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Issues relating to public services Ombudsmen and the Police Ombudsman for Northern Ireland

1 Introduction

This briefing paper has been prepared following a request from the Committee for the Executive Office. The Committee asked for information on the following:

- examples of Ombudsman's offices which have been subject of investigation by another Ombudsman.
- options for recourse currently exist for those who are unhappy with the actions or reports of the Police Ombudsman for Northern Ireland.

A number of papers were prepared for the Committee for the Office of the First Minister and Deputy First Minister in the 2011-16 mandate on the topic of the role and powers of ombudsmen. These provide useful context for any discussion around the accountability of ombudsmen offices.

It is important to note at the outset that there is a difference between complaints about **decisions** reached by an Ombudsman and the **service** provided by the Ombudsman. This distinction is made throughout the briefing.

Furthermore, the paper focuses on accountability mechanisms for public services ombudsmen, rather than other types such as financial services ombudsmen. It does reference other offices, where appropriate, to make comparisons.

2 Accountability of ombudsman offices

This section looks at a number of ombudsman offices and identifies what, if any, accountability mechanisms exist in relation to **decisions** taken by Ombudsmen and the **service** provided by Ombudsmen.

Scottish Public Services Ombudsman

The role and functions of the Scottish Public Services Ombudsman (SPSO) are set out in the Scottish Public Services Ombudsman Act 2002¹.

Table 1: SPSO approach to complaints about decisions and customer service

Customer service complaints	Decision reviews
<p>The SPSO will investigate customer service complaints, but if a customer is still unhappy then they will be put in touch with the Independent Customer Complaints Reviewer (ICCR). The ICCR should be contacted within one month of receiving the SPSO's decision.</p> <p>There are currently two ICCRs. They work closely with the SPSO and details of their work are included in the SPSO's annual reports.</p>	<p>The decision of the SPSO can only be legally challenged by judicial review. However, the SPSO has put in place a mechanism to review decisions on the following grounds:</p> <p>"You feel we made our decision based on important evidence that contains facts that were not accurate, and you can show this using readily available information.</p> <p>You feel you have new and relevant information that was not previously available and that affects the decision we made. In this case, we may share the new information with the organisation you complained about. We do this to give them the chance to consider it before the Ombudsman makes a decision on your review request".</p>

Public Service Ombudsman for Wales

The role and functions of the Public Services Ombudsman for Wales (PSOW) are set out in the Public Services Ombudsman for Wales Act 2005².

¹ Scottish Public Services Ombudsman Act 2002: <http://www.legislation.gov.uk/asp/2002/11/contents>

² Public Services Ombudsman (Wales) Act 2005: <http://www.legislation.gov.uk/ukpga/2005/10/contents>

Table 2: PSOW approach to complaints about decisions and customer service

Customer service complaints	Decision reviews
<p>The PSOW will investigate customer service complaints via its internal process. If a customer remains dissatisfied at the end of this process, then they can contact the Independent External Reviewer of Complaints, who is a person appointed by the Ombudsman.</p> <p>Complaints about the service are also reported annually to the Ombudsman's Advisory Panel, which is made up of a number of independent members (not employees of the Ombudsman).</p> <p>The guidance on customer service complaints makes clear that the ombudsman is not overseen by a regulator.</p>	<p>The PSOW has in place an internal process for reviewing decisions. Once this has been exhausted the PSOW advises that:</p> <p>"The decision on any review is final and there is no further appeal or review process. Unless you subsequently raise new issues that we consider are significant, we will not be able to discuss matters or respond to you further. You cannot use this procedure to complain about a decision on a review.</p> <p>There may be other legal options available to you and you may therefore wish to take legal advice".</p>

Office of the Ombudsman (Republic of Ireland)

The Ombudsman's legal authority to investigate complaints, and to recommend redress where necessary, is set out primarily in the Ombudsman Act 1980. The Ombudsman Act has been amended a number of times, principally by the Ombudsman (Amendment) Act 1984 and by the Ombudsman (Amendment) Act 2012³.

