



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

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**Northern Ireland
Assembly**

From: Kathy O'Hanlon Clerk to the Committee

Date: 3 September 2015

To: Shauna Mageean Senior Assistant Clerk
Ad Hoc Committee on the Public Services Ombudsperson Bill

Subject: **Public Services Ombudsperson Bill**

Office of the Legislative Counsel comments

1. At its meeting on 1 July 2015 the considered comments on the Bill from the Office of the Legislative Counsel (OLC) and agreed to ask the Drafter to provide text for a number of amendments. The Committee agreed the text of these amendments at its meeting on 2 September 2015 and they are included in the attached consolidated list of amendments which have been agreed by the Committee to date (**Appendix 1**). (Amendments arising from OLC's comments are in black type and those arising from the Examiner of Statutory Rules (ESR) comment are in blue type. The amendments which the Committee agreed and forwarded to the Ad Hoc Committee previously are in red type.)
2. The Committee did not agree to make amendments to the Bill in respect of all of the comments made by OLC and Bill Team officials will brief the Ad Hoc Committee on the points in question.

Constituent Colleges

3. At the meeting on 2 September the Committee received a briefing from the Assembly Research and Information Service regarding the application of the Bill to constituent colleges of universities. A copy of the Research paper is attached at **Appendix 2**. The Committee agreed to invite representatives from the theological colleges to Committee to provide their view on how the situation regarding constituent colleges can be managed in the context of the NIPSO Bill. It is hoped that this session can be scheduled for the Committee meeting on 9 September 2015.

Complaints Standards Authority

4. The Committee considered the Ombudsman's response to its queries regarding the delivery of a Complaints Standards Authority Role in the absence of additional funding being made available (**Appendix 3**). Notwithstanding the issues of funding, the Committee sees merit in such a role for the Ombudsperson. Members therefore agreed to ask the Drafter to draft the necessary amendments to provide in the Bill for a complaints standards authority role, on the same model as in Scotland, but subject

to commencement by the Assembly Commission when the necessary resources for implementation are available.

Other Correspondence

5. The Committee considered a number of items of correspondence relating to the Bill and agreed the following:
 - Seek the views of the Minister of Education and the Committee for Education on the General Teaching Council Northern Ireland's request to be added to the list of authorities that will come within the NIPSO remit (**Appendix 4**)
 - Request the Drafter to prepare draft amendments to give effect to:
 - The NI Ombudsman's request for an amendment to Schedule 1 (**Appendix 5**);
 - Remove the Rural Development Council from the list of authorities as requested by the Minister of Agriculture and Rural Development (**Appendix 6**); and,
 - Add the Police Rehabilitation and Retraining Trust as requested by the Department of Justice (**Appendix 7**).

British Medical Association

6. Finally the Committee considered the British Medical Associations paper of 12 August to the Ad Hoc Committee. Members agreed to seek advice from Legal Services on any issues raised in the paper which have not been considered previously and what implications, if any, there might be for the NIPSO Bill.

Regards

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Public Services Ombudsperson Bill

Draft List of Amendments Tabled for Prep for Consideration Stage

Topic:

Clause 1, Page 1, Line 4

After 'Ombudsperson' insert '(in this Act "the Ombudsperson")'

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

Clause 1, Page 1, Line 5

Leave out subsection (2)

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

Clause 1, Page 1, Line 7

After 'investigate' insert 'alleged'

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

Clause 2, Page 2, Line 1

Leave out subsection (2) and insert -

'(2) But this is subject to—

- (a) the power of the Assembly Commission to determine the salary, pension and terms of appointment of the Ombudsperson under paragraphs 6, 7 and 8 of Schedule 1,
- (b) the power of the Assembly to request Her Majesty to remove the Ombudsperson from office under paragraph 9 of Schedule 1,
- (c) the power of the Department of Finance and Personnel to direct the form of accounts the Ombudsperson must prepare, under paragraph 7 of Schedule 2, or sections 9 to 13 of the Government Resources and Accounts Act (Northern Ireland) 2001.'

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

Comment [Alyn Hick1]:

These first two amendments are consequential on "corporation sole" suggestion of OLC para 60 (see amendment **Schedule 1**, Page 23, Line 5)

Comment [Alyn Hick2]:

OLC para 6 -

Comment [Alyn Hick3]:

OLC para 7- OLC suggested that it was difficult to see how the provisions of the Bill listed in clause 2(2) could be said to subject the NIPSO to 'direction and control.

Drafter suggested a shorter list highlighting constraints on the NIPSO.

