statutory bar) both the Administrative Court and the ombudsman could potentially consider a particular matter<sup>19</sup>.
- 3.27 Provisional proposals to reform the statutory bars formed part of our consultation document on administrative redress. There we provisionally proposed a structured discretion to disapply the existing bars<sup>20</sup>. When we revisited the subject in our recent consultation document, we decided that more fundamental reform was appropriate, given the development of the public services ombudsmen and our wish to simplify and facilitate access to the ombudsmen. Rather than provisionally proposing a structured discretion, we provisionally proposed the removal of the bars completely, thereby allowing the public services ombudsmen to accept complaints where they thought this appropriate<sup>21</sup>.
- 3.28 Specifically, we made three provisional proposals in relation to the statutory bars:
- (1) We provisionally proposed that the existing statutory bars be reformed, creating a general presumption in favour of a public services ombudsman being able to open an investigation.
  - (2) We provisionally proposed that this should be coupled with a broad discretion allowing the public services ombudsmen to decline to open an investigation.

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18 Other 'statutory bars' are contained in Local Government Act 1974, s 26(6); Health Service Commissioner's Act 1993, s 4(1); and Public Service Ombudsman (Wales) Act 2005, s 9.

19 Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.46.

20 Administrative Redress: Public Bodies and the Citizen (2008) Law Commissioner Consultation Paper No 197 paras 5.55 to 5.75

21 Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196 paras 4.38 to 4.47

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- (3) We provisionally proposed that in deciding whether to exercise that discretion the public services ombudsmen should ask themselves whether the complainant has already had or should have had recourse to a court or tribunal<sup>22</sup>.

#### **'Referral to the High Court**

In addition, the Law Commission have suggested that consideration be given the ability of the Ombudsman to make a referral on a point of law to the High Court. There may be situations where the ombudsmen would be forced to abandon an investigation, which they would otherwise be able to conclude, due to a technical legal question that they are not necessarily equipped to resolve. In earlier meetings with the public services ombudsmen, it was also suggested that such a power would be useful to resolve occasional questions as to the jurisdiction of the public services ombudsmen. An extract from the Law Commission report is attached for consideration by the Committee.

#### **'Recommendation 7:**

We recommend that the public services ombudsmen be given a specific power to make a reference to the Administrative Court asking a question on a point of law.

We recommend that intervention by the parties to the original dispute should be allowed.

We recommend that the ombudsmen should be required to notify the parties before making a reference, inviting them to make representations and advising them of their ability to intervene should they want to.

We recommend that the decision to make a reference should be that of the relevant public services ombudsman alone.

We recommend that reference should have to pass the permission stage.

We recommend that the opinion of the Administrative Court should be considered a judgment of the Court for the purposes of section 16 of the Senior Courts Act 1981 and, therefore, potentially subject to appeal to the Court of Appeal.

We recommend that the public services ombudsmen should meet their own costs.

Where parties intervene, we recommend that they should normally meet their own costs.'

# Equality Commission Response

**Equality Commission**

FOR NORTHERN IRELAND

Equality House  
7-9 Shaftesbury Square  
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[www.equalityni.org](http://www.equalityni.org)

27 September 2012

Mr Mike Nesbitt MLA  
Chair  
OFMdFM Committee  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

Dear Chair

**Re: Committee Legislative Proposals – Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints**

Thank you for your letter of 17 July 2012 informing the Commission that, as a result of its deliberations, the Committee has agreed in principle to bring forward legislation to establish a single office to be known as The Northern Ireland Public Services Ombudsman. We appreciate being kept informed and also being consulted on the Committee's decisions to date.

As indicated in our previous submission, we support the general aim of simplifying the arrangements in respect of complaints about Government Departments and public bodies. The Commission considers that the people of Northern Ireland would be more effectively served in the future by the establishment of a single Office governing the current roles of both the Commissioner for Complaints and the Assembly Ombudsman.

Our main substantive comment on the proposals contained in Appendix 1 to your letter of 17 July relates to the proposal that the legislation will remove public sector employment matters from the remit of the Ombudsman. We appreciate that the Tribunal system is specifically designed to address employment matters, and we recognise there is some rationale for removing public sector employment matters from the remit of the Ombudsman as these, in common with private sector employment matters, can be addressed through the Tribunal system. However, in our previous submission we had urged caution in relation to this as the Tribunals are not designed to address issues of maladministration. We

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Chief Commissioner: Michael Wardlow



INVESTOR IN PEOPLE

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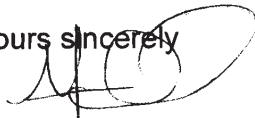
Chief Executive: Evelyn Collins CBE

related, as an example of an issue which would not be addressed through the current Tribunal system, a situation where a person was not considered for a public sector position as the relevant Human Resources Department had lost their application form. There would be no remedy available under the anti-discrimination legislation or employment legislation through the Tribunal system as it stands. This should, in our view, rightly fall within the remit of the Commission to investigate any subsequent complaint of maladministration. We had recommended that any changes to the provision should emphasise that the remit of the office would still extend to administrative issues where there is otherwise a gap in seeking redress.

We had also raised a concern about the provision of a power to undertake investigations without complaint given the potential of overlaps with existing statutory powers of other bodies. We had put forward the role of the Comptroller and Auditor General in this regard, who may be best placed to investigate an issue of wider dimension than an individual complaint. We had also pointed out that the character of the Ombudsman's Office has historically been that of an office which arbitrates between Government and the governed, rather than that of an Inspector General. There is also the practical consideration that conferring a general investigation power may divert resources from dealing with complaints from members of the public.

I trust this is useful.

Yours sincerely



**Michael Wardlow**  
**Chief Commissioner**

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# Audit Committee Response



COMMITTEE  
FOR THE OFMDFM

## AUDIT COMMITTEE

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Mr Mike Nesbitt MLA  
Chairperson, Committee for the Office of the First and deputy First Minister  
Room 435  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

8 October 2012

*Dear Mike,*

Thank you for your letter of 18 July 2012 on the Committee for the Office of the First and deputy First Minister's legislative proposals for the Northern Ireland Public Service Ombudsman (NIPSO). The Audit Committee considered this correspondence at its meeting on 2 October 2012 and agreed that (a) it is content that it should agree the annual estimate of the use of resources of the proposed NIPSO and lay these estimates before the Assembly; and (b) that the Northern Ireland Audit Office (NIAO) should be included in the schedule of bodies subject to scrutiny by the NIPSO.

Further detail is included in the enclosed paper at Annex A.

Please let me know if you require any further information.

Yours sincerely,

**Danny Kinahan MLA**  
Chairperson  
Audit Committee

## **Response from the Audit Committee on the legislative proposals for the Northern Ireland Public Service Ombudsman (NIPSO)**

### **Introduction**

1. This note sets out the Audit Committee's views on the legislative proposals for the Northern Ireland Public Service Ombudsman (NIPSO).