Table 3: Office of the Ombudsman (Republic of Ireland) approach to complaints about decisions and customer service

Customer service complaints	Decision reviews
<p>There is an internal procedure for dealing with complaints made against staff.</p> <p>If deemed necessary, the Director General will designate an appropriate staff member to act as Complaints Officer who will examine the complaint and make recommendations in relation to it to the Director General.</p> <p>Each complaint will be dealt with on its own merits and if upheld the form of redress shall be a matter for the Director General to determine on the recommendation of the Complaints Officer.</p> <p>If a complaint is upheld, the Complaints Officer may recommend action to the Director General to avoid any recurrence of the circumstances complained about.</p>	<p>The Office of the Ombudsman has an appeals procedure to cater for situations where a complainant is dissatisfied with the outcome of their complaint to the Ombudsman and wishes the Office to re-examine their complaint.</p> <p>There will be one appeal only of a complaint decision.</p> <p>Where a complainant expresses dissatisfaction with the Ombudsman's decision on his/her complaint, the matter will be referred to the Appeals Manager. The Appeals Manager will consider whether an appeal should be accepted.</p> <p>Where an appeal is submitted on a case which has been considered by the Ombudsman, for example complaints made by public representatives or where the case was referred to the Ombudsman for approval, the appeal will not be accepted as the most senior person in the Office has already made a decision on</p>

³ Taken from: <http://www.ombudsman.gov.ie/en/About-Us/Legislation/>

	the case. In such cases, the Appeals Manager will write to the complainant advising them that their appeal will not proceed.
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Other mechanisms of accountability

Previous research has identified other scrutiny/accountability mechanisms in place relating to Ombudsman offices:

- In Queensland, Australia, legislation requires that an independent strategic review is conducted at least every five years and submitted to Parliament. The strength of this model is that it is capable of providing parliament with the knowledge necessary to perform meaningful scrutiny.
- In many countries around the world the ombudsman's decisions are exposed to judicial challenge on occasion. The principle is not an uncontested one in ombudsman circles...but retains in the system the potential for mistakes...to be rectified and a degree of external pressure to foster care and attention within ombudsman schemes⁴.

In Queensland, a parliamentary committee also has responsibility:

- to monitor and review the performance by the ombudsman of the ombudsman's functions under the legislation;
- to report to the Assembly on any matter concerning the ombudsman, the ombudsman's functions or the performance of the ombudsman's functions that the committee considers should be drawn to the Assembly's attention;
- to examine each annual report tabled in the Assembly under the legislation and, if appropriate, to comment on any aspect of the report;
- to report to the Assembly any changes to the functions, structures and procedures of the office of ombudsman the committee considers desirable for the more effective operation of the legislation;
- the other functions conferred on the parliamentary committee by the legislation⁵.

3 Accountability of the Police Ombudsman for Northern Ireland and examples of other police complaints bodies

This section looks at the processes in place if people wish to complain about the service offered by the Police Ombudsman for Northern Ireland (PONI) or the decisions reached by the Ombudsman. It also references other police complaints handling bodies

⁴ Richard Kirkham, *The 21st Century Ombudsman Enterprise*, Paper to be presented to the IOI biennial conference, November 2012, Wellington, New Zealand.

⁵ Queensland, Ombudsman Act 2001

where appropriate. It does not comment in detail on the legislative background to these bodies and the structure and remit of these bodies may not be directly comparable to that of the PONI.

Police Ombudsman for Northern Ireland

The office of PONI was established under the Police (Northern Ireland) Act 1998, although there are numerous pieces of legislation relevant to the work of the office⁶. The Office is an executive Non-Departmental Public Body (NDPB) of the Department of Justice (DoJ)⁷.

Complaints

The customer complaints policy⁸ (June 2016) details the various stages of the complaints process. It makes clear that: “Complaints of maladministration against the Police Ombudsman and his staff can be raised with the Department of Justice only after the internal complaints process has been exhausted”⁹.

