



**Northern Ireland
Assembly**

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

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From: Kathy O'Hanlon
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To: Shauna Mageean
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Ad Hoc Committee on the Public Services Ombudsperson Bill

Subject: **Public Services Ombudsperson Bill**

I refer to the Ad Hoc Committee's correspondence regarding a number of recommendations made by an individual who was invited to attend the Ad Hoc Committee's stakeholder event on the Bill.

The request from the Ad Hoc Committee was:

"Please can you clarify if any or all of the recommendations are covered in the Bill."

The recommendations are set out below in bold type and beneath each one, in ordinary type, is the OFMDFM Committee's response indicating the extent to which the NIPSO Bill addresses the point in question.

- **Ombudsman becomes an arm length body**
The Bill brings the NIPSO within the ambit of the legislature rather than the Executive. Currently OFMDFM approves the expenses of the Ombudsman and Commissioner, staffing levels and terms of service. The NIPSO Bill provides for the Audit Committee to lay the NIPSO estimate and for the NIPSO to appoint staff/determine salary within budgetary constraints. Appointment is on the nomination of the Assembly with the Assembly Commission, rather than OFMDFM, administering the recruitment process. The Bill also contains an explicit statement of the NIPSO's independence.
- **Ombudsman must answer pertinent questions**
The Bill does not contain any specific questions mechanism.
- **scrutiny of the Ombudsman is imperative – independent review**
The NIPSO will subject to judicial review. Ombudsmen have been and continue to be judicially reviewed. Currently, where a complainant is dissatisfied with an Ombudsman's decision there is a system of internal review. The Bill does not make any specific provision in this regard. The NIPSO's budget will be submitted to the Audit Committee in the Assembly.

- Maladministration is clearly defined in the legislation**
 The Committee was content that maladministration should be undefined.
- Ombudsman discretion should have stringent guidelines**
 The discretion of the office holder is a key feature of the NIPSO Bill and of other ombudsman legislation. The Bill does not propose guidelines with the exception of a requirement to publish own initiative investigation criteria and, in the investigation proposal, indicate how the proposed investigation satisfies those criteria.
- Power of oath to be used where versions of events differ**
 The NIPSO will have the same power as the current office holders to administer oaths – powers of the High Court. The use of such powers is a matter for the NIPSO's discretion.
- Complaints and all evidence to be seen by all respondents for comment**
 The Bill does not require this. In many cases it would infringe the rights of individuals under the Data Protection Act 1998. However in accordance with principles of natural justice, listed authorities (and others alleged to have taken or authorised the action complained of) must be given an opportunity to comment on any allegations contained in the complaint (relating to them).
- The Complainants and defendants receive draft report at the same time**
 The Bill does not make any provision on this, other than the requirement highlighted in the preceding bullet point.
- Any breaches of the above should evoke disciplinary action**
 While the Bill states the NIPSO is independent it also provides that the NIPSO can be removed from office on grounds of misconduct where the Assembly so resolves. (Sch 1, Paragraph 9).
- Serious Ombudsman maladministration and misconduct found should be reported to the PSNI.**
 The NIPSO can be removed from office on grounds of misconduct where the Assembly so resolves. (Sch 1, Paragraph 9). The Ombudsman is (and the NIPSO will be) a public officer or the purposes of the common law offence of misconduct in a public office if, acting as such, he wilfully neglects to perform his duty or wilfully misconducts himself

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