### **Financial Accountability of the NIPSO.**

2. The Audit Committee has noted that paragraph 5b of the Committee for the Office of the First Minister and deputy First Minister's paper states that the bill should provide for the NIPSO budget to be submitted to the Assembly's Audit Committee for approval. Paragraph 17a states that the bill should provide for the NIPSO to appear before a Committee of the Assembly to give an account in relation to his or her performance, resources and salary and 17b states that the bill should provide for submission by NIPSO of estimate expenditure to the Audit Committee [5 months] in advance of the relevant financial year.
3. These proposals would mean that the Audit Committee would carry out a similar role in relation to the NIPSO as it does in respect of the Northern Ireland Audit Office (NIAO).
4. Further to section 66 of the Northern Ireland Act 1998 and Standing Order 58, each year, in place of the Department of Finance and Personnel (DFP), the Audit Committee agrees with the Comptroller and Auditor General an estimate of the use of resources by the NIAO for the next financial year and lays that estimate before the Assembly.
5. The core purpose of the work of the NIAO is to ensure that the Assembly is provided with an effective and truly independent audit assurance in relation to the use of public funds. Removing the NIAO from DFP and the Executive's remit underlines and strengthens the NIAO's independence in holding departments, executive agencies and other public bodies to account for their use of public money.
6. In carrying out its function, the Audit Committee has regard to the advice of DFP and the Public Accounts Committee. There is no legislative requirement for the Comptroller and Auditor General to submit the estimate for the use of resources by the NIAO for the next financial year to the Audit Committee within any particular timescale and this has not proved problematic.
7. In addition to agreeing the NIAO's estimate and laying it before the Assembly, the Audit Committee also undertakes other ancillary functions. These include, inter alia, considering the NIAO's corporate plan, monitoring the NIAO's financial performance and scrutinising the NIAO's annual report and accounts.

8. There are some obvious parallels between the role of the NIAO and the NIPSO. The Ombudsman shall be an officer of the Assembly (in the same way as the Comptroller and Auditor General is). The NIPSO shall undertake investigations into alleged maladministration in government departments and the wider public sector (in much the same way as the NIAO undertakes investigation into financial malpractice in government departments and the wider public sector). In doing so the NIPSO shall report its findings to the Assembly (in much the same way as the NIAO reports to the Assembly).
9. The Audit Committee is therefore satisfied that arrangements should be put in place in order to safeguard the NIPSO's independence from the Executive, and that, in particular, neither DFP nor the Executive should control or direct the access to the reasonable human, material and monetary resources that the NIPSO shall require for undertaking its functions.
10. In support of this principle the Audit Committee is content that it should agree the annual estimate of the use of resources of the proposed NIPSO and lay these estimates before the Assembly. The Audit Committee is also content to undertake any related relevant ancillary functions.

#### **Including the NIAO within the jurisdiction of the proposed NIPSO**

11. Although it is not mentioned in the paper from the Committee for the Office of the First Minister and deputy First Minister, the NIAO has advised that the legislative proposals include a proposal to include the NIAO within the jurisdiction of the proposed NIPSO.
12. The NIAO's complaints procedure, available on its website, enables a complainant to raise any expression of dissatisfaction about the actions or inactions by the NIAO or its staff with the Office. Where appropriate, the NIAO encourage that the complaint is dealt with informally. Should the formal procedure apply, this encompasses three stages, culminating in the C&AG acting as final arbiter. The complainant has no recourse to an independent body if they are unhappy with the C&AG's decision.
13. The NIAO viewed this position as unsatisfactory and had explored with the Assembly Ombudsman the possibility of his office investigating complaints made against the NIAO. The NIAO remain content that the Ombudsman is appropriately placed to fulfil this role. The current legislative proposals provide the opportunity to give effect to this.
14. The Audit Committee is committed to strengthening the accountability of the NIAO and therefore recommends that the NIAO should be included in the schedule of bodies subject to scrutiny by the NIPSO.

#### **Conclusion**

15. The Audit Committee is happy to provide further detail if necessary.



# Justice Committee Response

**Committee for Justice**

Room 242

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E-mail: [committee.justice@niassembly.gov.uk](mailto:committee.justice@niassembly.gov.uk)

**From:** Christine Darrah  
Clerk to the Committee for Justice

**Date:** 26 October 2012

**To:** Alyn Hicks  
Clerk to the Committee for the Office of the First Minister and deputy First Minister

At its meeting on 18 October 2012 the Committee for Justice considered correspondence from the Department of Justice regarding the OFMDFM Committee's legislative proposals in relation to combining the functions of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints into a single Public Services Ombudsman.

The Committee for Justice agreed to forward the correspondence to the Committee for the Office of the First Minister and deputy First Minister and a copy is attached for your information.

**Christine Darrah**  
**Committee Clerk**  
**Enc.**

# Department of Justice to Committee for Justice

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**

[www.dojni.gov.uk](http://www.dojni.gov.uk)

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Our ref SUB/1615/2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Room 242  
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Stormont  
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BT4 3XX

10 October 2012

Dear Christine

## **OFMDFM COMMITTEE'S LEGISLATIVE PROPOSALS REGARDING THE ASSEMBLY OMBUDSMAN AND COMMISSIONER FOR COMPLAINTS**

Thank you for your letter of 28 September which enclosed correspondence from the Clerk to the Committee of the First Minister and deputy First Minister concerning Ombudsman proposals. The Justice Committee sought comments on any likely justice-related implications arising from the proposals to combine the functions of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints into a single Public Services Ombudsman.

The implicit objective of ensuring that Ombudsman services are delivered efficiently and cost effectively is one which chimes with the approach being taken in the Department of Justice.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

**Justice**

[www.dojni.gov.uk](http://www.dojni.gov.uk)

The Committee is aware from previous correspondence – on 17 January and 7 March 2012 (copies of which are enclosed) – that the Department is exploring alternative options for the delivery of the functions of the Northern Ireland Judicial Appointments Ombudsman. This is in the context of the Executive’s review of arm’s length bodies.

DOJ officials are consulting with various stakeholders on the possible combination of these functions with those of the office of the Public Services Ombudsman (proposed by the Committee for the Office of the First Minister and deputy First Minister). Officials intend to brief the Committee and seek its views about this proposal following the conclusion of these consultations.

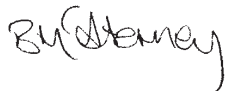
The Department has also been engaged in considering the future of other justice-related Ombudsmen services. The recent public consultation on the future operation of the Office of the Police Ombudsman sought views on whether respondents favoured retaining a separate police ombudsman or creating a broader based justice ombudsman. As you are aware, responses have now been received and engagement will continue with a range of stakeholders, including the Committee, in considering what changes are needed. The analysis of consultation responses and emerging policy and legislative proposals will come before the Committee on 11 October and be the subject of further political and public consultation.

Having already indicated the intention to place the Prisoner Ombudsman on a statutory footing, the Department will continue to explore the potential for developing shared services between Ombudsmen which could help to maximise front-line support and consolidate back-office functions.

