



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 07/17

12 January 2016

NIAR 02-17

RaISe

Further information relating to the Police Ombudsman

1 Introduction

This paper has been produced following a request from the Committee for the Executive Office. The Committee requested information on the following:

- The original rationale as to why the Office of the Police Ombudsman for Northern Ireland was set up in the way it is with respect to review/oversight of its decisions; and
- Any examples of where a complaint to the Scottish Public Services Ombudsman has led to a review of a decision of the Police Investigations and Review Commissioner.

2 Accountability arrangements pre-devolution of policing

Establishment of the Office of Police Ombudsman for Northern Ireland

In 1995 Dr. Maurice Hayes was tasked with conducting a review of the police complaints system in Northern Ireland. The Hayes Report made the following recommendation in respect of the administrative accountability of the proposed office:

The Police Ombudsman should be added to the schedule of bodies in the jurisdiction of the Assembly Ombudsman. This would provide for the investigation of complaints about maladministration of the Police Ombudsman in the exercise of his/her administrative functions without, of course, forming a court of appeal against his/her decision on complaints investigated or policies. In suggesting this arrangement I have taken account of the fact that the police complaints issue is regarded as a reserved matter and as such accountability etc. is normally to Whitehall bodies. My proposal is to make the position of the body comparable to the administrative arrangements that have been made for the Northern Ireland Civil Service group of staff in the Northern Ireland Office¹.

Northern Ireland Affairs Committee

In its July 2005 report *The Functions of the Police Ombudsman for Northern Ireland*, the Northern Ireland Affairs Committee raised concerns that complaints of maladministration against the Police Ombudsman were handled by Northern Ireland Office officials, rather than escalated to Ministerial level.

In its response, the Government stated that the type of accountability arrangements envisaged by Dr. Hayes could not be implemented as policing had not been devolved to Northern Ireland. Instead, the Secretary of State discharged "this accountability function on a non-statutory basis"². The response made clear that complaints of maladministration did not include complaints about the outcome of investigations and that the Secretary of State (in practice, the Minister) would not interfere with investigations or review the Ombudsman's decisions. The Government further stated that:

We would expect that once devolution has taken place the maladministration complaints against (the) Police Ombudsman will be dealt with by the Assembly Ombudsman as recommended by Dr. Hayes³.

¹ Hayes report, p.74 (emphasis in original text).

² Government and Ombudsman response to NIAC report July 2005

³ See: <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmniaf/394/39404.htm>

Criminal Justice Inspection report

A 2005 report from Criminal Justice Inspection Northern Ireland highlighted accountability issues in relation to the Ombudsman:

No human institution is infallible, and there is a question what people can do if they disagree with the decisions of the Ombudsman. They can complain to the Secretary of State, but he will only hear a complaint if it relates to maladministration in the administrative functions of the Office. The Ombudsman's decisions on the handling, investigation and outcome of a complaint are final, subject only to the possibility of judicial review. An Ombudsman has effective jurisdiction in his or her proper field.

The safeguard against a decision by the Police Ombudsman is that it will fall to another organisation – the Public Prosecution Service or the Police Service – to act upon any finding. Decisions will be made either in the Courts or in a police disciplinary tribunal, from which there is the possibility of appeal to the Secretary of State.

Like the Parliamentary Ombudsman the Police Ombudsman has a final line of accountability to Parliament. The Northern Ireland Affairs Committee recently reported on the Office. It would be right that there should in due course be a line of accountability from the Police Ombudsman to the Assembly in Northern Ireland⁴.

3 Accountability arrangements post-devolution of policing

Management Statement and Financial Memorandum

A Management Statement and Financial Memorandum forms part of the Police Ombudsman's corporate governance. The document was drawn up by the Department of Justice in consultation with the Police Ombudsman and at several points deals with complaints of maladministration and how these should be handled. The relevant sections are reproduced below⁵:

- The Chief Executive is the Principal Officer for cases involving a complaint of maladministration against the Office. As the Principal Officer responsible, he shall ensure complaints of maladministration are properly addressed within the customer satisfaction policy of the Office.

⁴ Criminal Justice Inspection Northern Ireland: *Inspection of The Office of the Police Ombudsman for Northern Ireland*, December 2005

⁵ Corporate Governance of the Office of the Police Ombudsman: <https://www.policeombudsman.org/About-Us/Corporate-Governance>

- Complaints and Challenges (this section is reproduced from Appendix 1 of the document and forms part of the Memorandum of Understanding between the Office and the Department):
 - If a complainant is dissatisfied with the outcome of a Police Ombudsman investigation it is open to them to pursue the matter further by way of judicial review; the DOJ only has a role if a complaint against the Police Ombudsman is a complaint of maladministration.
 - A complaint of maladministration is considered by the DOJ only if it relates to the exercise of the Police Ombudsman's administrative functions. A complaint against the Police Ombudsman is defined as; an expression of dissatisfaction about the Office, the manner by which it has dealt with a complaint against police, the service provided by the Office or poor or inefficient management or administration.

