
FROM: Kathy O'Hanlon - Clerk to the Committee for the Office of the First Minister and deputy First Minister

DATE: 13 May 2015

TO: Clare McCanny – Senior Assistant Clerk – AdHoc Committee on Ombudsperson Bill

SUBJECT: Public Services Ombudsperson Bill

The committee for the Office of the First Minister and deputy First Minister has engaged with relevant Ministers throughout the development of the Public Services Ombudsperson legislation.

At its meeting of 13 May 2015 this Committee noted correspondence from the Minister of Health, Social Services and Public safety advising that following further consideration by his Department about the “power to investigate under own initiative”, his officials are assured that the desire to investigate under own initiative would be backed up by evidence, or might help in cases where individuals are reluctant to make a complaint on their own behalf. The Minister also notes the Committee’s comments which go some way to alleviate the original issues raised by the Department in respect of social care workers.

The Committee also noted correspondence from the Minister of Education indicating that he is content with the Bill as drafted.

The Committee agreed to forward this correspondence to your Committee for information. I have also included the related correspondence with both Ministers for information.

I would be grateful if you could bring this to the attention of your Committee.

Regards

**Kathy O'Hanlon
Committee Clerk**

Enc



Northern Ireland
Assembly

Mike Nesbitt MLA, Chairman

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

Mr Jim Wells, MLA
Minister for Health, Social Services and Public Safety
Room C5.10
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

18 December 2014

Dear *Jim,*

IN CONFIDENCE

Northern Ireland Public Services Ombudsperson Bill (NIPSO Bill)

I write in relation to the OFMDFM Committee's NIPSO Bill which it hopes to introduce in the Assembly early in the New Year.

You will recall that the Assembly debated and approved the Committee's Report on this legislative proposal in September 2013. The Committee's Report, the Hansard of the debate and related background documents can be accessed via the [Committee's webpage](#)¹. In essence the Committee's bill will merge and reform the offices of Assembly Ombudsman and Commissioner for Complaints (the existing offices).

Your predecessor responded, via OFMDFM, to the Committee's 'key stakeholder' consultation in 2012 and the Committee welcomed that engagement. That response raised a concern regarding the potential impact of a power of own initiative investigation. The Bill will require the NIPSO to publish the criteria to be used in determining when to launch an own initiative investigation, to prepare an investigation proposal and to share that with the organisation or organisations to be investigated. The Committee considered other scrutiny arrangements in relation to the exercise of own initiative powers but concluded that

¹ <http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/legislation/Northern-Ireland-Public-Services-Ombudsman-Bill/>

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accountability to the Assembly and to the Audit Committee would provide sufficient oversight of the way in which this new power is used.

The response also raised a concern in relation to the exercise of professional judgment in the field of social care coming within the NIPSO's remit and its effect on the unqualified staff. The Committee considered this issue and was content that framing the provision by reference to 'professional judgement' (a similar approach operates in Wales) would be understood to refer to the exercise of professional judgement by staff required to hold a particular professional qualification as a condition of their particular post.

The Committee agreed that I should write enclosing for your information, and in confidence, a copy of the Bill and accompanying Explanatory Memorandum in advance of introduction. The provisions for investigations are J11, J12 and J13. Clauses j25, j23 and j24 set out the matters which can be investigated in the field of health and social care. You will be aware that independent health and social care providers and general health care providers were brought within the Commissioner's remit by amending legislation in 1997 and were dealt with slightly differently as they were not listed in the schedule of bodies within the Commissioner's remit. They are now included in the schedule of listed authorities.

The Bill provides for commencement of most of the substantive provisions at the start of April 2016 with staggered commencement of the provisions bringing new bodies within remit in order to better manage the transition to the new legislative framework and the financial constraints within which the NIPSO will exercise new powers.

A copy of this letter will be sent to the Committee for Health, Social Services and Public Safety.

Yours sincerely

A handwritten signature in black ink that reads "Mike" followed by a stylized flourish.

Mike Nesbitt MLA
Committee Chairman

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Mike Nesbitt MLA, Chairman
Committee for the Office of the First Minister and deputy First Minister

Mr Jim Wells MLA
Minister for Health, Social Services and Public Safety
Castle Buildings
Stormont Estate
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17 April 2015

Dear Jim

Public Services Ombudsperson Bill

The Committee noted your letter of 9 February 2015 at its meeting on 15 April 2015 and agreed that members of the project team supporting the Committee's Bill would engage with your officials regarding the concerns you raised, in particular regarding the power of own initiative investigation and the exercise of professional judgement in the field of social care. The comments and proposals below reflect the rationale for the Committee's proposals and the engagement at official level.

Section 8 - Power to investigate on own initiative

The Committee noted your concern that this power had the potential to shift the focus of the Ombudsperson's work to systemic reviews. The Committee considers that this is a significant new power which has the potential to complement the Ombudsperson's primary focus of investigating citizens' complaints of maladministration.