FROM THE OFFICE OF THE JUSTICE MINISTER



I hope the Committee finds this response helpful in coming to a view on the matters raised with them by the Committee for the Office of the First Minister and deputy First Minister.



**BARBARA McATAMNEY**  
**DALO**

**ENC**

# OFMDFM Response



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Deputy First Minister**  
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Mr Mike Nesbitt MLA  
Chairman  
OFMDFM Committee  
Room 435, Parliament Buildings  
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BT4 3XX

Our Ref: COR/449/12

21 January 2013

## **OFMDFM COMMITTEE LEGISLATIVE PROPOSALS – ASSEMBLY OMBUDSMAN FOR NORTHERN IRELAND AND THE NORTHERN IRELAND COMMISSIONER FOR COMPLAINTS**

We refer to your letter of 17 July, in which you requested comments on the Committee's consultation on Legislative Proposals for the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints.

OFMDFM has consulted with all NICS Departments and overall we are content in principle with the proposal to merge the offices of the Assembly Ombudsman and Commissioner for Complaints.

There are however a number of specific issues raised by departments which we would wish to bring to the Committee's attention. These are as follows:

- Concerns raised about the development and extension of the role of the proposed office to functions currently fulfilled by other bodies eg the Prison Ombudsman and Health and Social Care Complaints Procedures.
- DOJ, in the context of the Executive's review of Arm's Length Bodies, is giving consideration to the possibility of seeking to combine the functions of the Northern Ireland Judicial Appointments Ombudsman with those of the proposed Public Services Ombudsman.

- In addition, an option in a recent public consultation on the Police Ombudsman was for its functions also to fall within the responsibility of the proposed Public Sector Ombudsman (DoJ).
- Other legislation may be impacted by these proposals and will therefore need to be amended, for example the Commissioner for Public Appointments (NI) Order 1995.
- DEL is content with Further Education Colleges to be included within the future remit of the NIPSO but indicates that this should be confined to the investigation of maladministration only. The Terms of Reference should also set down appropriate timescales for investigations.
- DoE is considering bringing forward ethical standards proposals in the Local Government (Reorganisation) Bill. The proposals in this Bill and those in the OFMDFM Committee's Bill may therefore impact on each other.
- Further clarification is sought in relation to the proposals set out at paragraphs 9 and 11 in Appendix 1.

We have attached in Appendix 1, comments on specific paragraphs, regarding the proposed legislation. The full responses received from departments are attached at Appendix 2.

We would be grateful if you would keep us informed as the draft legislation progresses.

Yours sincerely



**RT HON PETER D ROBINSON MLA**  
**First Minister**



**MARTIN McGUINNESS MLA**  
**deputy First Minister**

# OFMDFM Response Appendix 1 - 21.01.2013

## Appendix 1

The proposed Bill should provide for the combining of the present offices of the Assembly Ombudsman and the Commissioner for Complaints into one new office to be known as the Northern Ireland Public Services Ombudsman (NIPSO), and,

subject to the MATTERS set out below

provide that the new office of NIPSO should have the same powers, responsibilities and duties as are currently provided for in the Commissioner for Complaints (Northern Ireland) Order 1996 and the Ombudsman (Northern Ireland) Order 1996.

### 1. Appointment and removal of Ombudsman and vacancy in the office.

- a. The Bill would provide for the Assembly Commission to undertake the necessary recruitment and selection exercise to identify a preferred candidate.
- b. In relation to the final, formal appointment stage, the Committee is taking advice from the Draftsperson on the competence of the Bill in relation to a range of appointment options:
  - by Her Majesty
  - by Her Majesty on nomination by the Assembly
  - by the Assembly
  - by the Assembly Commission
- c. The Bill would provide for removal of the NIPSO due to ill health or misconduct.
- d. The Bill would also provide for circumstances where a vacancy in the office of NIPSO arose.
- e. The NIPSO would be an officer of the Assembly in the same way as the Comptroller and Auditor General is.

### 2. Duration of appointment

- a. NIPSO appointment should be for a single, non-renewable, seven year term.

### 3. Ineligibility of certain persons for appointment.

- a. Bill should include a mechanism to deal with potential conflicts of interest (modelled on the legislation for the Ombudsmen in Scotland and Wales).
- b. Persons disqualified from **appointment** as NIPSO (**ie they would be required to resign before taking up appointment**) would include:
  - i. MPs, MLAs, MEPs
  - ii. Listed Authorities,
  - iii. members/staff/officers of Listed Authorities,
  - iv. and those disqualified from election as MLAs.
- c. **Person holding office as NIPSO** would be disqualified from appointment or election to:
  - i. any of the above positions;
  - ii. family health service provider and,

- iii. holding any other office or employment in respect of which remuneration or expenses are payable.(Draftsman will be requested to encompass all types of service and rewards).
- d. NIPSO leaving office may not, without the approval of the [Assembly/Assembly Commission] be appointed [or elected] to
  - i. any office which is a listed authority,
  - ii. membership of a listed authority,
  - iii. employment/office holder/staff member of listed authority,
  - iv. Appointment to a paid office by a listed authority.

This restriction starts when the person ceases to hold office as Ombudsman and ends on the expiry of the financial year following the one in which it started.

#### **4. Salary and Pension**

- a. Bill should provide that NIPSO salary (or salary scale) and pension would be determined by the Assembly - for new appointments only.

Paragraph 4 (a) provides for the Ombudsman's salary to be set by the Assembly. The Audit (Northern Ireland) Order 1987 makes similar provision for the Comptroller and Auditor General but sets a maximum (not exceeding the maximum salary for the time being payable to any person employed in the civil service of Northern Ireland). It is considered that a similar or other limiting restriction might be appropriate here.

#### **5. Appointment of Staff & Expenses (+ Transfer of Property/Staff)**

- a. As at present except the Bill should provide for approval of the Assembly (or relevant Assembly Committee) wherever approval of OFMDFM is required at present.
- b. Bill should provide for NIPSO budget to be submitted to the Assembly's Audit Committee for approval.

Paragraph 5 (b) proposes the approval of the office's budget by the Assembly's Audit Committee. The Audit Committee is a specific committee established under the requirements of section 66 (1) of the Northern Ireland Act 1988 to carry out the role specified in Article 6 of the Audit (Northern Ireland) Order 1987 in place of DFR. As such, this committee is very specific to the function of the Northern Ireland Audit Office and consequently it may not be the appropriate reporting location for the Ombudsman's office.

- c. Bill should provide for transfer of all current Ombudsman/Commissioner for Complaints staff and property to the new office of NIPSO and transition arrangements for staff currently on secondment (the option of returning to civil service or becoming NIPSO employees).

Paragraph 5c states that there should be transitional arrangements for staff currently on secondment to return to NICS or become employees of NIPSO. The proposals could go further and been specific to allow NIPSO to become an employer and recruit in its own right.