The Office defines a complaint as:

“An expression of dissatisfaction about the Office, the manner in which it has dealt with your complaint against police, the behaviour of Police Ombudsman staff, the service provided or poor or inefficient management or administration”.

Examples of complaints would be:

- *Dissatisfaction with the investigation process;*
- *An unnecessary and/or unexplained delay in a case;*
- *Administrative/process error;*
- *Lost documents;*
- *Poor customer care; not responding to phone calls, letters, emails; or*
- *Discrimination/harassment; allegations of discrimination/harassment.*

However, experience would indicate that the majority of complaints received by the Office relate to the outcome of an investigation or resolution process. It should be noted that there is no statutory appeal mechanism within the Police (Northern Ireland) Act 1998 for decisions taken by the Police Ombudsman. However, in the interests of providing an open and accountable complaints system to the public and the police the Police Ombudsman will review cases

⁶ See: <https://www.policeombudsman.org/About-Us/Legislation>

⁷ 2015-16 Annual Report of the Ombudsman: <https://www.policeombudsman.org/About-Us/Publications>

⁸ See Customer Complaints Policy at: <https://www.policeombudsman.org/About-Us/Publications>

⁹ As above

in instances where a stakeholder has made a customer complaint. In dealing with this type of customer complaint, the Office will be mindful to ensure that the processes undertaken to reach the conclusions/outcome in the investigation/resolution subject of the complaint have been fair and in keeping with the standards and values of the Office¹⁰.

If, in the case of a **customer service complaint**, a person remains dissatisfied with the steps taken by the office to resolve the complaint, then they can contact the Department of Justice:

Complainants, however, should be aware that the Department of Justice will consider all complaints of maladministration regarding the Office's actions or inactions which result in a customer experiencing a service which does not match the Office's aims or commitments, but will not deal with complaints about the outcome of an investigation. Where the complaint is about the outcome of a Police Ombudsman investigation it may be possible to pursue the matter by way of judicial review. Complainants may wish to seek advice from a solicitor or the Citizens Advice Bureau in relation to this...

If a complainant considers that he/she has grounds for a complaint of maladministration he/she should write to the Department of Justice...providing full details of the maladministration complaint including the grounds for complaint together with a copy of the final letter they received from the Police Ombudsman on the matter¹¹.

Further points relating to PONI

Reports by the Criminal Justice Inspection Northern Ireland

Under section 46 of the Justice (Northern Ireland) Act 2002, the Inspector of Criminal Justice in Northern Ireland (CJI) has a duty to report on, among other bodies, the Police Ombudsman for Northern Ireland¹².

Evidence from the Northern Ireland Public Services Ombudsman

On 27 October 2016 the Northern Ireland Public Services Ombudsman (NIPSO) gave evidence to the Committee for the Executive Office. During her evidence session, the Ombudsman was asked if she was aware of any instances where an Ombudsman can be examined by another Ombudsman. The NIPSO responded that she believed the Prisoner Ombudsman fell under her jurisdiction due to the structure of that office and referenced the fact that the DoJ was responsible for that Ombudsman. The NIPSO also

¹⁰ See Customer Complaints Policy at: <https://www.policeombudsman.org/About-Us/Publications>

¹¹ As above

¹² See, for example: <https://www.policeombudsman.org/Media-Releases/2011/Police-Ombudsman-welcomes-CJI-report-and-announces>

referred to previous discussions around the possibility of the PONI being brought under the remit of the NIPSO¹³.

Judicial Review

In 2012 an application for a Judicial Review was heard on an alleged failure by the PONI to process and investigate a complaint. In its conclusion, the Court found that the PONI had breached its statutory duty to investigate, but recognised that there were exceptional circumstances (i.e. underfunding for investigation of historic cases) that had led to this situation. It also noted that the PONI had advised the applicant that an investigation had been initiated and as such the court decided that no further action was necessary. The full conclusion is reproduced below:

Figure 2: Extract from judgement in the matter of an application for judicial review¹⁴

As previously pointed out it is common case that the Police Ombudsman is subject to the supervisory jurisdiction of the High Court. However, he has a very wide discretion in respect of the exercise of his powers under Part VII of the 1998 Act. He is also the master of his own procedure. Accordingly, the circumstances in which it would be permissible for the Court to intervene will inevitably be extremely limited. The Court must be astute neither to abdicate its constitutional responsibility of supervisory review nor its constitutional duty not to trespass into forbidden territory. It is thus, for example, not the role of the Court to dictate to the Police Ombudsman how to carry out his functions.