Clause 9, Page 4, Line 18

After 'publish' insert 'and have regard to'

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

Comment [Alyn Hick4]:

OLC para 13 - suggested that the NIPSO should be required to have regard to the criteria (which the NIPSO is required to publish) for commencing own initiative investigations.

Clause 12, Page 5, Line 5

Leave out 'First Minister and deputy First Minister acting jointly may' and insert 'Office of the First Minister and deputy First Minister may, with the concurrence of the Assembly Commission'

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

Comment [Alyn Hick5]:

Blue text indicates an amendment made in light of comments of the Examiner of Statutory Rules ("ESR") suggested amendment. Also addresses OLC's concern re 12(4)(b) - OLC para 14. ESR commented that it is convention that departments rather than ministers make orders + concurrence suggested by ESR. (see also next two amendments in blue below)

Clause 12, Page 5, Line 27

At end insert -

'(b) its expenses are defrayed out of moneys appropriated by Act of Parliament,'

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

Clause 12, Page 5, Line 31

Leave out from 'First' to 'jointly' on line 32 and insert 'Office of the First Minister and deputy First Minister'

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

Comment [Alyn Hick6]:

OLC para 15 - amendment gives effect to OLC's suggestion for completeness in the list of preconditions for bodies being added to Sch 3 listed authorities.

Clause 12, Page 5, Line 33

Leave out 'they think' and insert 'it thinks'

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

Clause 14, Page 6, Line 8

After 'taken' insert 'in the exercise of administrative functions'

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

Comment [Alyn Hick7]:

OLC para 17-18 - (This and next amendment)
OLC considered that power of investigation should be qualified by reference to "exercise of administrative functions" - to avoid encompassing quasi-judicial functions.

Clause 15, Page 6, Line 18

After 'taken' insert 'in the exercise of administrative functions'

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

Comment [Alyn Hick8]:

OLC 20 - extension of remit re med/prof negligence.
OLC 21 - commented on distinction between "clinical judgement" and "Professional judgement". OFMDFM Ctte agreed to rationalise (as in Wales) to "professional judgment".
OLC 22 - "social care" - various degrees of qualification.

Clause 15, Page 6, Line 20

Leave out paragraph (b)

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

Clause 15, Page 6, Line 22

After 'decision' insert 'of that body'

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

Comment [Alyn Hick9]:

OLC para 19 - suggested it would be helpful to make explicit whose decision was being referred in clause 15(2)(c).

Clause 16, Page 6, Line 29

After 'taken' insert 'in the exercise of administrative functions'

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

Clause 16, Page 6, Line 31

After 'decision' insert 'of that body'

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

Clause 16, Page 6, Line 32

Leave out 'clinical' and insert 'professional'

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

Clause 17, Page 7, Line 10

After 'taken' insert 'in the exercise of administrative functions'

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

Clause 17, Page 7, Line 13

Leave out paragraph (b)

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

Comment [Alyn Hick10]:

Removes "clinical judgement" provision

Clause 17, Page 7, Line 15

After 'decision' insert 'of that body'

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

Clause 18, Page 7, Line 27

After 'taken' insert 'in the exercise of administrative functions'

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

Clause 18, Page 7, Line 37

At end insert -

'(7) In this Act, references to a university include references to a constituent college, school or hall or other institution of a university.'

Comment [Hicks, AI11]:

Red text indicates OFMDFM Ctte amendment

Ctte agreed to move this provision from a Note at the end of Schedule 3 to clause 18.

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

Clause 19, Page 8, Line 10

Leave out 'First Minister and deputy First Minister acting jointly may' and insert 'Office of the First Minister and deputy First Minister may, with the concurrence of the Assembly Commission'

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

Clause 22, Page 9, Line 7

After 'may' insert ', with the concurrence of the Office of the First Minister and deputy First Minister'

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

Clause 24, Page 9, Line 24

Leave out 'it is reasonable to do so in the circumstances' and insert 'there are special circumstances which make it proper to do so'

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

Clause 28, Page 10, Line 35

Leave out 'it is reasonable to do so' and insert 'there are special circumstances which make it proper to do so'

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

Clause 30, Page 11, Line 36

Leave out 'furnishes' and insert 'provides'

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

Clause 30, Page 12, Line 1

Leave out 'furnishing' and insert 'providing'

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

Clause 31, Page 12, Line 12

Leave out 'supply' and insert 'provide'

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

Clause 31, Page 12, Line 16

Leave out 'supply' and insert 'provide'

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

Comment [Alyn Hick12]:

This and preceding amendment arise from ESR comment on the mechanism in **Clause 19** for updating the schedule of tribunals - orders conventionally made by Departments (not Ministers)
And
The power of the Commission to exclude matters from investigation in **Clause 22**.