#### **6. Bodies subject to investigation by NIPSO**

- a. Bill should provide for bodies subject to NIPSO jurisdiction to be listed in a schedule with a duty on the Department of Finance and Personnel to keep the schedule up to date subject to Assembly approval.
- b. Bill should provide that all bodies currently within jurisdiction of the Assembly Ombudsman and the Commissioner for Complaints, including North/South bodies, would be within NIPSO's jurisdiction.



- c. The Committee is continuing to consult with the Minister of Education in relation to the Bill providing for schools to be included within the NIPSO's jurisdiction.
- d. Bill should provide for Further Education and Higher Education bodies to be included in the NIPSO jurisdiction.

The Higher Education sector already has grievance procedures in place which DEL intends to standardise. Only after this will DEL consider extending the remit of the Ombudsman to include them. DEL would therefore request that the proposal to extend the NIPSO's remit to the Higher Education sector be subject to enabling legislation which would only be brought into effect should the review process determine that is the best way forward.

## 7. Investigations

- a. Matters subject to investigation should remain the same except the Bill should provide for the removal of public sector employment issues from NIPSO's jurisdiction.

Paragraph 7a proposes that the Bill "should provide for the removal of public sector employment issues from NIPSO's jurisdiction". Corporate HR within the Department of Finance and Personnel is policy owner for employment issues in the Northern Ireland Civil Service, and this proposal is welcomed. The field for dealing with complaints about employment issues is already very cluttered, with both informal and formal internal grievance processes, the Civil Service Appeals Board, Industrial Tribunals and, increasingly, the Courts, as well as the Ombudsman. It is right and proper that staff should have every opportunity to seek a resolution of a genuine grievance and to obtain redress as appropriate, but the range of avenues available for staff to pursue employment issues is too broad and potentially very resource intensive for the employer. Any rationalisation is to be welcomed.

- b. Bill should provide NIPSO with power to initiate a systemic inquiry (where he or she believes systemic maladministration is taking place) subject to the NIPSO giving detailed reasons and evidence in a notice to the relevant Member of the NI Executive.
- c. Investigation of professional/clinical judgments in the area of health and social care. Bill should provide for the NIPSO to exercise the current power of the Commissioner for Complaints to investigate complaints about the exercise of clinical judgment in health care – making use of a panel of suitably qualified experts and keeping the relevant professional body informed.
- d. Bill should also provide for the NIPSO to investigate exercise of professional judgement in relation to complaints about social care without requirement to first find maladministration.

There is concern about the potential impact of the proposal to provide the NIPSO with the power to initiate systemic inquiries on the Health and Social Care Complaints Procedures. This would represent a significant change in policy, with the potential to shift the focus to systemic reviews. Such a shift could have a negative impact on HSC service users' access to redress, potentially give rise to confusion and duplication with other bodies with the powers to conduct wide ranging reviews and ultimately give rise to increased costs.

In relation to the proposed extension of the Commissioner for Complaints current powers to investigate clinical judgements in the area of health care to include the exercise of professional judgement in relation to complaints about social care, it is important to note that while social workers make professional judgements the vast majority of the social care workforce are unqualified staff. The proposed Bill would therefore have to be clear that "the exercise of professional judgement in social care" refers to the exercise of judgement by individuals who hold a social work qualification recognised by the Northern Ireland Social Care Council (NISCC).

## **8. Complaints mechanisms**

- a. Bill should provide that complaints may be made to NIPSO by the individual who suffers injustice **or** by an MLA on their behalf **or** by an aggrieved person's representative (person who appears to the Ombudsman to be appropriate)
- b. Bill to provide that NIPSO should have discretion to accept complaints referred by a listed authority.
- c. Bill should provide that complaints can made in writing **or** orally and that a complaint made orally should be reduced to writing by NIPSO within 10 working days and approved by the complainant.
- d. Bill should remove the residency requirement stating that only those resident in NI may complain.

In relation to (d) it is not clear what currently unmet demand this would meet nor what consideration has been given to the practicalities and resource implications of investigating and fulfilling redress in respect of complaints from people not resident in Northern Ireland

## **9. Time limit for complaints**

- a. Bill should provide that complaints must be made within six months of the complainant receiving the listed body's final decision in writing on his or her complaint and that this decision represents the conclusion of the final stage of the body's internal complaints procedure.
- b. Bill should place a duty on a listed body, when informing a complainant of the listed body's final decision at the conclusion of any internal complaints procedure, to inform a complainant in writing of his or her right to refer the matter to the NIPSO and details of how to do so.
- c. Bill should provide NIPSO with discretion to investigate complaints outside the six month time limit on same basis as at present, namely, where NIPSO "considers that there are special circumstances which make it proper to do so."

## **10. Reports on investigations**

- a. The Bill should provide for the Ombudsman to send his or her reports on investigations (or statement of reasons for not investigating/discontinuing)
  - i. the head of the department/body being complained about;
  - ii. any other person alleged to have taken the action complained of;
  - iii. the person who made the complaint
  - iv. any Assembly member assisting the Complainant
  - v. anybody else that the NIPSO feels appropriate.
- c. Existing discretionary reporting powers should be retained.

## **11. Application for compensation (by complainant)**

Bill should provide, in respect of all listed bodies (**including Health Service Providers**), that where NIPSO finds that a complainant has sustained injustice in consequence of maladministration by a listed body, then the Complainant may apply to the county court for an order for damages to be paid to him or her by that listed body – (on same basis as currently in the Commissioner for Complaints (Northern Ireland) Order 1996).

**12. Application for relief (by Commissioner for Complaints)**

Bill should provide this power for NIPSO in respect of all bodies within the NIPSO's jurisdiction – namely, the current power in the Commissioner for Complaints Order to request the Attorney General to apply to the High Court for the grant of relief where the Commissioner believes that a body is likely to continue to engage or has previously engaged in conduct that amounted to the maladministration complained of. The High Court may then place injunctions or restraints on the body in question to prevent it engaging in such conduct again.

**13. Reports to the Assembly (Special Reports)**

- a. Bill should provide for the NIPSO to lay reports before the Assembly – as currently provided for in the Ombudsman (Northern Ireland) Order 1996 - including the ability for the NIPSO to lay a special report where he or she is not satisfied with a body's response to recommendations for redress.
- b. Bill should provide that the OFMDFM Committee may request to be briefed on any report laid or other matter.
- c. Ombudsman reports should be presented to the OFMDFM Committee. The OFMDFM Committee may refer a report to any Assembly Committee with responsibility for the issues dealt with in a report.

Consideration should be given as to whether the OFMDFM Committee is best placed to receive these special reports given that, the Department itself could be subject to the investigation. It might be preferable for these reports to go, in the first instance, to the relevant departmental committee or perhaps to the NI Assembly.

**14. Disclosure of Information**

- a. The current position **in Northern Ireland** is that the Secretary of State or a head of department can give notice to the Ombudsman that, in his or her opinion, that disclosure of certain information would be prejudicial to the safety of NI or the UK or otherwise contrary to the public interest. Where such notice is given nothing in the legislation shall authorise or require the Ombudsman to communicate the said information or documents (or classes of information or documents) to any person.
- b. The Committee is considering whether the Bill should refer to a Northern Ireland Minister (to include the First Minister and deputy First Minister) giving such notice rather than "head of department".