It is also common case that the 1998 Act contains an implicit requirement that the relevant investigation be carried out within a reasonable time. The setting of priorities, and the allocation of resources is quintessentially a matter within the realm of the decision maker who, as here, will often be faced with competing demands. It is an area into which the Court would not lightly tread.

The requirement of investigation within a reasonable time must accord the Police Ombudsman a very considerable degree of latitude and flexibility in the timetabling of investigations and the allocation of finite resources. However, if a breach of statutory duty by failing to investigate within a reasonable time has been established it is the Court's role to so declare.

Ultimately this case resolved to the question whether or not the delay in initiating the investigation of the applicant's complaint was unlawful in public law terms as being a breach of the implicit statutory obligation to commence an investigation within a reasonable time. The decided cases make clear that claims based on delay are unlikely, save in very exceptional circumstances, to succeed and are likely to be regarded as unarguable. It is only if the delay is so excessive as to be regarded as manifestly unreasonable that a claim might be entertained by the court. If unacceptable delays have resulted causing a breach of statutory duty the breach is not remedied because it may in large part have resulted from the provision of woefully inadequate resources. That may explain how the breach occurred but it does not remedy it.

¹³ The Ombudsman's evidence session can be viewed at: <https://niassembly.tv/video/committee-executive-office-meeting-26-october-2016/>

¹⁴ [2012] NIQB 89

Police Investigations and Review Commissioner (Scotland)

The Police Investigations and Review Commissioner (PIRC) undertakes independent investigations into the most serious incidents involving the police and to provide independent scrutiny of the way police bodies operating in Scotland respond to complaints from the public¹⁵. The PIRC falls under the remit of the Scottish Ombudsman¹⁶. The PIRC's Standards of Service guidance explains that:

If you are dissatisfied with the response from the (Director of Corporate Services), you have the right under the Scottish Public Services Ombudsman Act 2002 to make a complaint to the Scottish Public Services Ombudsman (SPSO) and ask for a review of my decision. The SPSO is the final stage for complaints about most organisations that provide public services in Scotland, including the PIRC. His service is independent, free and confidential. You can contact the SPSO for advice and request a complaint form¹⁷.

Garda Ombudsman

The Garda Síochána Ombudsman Commission (GSOC) is an independent statutory body, established under the Garda Síochána Act 2005 and set up in 2007. It replaced the Garda Síochána Complaints Board. GSOC is an independent agency of the Department of Justice and Equality. The GSOC has a range of responsibilities, including:

- dealing with complaints made by members of the public concerning the conduct of members of the Garda Síochána.
- to conduct independent investigations, following referral by the Garda Síochána, in circumstances where it appears that the conduct of a garda may have resulted in the death of, or serious harm to, a person. 52 such referrals were received in 2015, of which 15 related to fatalities.
- investigating matters in relation to the conduct of gardaí, when it is in the public interest, even if a complaint has not been received. 12 such investigations were opened in 2015.
- investigating (with the consent of the Minister for Justice and Equality) where there is a concern that the Garda Commissioner may have committed an offence or behaved in a manner that would constitute serious misconduct (provided for by s.102B of the Garda Síochána Act 2005, as amended).
- examining any "practice, policy or procedure" of the Garda Síochána. Two such examinations have been conducted by GSOC to date. The first, completed and submitted to the Department of Justice and Equality in 2009, examined the

¹⁵ See: <http://pirc.scotland.gov.uk/about>

¹⁶ Section 32A, Scottish Public Services Ombudsman Act 2002

¹⁷ See: <http://pirc.scotland.gov.uk/contact>

Fixed Charge Penalty System. The second, completed, submitted and published in 2015, was in relation to dealing with persons who are committed to custody on remand by a court.¹⁸