Assembly questions

A number of Assembly questions have been asked that have addressed appeal mechanisms and oversight arrangements for the Office. A sample is reproduced below.

Date	Question	Response
01/07/14	Will the Minister indicate whether he has any intention of putting in place an appeal mechanism for any of the Police Ombudsman's reports?	...The simple position is that ombudsmen in the United Kingdom are largely seen as the final point of referral. The logic of what is suggested by that question is that we would have an ombudsman of ombudsmen, but then we would also have to have an appeal mechanism against the ombudsman of ombudsmen's decisions. I do not think that it is possible to work in our current system beyond the point that an ombudsman's decision is final.
17/04/2013	AQW 21923/11-15 To ask the Minister of Justice to outline the oversight mechanisms that are in place, and those that are planned, for the Office of the Police Ombudsman for Northern Ireland.	<p>There is in place an agreed Management Statement and Financial Memorandum between the Police Ombudsman's Office and my Department. This document sets out the broad framework within which the Office operates and the conditions under which any public funds are paid to the Office, together with how the Office is held to account for its performance.</p> <p>Specifically, I formally approve the Office's corporate and business plans on the basis that the work of the Office supports my Department's aims and objectives. Also, my officials attend the Office's Audit Committee meetings in an observer capacity and hold quarterly governance meetings with the Chief Executive to review performance.</p> <p>Additionally, and in light of the recent Criminal Justice Inspection Northern Ireland follow-up report to their report in September 2011 and the decision of the Ombudsman to recommence history investigations, Criminal Justice Inspection Northern Ireland will conduct a further review once three substantial history investigations have been completed.</p>

		<p>This will provide further assurance on progress and that this aspect of OPONI's new strategic plan is operating effectively. I am confident that, as this progress continues, the enhanced professionalism in how the Office operates with a particular focus on higher quality work in its investigations will all add to rebuild public confidence in the Office.</p>												
03/07/2012	<p>AQW 13522/11-15 To ask the Minister of Justice how many of the complaints received by his Department against the actions of the Office of the Police Ombudsman, in each of the last three years, were upheld.</p>	<p>The information requested is only available from 12 April 2010, when the Department of Justice came into being. The table below details how many complaints of administrative maladministration regarding the actions of the Office of the Police Ombudsman the Department has received and how many of those complaints were upheld.</p> <table border="1"> <thead> <tr> <th>Period</th> <th>Number of complaints received</th> <th>Number of complaints upheld</th> </tr> </thead> <tbody> <tr> <td>April - December 2010</td> <td>0</td> <td>0</td> </tr> <tr> <td>January – December 2011</td> <td>1</td> <td>0</td> </tr> <tr> <td>January – June 2012</td> <td>3</td> <td>1 upheld 2 pending review and decision</td> </tr> </tbody> </table>	Period	Number of complaints received	Number of complaints upheld	April - December 2010	0	0	January – December 2011	1	0	January – June 2012	3	1 upheld 2 pending review and decision
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03/07/2012	<p>AQW 13517/11-15 To ask the Minister of Justice to detail the process used by his Department when dealing with complaints made against the actions of the Office of the Police Ombudsman.</p>	<p>If having made a complaint of administrative maladministration to the Chief Executive of the Police Ombudsman's Office, the complainant is unhappy with the Chief Executive's decision, the individual can raise a complaint with my Department. A written request specifying the grounds of maladministration along with a copy of the Chief Executive's decision letter should be forwarded to my Department. My Department will then ask the Police Ombudsman's Office for a report, which the Head of Policing Policy and Strategy Division will consider on my behalf, and determine whether the complaint is substantiated and if so, can appoint an independent person to investigate.</p>												

4 Decisions by the Scottish Public Services Ombudsman in relation to the Police Investigations and Review Commissioner

There have been several referrals to the Scottish Public Services Ombudsman in relation to the Police Investigation and Review Commissioner, including the predecessor office of Police Complaints Commissioner for Scotland.

None of the complaints were upheld, although there were some recommendations made in relation to, for example, the issuing of draft reports⁶.

⁶ See for example: <http://www.spsa.org.uk/investigation-reports/2008/december/police-complaints-commissioner-scotland>