There is support for this amendment to bring the legislation in line with the current political context.

- a. The Committee is also considering whether the Secretary of State's power to give such notice remains necessary, including any areas which might require the retention of the Secretary of State's power to give notice - where the NIPSO's jurisdiction and investigations may overlap with matters for which the Secretary of State/UK Ministers retain responsibility.
- b. The Committee is seeking clarification and advice in relation to these issues.

**15. Legal Privilege**

- a. The current position under the Ombudsman Order is that legal privilege cannot prevent the Ombudsman having access to papers.
- b. Bill should make similar provision in relation to all bodies within the NIPSO's jurisdiction. The draftsman will be asked to advise on the effect of this in conjunction with extension of the county court enforcement mechanism.

## **16. Information Sharing/Co-operation**

- a. Bill should provide for the sharing of information by the NIPSO on the basis provided for in the existing Orders.
- b. Bill should also provide for the NIPSO to share information not only with the Information Commissioner but also with other Ombudsmen throughout the UK and the Republic of Ireland, to be listed in a schedule to the Bill.

It is expected that a full analysis of the implications of wider disclosing of information with other agencies including those outside Northern Ireland will be undertaken.

- c. Bill should allow NIPSO to co-operate with other Ombudsmen throughout the UK and the Republic of Ireland in matters which overlap their jurisdictions.

## **17. Financial accountability of the Ombudsman**

- a. Bill should provide for the NIPSO to appear before a Committee of the Assembly to give an account in relation to his or her performance, resources and salary.
- c. Bill should provide for submission by NIPSO of estimated expenditure to relevant Assembly Committee (Audit Committee) [5 months] in advance of relevant financial year.

Paragraph 17 (b) suggests reporting to the Audit Committee. However, as detailed above, this committee was established specifically to meet requirements in the Northern Ireland Act 1988 and the Audit (Northern Ireland) Order 1987 in relation to the NIAO.

This paragraph also specifies a timetable for submission of estimated expenditure to the committee. However it would seem more appropriate for any timeframe or requirement for consideration to be set outside the legislation by any relevant committee to which the office may report. This will allow flexibility to adjust to any change in the date allocations if budget exercises are initiated by the Executive or Treasury which may not allow for the idealised timing in the proposed legislation to be met. This would leave the office in the same position as all other departments except NIAO for which specific legislative requirements are set.

Assuming this project progresses, it is important that there is value for money assessment and a cost analysis are completed before taking a final view.

- a. Bill should provide for scrutiny of NIPSO accounts by the Comptroller & Auditor General and additionally to allow the C&AG to conduct reviews of the economy, efficiency & effectiveness of the NIPSO (but not his or her policy objectives) and report to the relevant Assembly Committee.
- b. Expenses/allowances (mileage/subsistence etc) would mirror NI Civil Service rates.

## **18. Public Procurement**

- a. Bill should provide for investigation of public procurement complaints (on the basis provided for currently in the Commissioner for Complaints (NI) Order 1996) in respect of all bodies within the NIPSO's jurisdiction and without any statutory bar of the sort currently found in the Ombudsman (NI) Order 1996.

Under this proposal there would be no statutory bar on the Ombudsman's powers of investigation of the sort currently found in the Ombudsman (NI) Order 1996. Given that public procurement is a highly regulated area this proposal would pose a number of legal and practical problems. The key issues are as follows:

- Public procurement is a commercial matter highly regulated by European Directives, statutory regulations and fast developing case law;
- The involvement of the Ombudsman would potentially add confusion and costs;
- NI is the only part of the UK where such a proposal is being made in a Bill;

- The proposal would be at odds with the tenor of a recent judgement of the NI Court of Appeal in the case of Traffic Signs and Equipment. This dealt with the case of an economic operator who was unhappy with the court's decision and sought to attack it through alternative means. The judgement clearly took the view that the courts are the correct venue for procurement law disputes.
- The proposal would drive up the overall cost and be impractical, requiring training for NIPSO officials in a highly complex area; it would seriously undermine the time limits for mounting a challenge under the European rules, and it would create an overlap with the courts.

The Ombudsman's involvement in these matters would only serve to confuse the processes for challenging and seeking redress against actions taken by contracting authorities. In addition it is likely to be both expensive and legally questionable. The Ombudsman's role should relate only to matters where departments and centres of procurement expertise fail to meet their service standards when administering procurements. It should not extend into those areas where remedies are already readily available through the courts.

#### **19. Requirement to Provide Facilities**

- a. Currently, where the Ombudsman believes that a body may be able to supply information or documents relevant to an investigation there is no requirement for the body to provide any facilities (eg photocopiers, computers) that would assist the Ombudsman in investigating the complaint.
- b. In Wales the Ombudsman may require a body he or she believes is able to supply relevant information to also "provide any facility [the Ombudsman] may reasonably require".

Bill should make similar provision in relation to NIPSO

## OFMDFM Response Appendix 2 - 21.01.2013

### Appendix 2

#### **Department for Health Social Services and Public Safety**

August 2012

You have asked for my views on the proposals of the Committee for the Office of the First Minister and Deputy First Minister to bring forward legislation to update and reform the offices of Assembly Ombudsman and Commissioner for Complaints.

While I have no objections in principle to the proposed rationalisation of the offices of Assembly Ombudsman and Commissioner for Complaints, there is insufficient detail in the Committee's proposals to allow for substantive comment. It is therefore difficult at this stage in the development of the proposals to assess fully the potential impact in terms of the Health and Social Care Complaints Procedures.

I would, however, want to express some concern about the potential impact of the proposal to provide the NIPSO with the power to initiate systemic inquiries on the Health and Social Care Complaints Procedures. This would represent a significant change in policy, with the potential to shift the focus to systemic reviews. Such a shift could have a negative impact on HSC service users' access to redress, potentially give rise to confusion and duplication with other bodies with the powers to conduct wide ranging reviews and ultimately give rise to increased costs.

With regard to the proposed extension of the Commissioner for Complaints current powers to investigate clinical judgements in the area of health care to include the exercise of professional judgement in relation to complaints about social care, it is important to note that while social workers make professional judgements the vast majority of the social care workforce are unqualified staff. The proposed Bill would therefore have to be clear that "the exercise of professional judgement in social care" refers to the exercise of judgement by individuals who hold a social work qualification recognised by the Northern Ireland Social Care Council (NISCC).

I look forward to the opportunity to comment in more detail on the proposals as work on the proposed Bill progresses.

**Edwin Poots**

**Minister for Health Social Services and Public Safety**

## Department for Social Development

### **Part Input**

The Department for Social Development is content in principle with the OFMdfM Committee's legislative proposals to update and reform the offices of the Assembly Ombudsman and Commissioner for Complaints.