Where an own initiative investigation is proposed there must be evidence of a systemic maladministration or systemic injustice and this is likely to be indicated by multiple individual complaints about the public service provider in question. The Committee considers that this power will provide a more effective, and cost effective, mechanism for addressing the suspected systemic issue than multiple investigations of individual complaints.

It would also allow the Ombudsperson to take the initiative in circumstances where the suspected victims of abuse may be unable or reluctant to bring an individual complaint. You may be aware that the Irish Ombudsman used this power to investigate the retention by care providers of what was known colloquially as "pocket money" for those in residential care.

The Committee is content that the Audit Committee's consideration of the Ombudsperson's budget estimate would provide an opportunity to raise and address any concerns regarding the amount of resource being devoted to own initiative investigations of systemic maladministration. In doing so the Audit Committee may wish to have regard to the assumptions regarding the number of own initiative investigations which informed Assembly Research's work (in close conjunction with the Ombudsman's office) on the financial implications of the Committee's policy - this assumed 1-2 investigations a year initially (the own initiative power does not commence until 2018) increasing to 4 per annum. In recent evidence to a Welsh Assembly committee the current Ombudsman envisaged to 2-3 major investigations a year. Assuming a spread of investigations across public sector we hope that this provides some reassurance in relation to the number of own initiative investigations and related demand on HSC staff.

In relation to potential duplication with the powers of other bodies to conduct wide ranging reviews the Committee would share your desire to avoid any duplication of work and waste of resources, particularly in the field of health and social care where your officials highlighted the range of regulatory/investigatory bodies that could potentially be engaged in relation to an incident.

You will note that the investigation proposal must be shared with the body or bodies to be investigated before the investigation commences.

You will also be aware that the Bill provides at Clause 42 for consultation and cooperation with a range of other oversight bodies *"if, at any stage in the course of considering a complaint or conducting an investigation, the Ombudsperson forms the opinion that the matter could be the subject of an investigation by a person mentioned in subsection (4)"*. The bodies listed include the Equality Commission and Human Rights Commission, the Commissioner for Older People and the Commissioner for Children and Young People, as well as the other UK Ombudsmen and (in relation to North/South implementation bodies) the Irish Ombudsman.

Your officials highlighted the key role of the RQIA in the field of health and social care and potential value of RQIA input to the NIPSO's deliberations. The Committee would be willing to consider the possibility of an amendment bringing RQIA within the clause 42 framework of consultation and cooperation if you consider this would be useful.

Sections 15-17 - professional judgement in connection with social care

The Committee noted your proposal that this provision be explicitly limited to the exercise of judgement by individuals who hold a social work qualification recognised by the Northern Ireland Social Care Council.

We note that the Northern Ireland Social Care Council is responsible for the registration of a number of categories of workers. The attached leaflet on the NISCC website is entitled *"Who regulates health and social care professionals?"* and refers to social care workers, qualified social workers, and social work students on approved degree courses in Northern Ireland.

The Committee notes that “*social care worker*” category of registrants includes social care managers in Residential Care Home, Day Care Setting or Domiciliary Care Setting. It also includes social care workers in an Adult Residential Care Home, Nursing Home or Residential Childcare Setting. The Committee notes that the HSCC holds conduct hearings for both social workers and social care workers.

The Committee considers that staff delivering social care should be within the remit of the Ombudsperson to the extent that they exercise professional judgement corresponding to the position they hold and qualifications and training required for that position - this will vary depending on whether the person is the manager of a residential care home, a care worker, a social worker, a social work student or some other category of social care worker.

You may be aware that the equivalent provision in the Public Services Ombudsman (Wales) Act 2005 (Section 11) refers to “*the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of health or social care.*”

The Committee is not aware that this provision has presented any difficulty in its operation in Wales and officials in the Welsh Ombudsman’s office indicate that the Ombudsman has not been challenged on it.

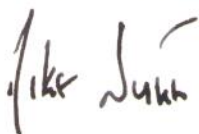
The Committee would not wish to place an artificial limit on the circumstances where the Ombudsperson can investigate the exercise of professional judgement in relation to social care - so that a member of the public could only complain where a social worker is exercising professional judgment but not where some another social care professional is exercising professional judgement appropriate to their position - for example, the manager of a residential care home.

The Committee would expect the Ombudsperson to adopt a measured and proportionate approach to professional judgment cases in the field of social care, taking into account the nature and extent of the qualifications and training of the various categories of social care workers. There should be no question of judging the decisions of a social care worker by the standard of professional judgement appropriate to a social worker.

The Committee hopes to introduce the Ombudsperson Bill to the Assembly on Monday 20 April 2015.

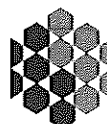
I look forward to hearing from you in relation to the inclusion of RQIA within the framework of section 42 of the Bill.