Complaints about GSOC staff

GSOC is a civil service organisation and its staff are civil servants. As such, its standards and behaviour are governed by the Civil Service Code of Standards and Behaviour. This document sets out the standards required by all civil servants, including GSOC staff, in the discharge of their duties and sets out a clear framework within which GSOC must work¹⁹. The website of the GSOC provides the following information about the customer service complaints process:

Figure 1: Garda Síochána Ombudsman Commission customer service complaints process

- All complaints must be in writing – so the complainant must complete a complaint form or submit a signed, written complaint.
- If a complaint is made by telephone, e-mail or verbally at Reception, the complainant should be given a complaint form and the process explained.
- All completed complaint forms should be returned to: Corporate Services, Garda Síochána Ombudsman Commission, 150 Upper Abbey Street, Dublin 1.
- Date of receipt of written complaint is logged by Corporate Services in the Complaints Database.
- Receipt of the complaint is acknowledged.
- Complaint form is forwarded to the Manager in the relevant area/unit within 10 working days.
- Corporate Services records when the complaint has been forwarded to the relevant Manager and will retain a copy of the complaint.
- The Manager will deal with the complaint, including corresponding with the complainant, within the designated timeframe.
- The Manager will inform Corporate Services when the complaint has been dealt with and closed.

In addition:

If someone is unhappy with the conduct of a designated officer in the context of a criminal investigation, they may also write to the Minister for Justice and Equality. The Minister has the power, under s.109 of the Garda Síochána Act 2005, to “request the Chief Justice to invite a judge to inquire into the conduct of a designated officer in performing functions under section 98 or 99....” On completing the inquiry, the appointed judge shall report its results to the Minister who shall forward a copy of the report to the Ombudsman Commission for such action as it considers appropriate in the circumstances²⁰.

¹⁸ See: <http://www.gardaombudsman.ie/about/about.html>

¹⁹ Summarised from: <http://www.gardaombudsman.ie/policies/ComplaintGSOCstaff.html>

²⁰ See: <http://www.gardaombudsman.ie/policies/ComplaintGSOCstaff.html>

Functions under sections 98 and 99 of the 2005 Act include powers of designated officers of the Commission in investigating complaints that appear to involve offences and the search of Garda Síochána stations²¹.

Appeals against decisions

When a person makes a complaint to the GSOC, it will be dealt with in one of the following ways:

- Mediation or informal resolution
- Garda investigation into complaints that appear to involve disciplinary matters, with reporting to the Garda Ombudsman
- Garda investigation into complaints that appear to involve disciplinary matters, supervised by the Garda Ombudsman
- Garda Ombudsman investigation into complaints that do not appear to involve criminal offences
- Garda Ombudsman investigation into complaints that appear to involve criminal offences²²

In terms of appeals, the website of the GSOC provides the following information:

The law provides for a person whose complaint was about a disciplinary matter, and was investigated by the Garda Síochána and not supervised by GSOC (the second way that complaints can be dealt with, as listed above), to ask GSOC to review the investigation if they are not satisfied with the outcome as explained to them.

In these reviews, GSOC's role is to establish if the investigation was comprehensive enough and the outcome appropriate (not to re-investigate).

GSOC does not have the power to substitute the decision or finding with a new decision. We provide a report to the Garda Commissioner, in circumstances where concerns in relation to how the investigation was conducted and/or its outcome arose. As the disciplinary process has been concluded, the case cannot be re-opened or the outcome changed, but it is hoped that the feedback may contribute to a reduction in similar issues in future investigations²³.

²¹ Garda Síochána Act 2005: <http://www.irishstatutebook.ie/eli/2005/act/20/enacted/en/html>

²² See: <http://www.gardaombudsman.ie/complaints/complaintdeal.html>

²³ See: <http://www.gardaombudsman.ie/complaints/complaintdeal.html>