## Department of Education

**COR/449/2012**

Mr Stephen Boyd  
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August 2012

Dear Mr Boyd

**Committee Legislative Proposals: Assembly Ombudsman for NI and the NI  
Commissioner for Complaints**

You recently asked departments for their views on proposals from the Committee for the Office of First Minister and deputy First Minister in relation to the establishment of a single office to be known as the Northern Ireland Public Service Ombudsman.

Minister John O'Dowd's position on the proposed future role of the NI Public Services Ombudsman in relation to complaints of maladministration against schools is set out in his letters of 21 March and 18 July 2012 to the Chair of the Committee for OFMdfM, copies of which are enclosed.

I note that Section 6 c. of Appendix 1 of the Committee's letter states;

**"Bodies subject to investigation by NIPSO - The Committee is continuing to consult with the Minister of Education in relation to the Bill providing for schools to be included within the NIPSO's jurisdiction."**

We have no other comments to make at this point.

Yours sincerely

Mervyn Gregg  
Head of Education Governance

cc DE Private Office  
Paul Sweeney  
John McGrath  
Chris Stewart  
Katrina Godfrey  
Roberta Sterling



FROM THE MINISTER/ÓN AIRE



COR 367/2012

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18 July 2012

Mike a chara,

Thank you for your letter of 11 May seeking clarification of my views with regard to the proposed future role of the Ombudsman in relation to complaints of maladministration.

I have reviewed the proposal carefully as it will apply to schools having regard to the information in your letter about the Ombudsman's residual powers and overarching role. In doing so, I have taken account of the existing arrangements for dealing with appeals against school decisions; education policy developments which could affect these arrangements; and the Department of Education's own power of direction over a school Board of Governors that might unusually refuse to comply with the outcome of a statutory appeal process.

While your proposal in relation to the Ombudsman's residual powers and overarching role seems reasonable, it has the potential to raise complications in the education sector. I therefore hold to the position expressed in my letter of 21 March. Also, there are policy developments which may require further consideration of the Ombudsman's powers over complaints about the special educational needs provision made by schools. I would, therefore, be content for the relevant officials to discuss the implications of this for any future legislation if this would be helpful.

A copy of this letter goes for information to the Committee for Education.

**JOHN O'DOWD MLA**  
Minister for Education



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FROM THE MINISTER/ÓN AIRE



COR 1551/2011

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21 March 2012

Tom a chara

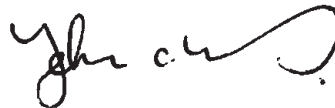
Thank you for your letter of 12 December about the reform of the Office of the NI Ombudsman and in particular seeking my views with regard to the possibility of including schools under the jurisdiction of the Ombudsman.

I have considered your proposal with interest in the context of the role and responsibilities of school Boards of Governors (BoGs), and the limited scope which presently exists for independent review of their decisions in the event of complaints of maladministration.

I agree that there is a good case for establishing a role for the NI Ombudsman in investigating complaints of maladministration against the decisions of school BoGs. I should make it clear, however, that this role would exclude the complaints for which there are alternative independent mechanisms for review as described in the paper enclosed.

In order to facilitate this proposal, I am prepared to formalise the existing arrangements for dealing with school complaints by making it a statutory requirement for BoGs to have written complaints procedures and for them to have regard to guidance on best practice when drawing up or reviewing their procedures.

A copy of this letter goes for information to the Committee for Education.



**JOHN O'DOWD**  
Minister for Education



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## Department of the Environment

### Part 1 –

I note that the Committee has agreed “in principle to bring forward legislation to establish a single office” and I understand the reasons to do so.

However, I wish to, put down a stronger marker against any development of the principle, to extend the role of the proposed office to functions currently fulfilled by other bodies, for example the Prison Ombudsman and the Police Ombudsman respectively.

Recently it has been the case that an argument has been promoted to see an expansive Ombudsmans Office. I strongly believe that police, prison and justice institutions should have independent and separate complaints agencies.

I appreciate that this is not the ambition of the Committee. I very much hope that this is a fully shared position.

### Part 2 –

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Our Ref: COR/778 /2012

**FROM:** Alex Attwood MLA  
**DATE:** October 2012  
**TO:** Private Office OFMdFM

## Consultation on Committee Legislative Proposals – Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints

I refer to your memo of 19 July 2012 seeking my Department’s views on the proposals to develop legislation to update and reform the offices of Assembly Ombudsman and Commissioner for Complaints. You will note that I previously replied to in relation to the above. There is a further matter that I would wish to raise.

In November 2010 the former Executive agreed to policy proposals for local government reform being issued for public consultation. The consultation put forward proposals for a new ethical standards framework for the 11 new councils. The proposed framework includes the introduction of a mandatory Code of Conduct for councillors and associated mechanisms for investigation and adjudication. The consultation also proposed a role for the Northern Ireland Commissioner for Complaints in the new ethical standards framework which would see all written complaints regarding alleged breaches of the mandatory code referred initially to the Commissioner’s office to decide whether a complaint should be referred to the relevant council for local resolution or whether the matter should be retained for investigation by the Commissioner’s office. It was also anticipated that the Commissioner should have a role in adjudicating on cases.

I have considered the responses to the policy consultation and will shortly be asking my Executive colleagues for agreement to the final policy proposals to be taken forward in a Local Government (Reorganisation) Bill. The ethical standard proposals will form part of that Bill.

I am bringing to your attention that the ethical standards proposals in the Local Government (Reorganisation) Bill and the proposals in the OFMdfM Committee Bill may impact on each other. I have asked my officials to monitor and keep me advised of progress on the OFMDFM Committee's Bill and I will, of course, advise the Committee of the final policy proposals that I intend to introduce, once I have agreed these with my Executive colleagues.

**Alex Attwood MLA**  
**Minister of the Environment**

Department of Justice

FROM THE OFFICE OF THE JUSTICE MINISTER



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Your ref: COR/449/2012  
Our ref: COR/789/2012

**From: DAVID FORD MLA  
MINISTER OF JUSTICE**

**15 AUGUST 2012**

**To: RT HON PETER ROBINSON MLA  
FIRST MINISTER**

**MARTIN MCGUINNESS MP MLA  
DEPUTY FIRST MINISTER**

**COR 449/2012: OFMdFM Committee Legislative Proposals - Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints**

Your correspondence of 19 July asked for input to the proposal from the Committee for the Office of the First Minister and deputy First Minister to develop legislation to combine the offices of the Assembly Ombudsman and the Commissioner for Complaints.

I have no concerns about the Committee's objective to ensure that Ombudsman services are delivered efficiently and cost effectively which chimes with the approach being taken in the Department of Justice.

I should like to take this opportunity to advise that the Department of Justice, in the context of the Executive's review of arm's length bodies, is giving consideration to the possibility of seeking to combine the functions of the Northern Ireland Judicial Appointments Ombudsman with those of the

**Building a fair, just and safer community**

FROM THE OFFICE OF THE JUSTICE MINISTER



proposed Public Services Ombudsman. Subject to the views of various stakeholders – including the Lord Chief Justice, the Northern Ireland Judicial Appointments Commission and the Assembly Justice Committee – the Department may wish to consult the OFMDFM Committee in due course about the inclusion of relevant provisions in their forthcoming legislation.