Yours sincerely



Mike Nesbitt MLA
Committee Chairman

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Jim Wells MLA



Department of
**Health, Social Services
and Public Safety**

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Mr Mike Nesbitt MLA
Chair
Committee for the Office of the First Minister and Deputy
First Minister
Room 285
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Our Ref: AGY/262/2015

Date: 5 May 2015

Dear Mike

Thank you for your letter, dated 17 April 2015, regarding the Public Services Ombudspersons Bill.

I understand that my officials met with the Project Team to discuss the issues. My officials expressed concerns about the "power to investigate under own initiative". Those concerns were that such a power had the potential to be abused in the form of fact finding without any basis for investigation. It might also be possible that pressure might be brought to bear externally to prompt such an approach on a piecemeal basis.

However, officials were assured that the desire to investigate under 'own initiative' would be backed up by evidence or might help in cases where individuals are reluctant to make a complaint on their own behalf. Officials were encouraged to hear that the intent was to bracket together a number of cases and to address them together to address systematic maladministration or systematic injustice. If this is the intent of the power (and its practical application), this would represent a far more effective use of everyone's resources and my Department would be happy to support it on that basis. Clearly, Audit Committee scrutiny of the exercise of the power would provide additional assurance as described in your correspondence.

I also note the Committee's comments which go some way to alleviate the original issue raised by this Department in respect of social care workers. However, it is important that the Bill or any subsequent Guidance includes the expectation expressed by the Committee that social care workers will not be held accountable for the same level of decision making as professionally qualified staff but a more proportionate approach is adopted commensurate with the role, function and level of decision making of that part of the workforce. It is also essential that as the Bill progresses through the legislative assembly process that close scrutiny continues to be undertaken of this key issue.

Notwithstanding support as outlined above, I consider the following to be most important:

- The need to include RQIA within the clause 42 framework of consultation and cooperation
- The investigation proposals must be shared with body/bodies before investigation begins
- The Bill should include the expectation that social care workers will not be held accountable for the same level of decision making as professionally qualified staff but a more proportionate approach is adopted.



Jim Wells MLA
Minister for Health Social Services and Public Safety



Northern Ireland
Assembly

Mike Nesbitt MLA, Chairman

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

John O'Dowd MLA
Minister of Education
Department of Education
Rathgael House
Balloo Road
Rathgael
Bangor
BT19 7PR

Dear

John,

18 December 2014

IN CONFIDENCE

Northern Ireland Public Services Ombudsperson Bill (NIPSO Bill)

I write in relation to the OFMDFM Committee's NIPSO Bill which it hopes to introduce in the Assembly early in the New Year.

You will recall that the Assembly debated and approved the Committee's Report on this legislative proposal in September 2013. The Committee's Report, the Hansard of the debate and related background documents can be accessed via the [Committee's webpage](http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/legislation/Northern-Ireland-Public-Services-Ombudsman-Bill/)¹. In essence the Committee's bill will merge and reform the offices of Assembly Ombudsman and Commissioner for Complaints (the existing offices).

You will also recall that the Committee proposed that schools would come within the remit of the NIPSO. You responded via OFMDFM to the Committee's proposals and the Committee welcomed that engagement and the work of your officials with the Ombudsman's office and Committee staff in addressing a number of concerns you raised.

The Bill will bring grant aided schools within the NIPSO's remit.

¹ <http://www.niassembly.gov.uk/Assembly-Business/Committees/Office-of-the-First-Minister-and-deputy-First-Minister/legislation/Northern-Ireland-Public-Services-Ombudsman-Bill/>

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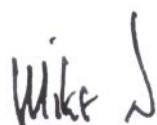
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The Committee agreed that I should write enclosing for your information, and in confidence, a copy of the Bill and accompanying Explanatory Memorandum in advance of introduction. The draft Bill reflects some of the changes which may be required in light of the Education Bill which the Assembly has recently approved.

The Bill provides for commencement of most of the substantive provisions at the start of April 2016. In order to better manage the transition to the new legislative framework and the financial constraints within which the NIPSO will exercise new powers, the Bill provides that schools will come within the remit of the NIPSO at the start of April 2017.

A copy of this letter will be sent to the Education Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike' followed by a stylized flourish.

Mike Nesbitt MLA
Committee Chairman

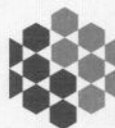
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FROM THE MINISTER/ÓN AIRE



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28 April 2015

Mike a chara

NI PUBLIC SERVICES OMBUDSPERSON BILL (NIPSO)

Thank you for sight of the draft NIPSO Bill and accompanying Explanatory Memorandum.

I understand that NIPSO will have enhanced powers of investigation in respect of maladministration in public services and that the Bill will bring grant aided schools within NIPSO's remit. As you are aware there are a number of appeal mechanisms within the education sector, such as the Special Educational Needs and Disability Tribunal, which are independent of the Department of Education and will sit outside the remit of NIPSO.

The draft Bill includes the Education Authority as a body subject to investigation and the Education (NI) Act 2014 has made the necessary change to the Commissioner for complaints Order; as such I am content with the Bill as drafted.

JOHN O'DOWD MLA
Minister for Education