I also recently held a public consultation on the future operation of the Office of the Police Ombudsman, which closed on 8 June 2012. One of the issues put forward for consideration in the consultation was whether the functions of the Police Ombudsman could be located as part of a wider Justice Ombudsman, Justice Ombudsmen or Public Sector Ombudsman service, or should remain as a stand-alone office. My officials are currently analysing the responses to identify proposals for change which may result in agreed changes to the legal and administrative framework.

Having already indicated my intention to place the Prisoner Ombudsman on a statutory footing, I will be continuing to explore the options for bringing together key justice-focused ombudsmen services on a shared service platform which could maximise front-line support and consolidate back-office functions.



**DAVID FORD MLA**  
Minister of Justice

**Department of Finance and Personnel**

<b>Proposal</b>	<b>Paragraph</b>	<b>Response</b>
4. Salary and Pension	4 (a)	Paragraph 4 (a) provides for the Ombudsman's salary to be set by the Assembly. The Audit (Northern Ireland) Order 1987 makes similar provision for the Comptroller and Auditor General but sets a maximum (not exceeding the maximum salary for the time being payable to any person employed in the civil service of Northern Ireland) and I would question whether a similar or other limiting restriction might be appropriate here.
5. Appointment of Staff & Expenses (+ Transfer of Property/ Staff)	5 (b)	Paragraph 5 (b) proposes the approval of the office's budget by the Assembly's Audit Committee. I would flag that the Audit Committee is a specific committee established under the requirements of section 66 (1) of the Northern Ireland Act 1988 to carry out the role specified in Article 6 of the Audit (Northern Ireland) Order 1987 in place of DFP As such, this committee is very specific to the function of the Northern Ireland Audit Office and consequently it may not be the appropriate reporting location for the Ombudsman's office.
	5 (c)	Paragraph 5c states that there should be transitional arrangements for staff currently on secondment to return to NICS or become employees of NIPSO. I thought the proposals would have gone further and been specific to allow NIPSO to become an employer and recruit in its own right. However, perhaps that is implicit.
7. Investigations	7 (a)	Paragraph 7a proposes that the Bill "should provide for the removal of public sector employment issues from NIPSO's jurisdiction". Within my Department, Corporate HR is policy owner for employment issues in the Northern Ireland Civil Service, and I welcome this proposal. The field for dealing with complaints about employment issues is already very cluttered, with both informal and formal internal grievance processes, the Civil Service Appeals Board, Industrial Tribunals and, increasingly, the Courts, as well as the Ombudsman. It is right and proper that staff should have every opportunity to seek a resolution of a genuine grievance and to obtain redress as appropriate, but the range of avenues available for staff to pursue employment issues is in my view too broad and potentially very resource intensive for the employer. Any rationalisation is to be welcomed.
13. Reports to the Assembly (Special Reports)	13	A question exists as to whether the OFMDFM Committee is best placed to receive these special reports given that, the department itself could be subject to the investigation. It might be preferable for these reports to go, in the first instance, to the relevant departmental committee or perhaps the NI Assembly.

Proposal	Paragraph	Response
17. Financial accountability of the Ombudsman	17 (b)	<p>Paragraph 17 (b) suggests reporting to the Audit Committee however, as detailed above, this committee was established specifically to meet requirements in the Northern Ireland Act 1988 and the Audit (Northern Ireland) Order 1987 in relation to the NIAO.</p> <p>This paragraph also specifies a timetable for submission of estimated expenditure to the committee. However it would seem more appropriate for any timeframe or requirement for consideration to be set outside the legislation by any relevant committee to which the office may report. This will allow flexibility to adjust to any change in the date allocations if budget exercises are initiated by the Executive or Treasury which may not allow for the idealised timing in the proposed legislation to be met. This would leave the office in the same position as all other departments except NIAO for which specific legislative requirements are set.</p> <p>While I appreciate this is a work in progress it will be important that the issue of affordability is fully addressed. Assuming this project progresses you will appreciate that as Finance Minister I will have a particular interest in the cost analysis before taking a final view.</p>
18. Public Procurement	18	<p>Under this proposal there would be no statutory bar on the Ombudsman's powers of investigation of the sort currently found in the Ombudsman (NI) Order 1996. Given that public procurement is a highly regulated area this proposal would pose a number of legal and practical problems. The key issues are as follows:</p> <ul style="list-style-type: none"> <li>• Public procurement is a commercial matter highly regulated by European Directives, statutory regulations and fast developing case law;</li> <li>• The involvement of the Ombudsman would potentially add confusion and costs;</li> <li>• NI is the only part of the UK where such a proposal is being made in a Bill;</li> <li>• The proposal would be at odds with the tenor of a recent judgement of the NI Court of Appeal in the case of Traffic Signs and Equipment. This dealt with the case of an economic operator who was unhappy with the court's decision and sought to attack it through alternative means. The judgement clearly took the view that the courts are the correct venue for procurement law disputes.</li> <li>• The proposal would drive up the overall cost and be impractical, requiring training for NIPSO officials in a highly complex area; it would seriously undermine the time limits for mounting a challenge under the European rules, and it would create an overlap with the courts.</li> </ul> <p>In my view the Ombudsman's involvement in these matters would only serve to confuse the processes for challenging and seeking redress against actions taken by contracting authorities. In addition it is likely to be both expensive and legally questionable. It is my strong view that the Ombudsman's role should relate only to matters where departments and centres of procurement expertise fail to meet their service standards when administering procurements. It should not extend into those areas where remedies are already readily available through the courts.</p>



## Department for Regional Development

### **Part Input to OFMDFM**

The Department for Regional Development supports the proposals to update and reform these offices and notes the Committee's proposals for inclusion in the Bill.

Appendix 1, 8(d) recommends that the Bill should remove the residency requirement stating that only those residents in Northern Ireland may complain. DRD would be interested to know if it would create any problems in fulfilling recommendations for redress for those who are not resident in Northern Ireland.

Further, DRD would wish to know of any issues flowing from disclosure of information outside Northern Ireland as per paragraph 16(b).

CLARCOREPODRD 12 001933  
SEPT/LT

## Department of Enterprise, Trade and Investment

### **DETI views on Committee for OFMDFM proposals to legislate for a single office of the 'Northern Ireland Public Services Ombudsman' (NIPSO)**

The Consumer Council believes these proposals would provide a less confusing approach for consumers. As the current protections will remain in place, there may be an opportunity for them to be better applied under this merger. There are also a number of practical points which would further simplify the process such as complaints being received in different formats and the removal of the residency criteria.

## Department for Employment and Learning

FROM THE MINISTER



Department for  
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and Learning**  
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**Our Ref:COR/292/12**

10 October 2012

Dear *Peter J Martin*

Mike Nesbitt's letter of 17 July on this subject refers.

I am happy to express my support for the plan to replace the current offices of Assembly Ombudsman and Commissioner for Complaints with a new single office, the NI Public Services Ombudsman (NIPSO). In the main, the detailed proposals appear sensible; my Department is pleased to note, for example, that public sector employment issues will be removed from the NIPSO's jurisdiction.

The proposals make explicit mention of two areas within my jurisdiction: Further Education and Higher Education bodies. Further Education colleges were previously under the jurisdiction of the Ombudsman but this arrangement ceased in 1997 when the colleges acquired incorporated status. My Department considers that the removal of colleges from the Ombudsman's jurisdiction has denied complainants adequate means of redress beyond the college's governing body or, in limited circumstances, the Department. In many cases, legal action may be the only possible recourse once the college's internal complaints procedures have been exhausted.

For these reasons, I am content for the Further Education colleges to be included in the NIPSO jurisdiction. I would sound two notes of caution, however. It is important to ensure that the remit of the Ombudsman be confined to the investigation of maladministration only; I do not consider that the NIPSO has any role in challenging professional judgement with regard to FE.

In addition, the terms of reference for the NIPSO should set down appropriate timescales for his investigations. Delays by the NIPSO have the potential to impact adversely on standards of administration e.g. by delaying corrective



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action within Departments and their third party partners. This is to be avoided at all costs, and it is fitting that the NIPSO be expected to meet high standards of administration himself.

With regard to extension of the NIPSO's remit to the universities, you will be aware that student complaints in the two Northern Ireland universities, which cannot be resolved internally, are handled by either the University of Ulster's 'Visitor' (a person with a common law role to supervise the domestic affairs of that institution), or Queen's University's 'Board of Visitors'. Both the Visitor and Board of Visitors are nominated by each university and appointed by the Privy Council. Rulings of the Visitor or Board of Visitors are binding on institutions, and courts will only intervene in such matters in very limited circumstances.

It is my intention, initially, to standardise the universities' grievance procedures and then consider if there is merit in extending the remit of the Ombudsman to include them, as stated within my Department's recently-published Higher Education Strategy, Graduating to Success. I would therefore request that the proposal to extend the NIPSO's remit to the higher education sector be subject to enabling legislation which would only be brought into effect should the review process determine that is the best way forward.

Yours sincerely,



**DR STEPHEN FARRY MLA**  
**Minister for Employment and Learning**

**Cc The Committee for Employment and Learning**

Department of Agriculture and Rural Development

From the Office of the Minister  
Michelle O'Neill MLA



Department of  
**Agriculture and  
Rural Development**

[www.dardni.gov.uk](http://www.dardni.gov.uk)

AN ROINN

**Talmhaíochta agus  
Forbartha Tuaithe**

MINISTRE O

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Our Ref:  
Your Ref:

23 October 2012

First Minister and deputy First Minister, a chairde

**OFMDFM COMMITTEE LEGISLATIVE PROPOSALS - ASSEMBLY OMBUDSMAN AND  
THE NI COMMISSIONER FOR COMPLAINTS**

You have requested views on the OFMDFM Committee's proposals to bring forward legislation to update and reform the offices of the Assembly Ombudsman and the Commissioner for Complaints and to merge these offices into a single body.

I have no objection in principle to these proposals and have no substantive issues or concerns to raise at this time. I would be grateful however for clarification on the proposals set out at paragraphs 9 and 11 in Appendix 1 to Mike Nesbitt's letter to you of 17 July – the attached Annex refers.

If you need any further information on the issues raised please let me know.

Is mise le meas

**MICHELLE O'NEILL MLA**  
Minister of Agriculture and Rural Development

If you have a hearing difficulty you can contact  
the Department via the textphone on 028 9052 4420



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# Chairperson to Attorney General

**Mike Nesbitt MLA, Chairman**

Committee for the Office of the First Minister and deputy First Minister

John Larkin QC  
Attorney General for Northern Ireland  
PO Box 1272  
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28 February 2013

Dear John

## Committee Legislative Proposals - Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints

You may be aware the Committee for the Office of the First Minister and deputy First Minister has been working to develop legislation to update and reform the offices of the Assembly Ombudsman and Commissioner for Complaints – currently provided for in the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996.

The current position was reviewed in a report from Deloitte in 2004 commissioned by OFMDFM. The Ombudsman engaged with the Committee in 2010 and asked it to consider taking the matter forward. Consequently the Committee carried out a consultation exercise between September and December 2010. The Committee also engaged with OFMDFM who were reviewing the Deloitte recommendations. OFMDFM indicated by letter that they would not be bringing forward legislation, due to resource constraints and competing priorities, but were in support of the Committee pursuing the matter.

As a result of its deliberations the Committee has agreed in principle to bring forward legislation to establish a single office to be known as the Northern Ireland Public Services Ombudsman. The legislation will broadly cover the range of powers, responsibilities and duties contained in the two current pieces of legislation.

Article 17 of the Commissioner for Complaints (Northern Ireland) Order 1996 provides that in certain circumstances the Commissioner may request the Attorney General to apply to High Court for the grant of relief. The Attorney General “may apply” to the High Court.

The Committee is minded that a similar provision should be included in the proposed NIPSO Bill, making this option available in respect of not only the bodies currently within the Commissioner’s jurisdiction but also those currently within the Ombudsman’s jurisdiction.

Accordingly, the Committee agreed to seek your views on this aspect of its proposals.

Should any point require further clarification or discussion please contact the Clerk to the Committee, Alyn Hicks (alyn.hicks@niassembly.gov.uk).

The Committee will be considering its policy proposals again on 20 March 2013 and a response in advance of that date would be much appreciated.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Nesbitt". The signature is written in a cursive style with a horizontal line underneath the name.

**Mike Nesbitt MLA**  
**Committee Chairman**

## Attorney General Response



**Attorney General  
for Northern Ireland**

Mr Mike Nesbitt MLA  
Chairman, Committee of the Office of the  
First Minister and deputy First Minister  
Room 435  
Parliament Buildings  
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Belfast BT4 3XX

Our Ref: 18/06/13/002

Your Ref:

March 14 2013

*Dear Mike,*


**Committee Legislative Proposals – Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints**

Thank you for your letter of 28 February in relation to a proposed Bill which has as its purpose the reform and modernisation of the above offices.

I see no difficulty with a power similar to the current Article 17 of the Commissioner for Complaints (NI) Order 1996 being included in the proposed Bill. This might involve me being asked to consider pursuing an application in respect of a Department but as I exercise my functions independently (cf. section 22 (5) of the Justice (Northern Ireland) Act 2002) there would be nothing irregular in this – although one hopes, naturally, that such an event would be very rare indeed.

As you know there might be thought to exist at present debateable ground between the inability to recover damages from the Courts by reason of administrative illegality alone, and the remedies that are available through the Ombudsman. This area is of great interest to me and I am happy to assist the Committee as it continues its work in this area.

If I can be of any further assistance please do not hesitate to get in touch.

*Yours sincerely*  


John F Larkin QC  
Attorney General for Northern Ireland

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