The Examiner recommended that the powers in clauses 19 and 22 should be exercisable with concurrence of the Assembly Commission and OFMDFM respectively.

Comment [Alyn Hick13]:

OLC para 25 - this amdt + preceding amendment to clause 24.

OLC commented on different tests for exercising discretionary power to consider complaints where, for example, they are out of time.

OFMDFM Ctte agreed to rationalise on basis of "special circumstances"

Comment [Alyn Hick14]:

OLC para 29 + para 99 - suggested rationalising **supply/provide** etc

This + following amendments give effect

Clause 31, Page 12, Line 24

Leave out 'supply' and insert 'provide'

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

Clause 32, Page 12, Line 38

Leave out 'supply' and insert 'provide'

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

Clause 33, Page 13, Line 6

Leave out 'officer' and insert 'member of staff'

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

Clause 35, Page 14, Line 5

Leave out lines 5 and 6 and insert-

35.-(1) This section-

(a) applies where the Ombudsperson proposes to publish a report of a type referred to in section 34(1),

(b) but does not apply not in respect of an investigation conducted under section 8.

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

Comment [Alyn Hick15]:

OLC paras 34-36 commented that clause 35 – publication in the public interest, could apply to section 8 own initiative investigations whereas their publication is dealt with separately in clause 36.

Amendment makes clear it clause 35 doesn't apply to own initiative investigations.

Clause 37, Page 14, Line 24

After 'investigation' insert '(other than one under section 8)'

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

Comment [Alyn Hick16]:

OLC para 38 – suggested clarification so that provision for reports to the Assembly in 37(2) doesn't apply to reports of section 8 investigations.

Clause 38, Page 14, Line 35

Leave out 'in accordance with section 32(2)' and insert 'under section 31(1) by virtue of section 32(2)'

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

Comment [Alyn Hick17]:

OLC para 38 – this amendment clarifies the provisions of the Bill which authorise the production of documents which would otherwise be legally privileged.

Clause 41, Page 16, Line 26

After 'give' insert 'written'

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

Comment [Alyn Hick18]:

OLC – suggested that a notice under clause 41 be in writing.

Clause 42, Page 17, Line 38

At end insert -

(i) a local government auditor within the meaning of Article 4 of the Local Government (Northern Ireland) Order 2005,

Comment [Alyn Hick19]:

OFMDFM Ctte agreed to consultation and cooperation with additional entities

- (j) the Comptroller and Auditor General, and
- (k) the Health and Social Care Regulation and Quality Improvement Authority under the Health and Social Care (Reform) Act (Northern Ireland 2009.’

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

Clause 47, Page 19, Line 27

Leave out from ‘in’ to ‘32(2)’ on line 28 and insert ‘under section 31(1) by virtue of section 32(2)’

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

Comment [Alyn Hick20]: OLC para 47 – again clarifying authority for production of documents which would otherwise be **legally privileged**.

Clause 48, Page 19, Line 35

Leave out from ‘or’ to ‘Ombudsperson’ on line 36

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

Comment [Alyn Hick21]:
–**Rationalise terminology?**

Clause 49, Page 20, Line 11

At end insert -

‘(3) The person holding office as Northern Ireland Judicial Appointments Ombudsman immediately before the coming into operation of this section ceases to hold that office upon the coming into operation of this section.’

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

Comment [Alyn Hick22]:
Requested by DoJ

Clause 50, Page 20, Line 15

At end insert -

“‘action taken by a listed authority” has the meaning given in section 13,’

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

Comment [Alyn Hick23]:
OLC para 16 – requested this be included in “Interpretation”

Clause 50, Page 20

Leave out lines 34 to 38 and insert -

- ‘(a) Minister of a Northern Ireland department, and
- (b) junior Minister,’

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

Comment [Alyn Hick24]:
OLC paras 49+50 – the current definition suggested that OFM or dFM or junior ministers could act independently

This and next amendment address this issue.

Clause 50, Page 20, Line 38

At end insert -

“‘Northern Ireland Minister” has the same meaning as in the Northern Ireland Act 1998”,’

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

New Clause

After clause 51 insert -

‘Orders

52.—(1) No order to which subsection (2) applies is to be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(2) This subsection applies to an order under section 12(2), 19(3), 22(2) or 51.

(3) Orders under paragraph 6(1) of Schedule 1 are subject to negative resolution.

(4) Orders mentioned in this section may contain such incidental, consequential, supplementary, transitional and savings provisions as appear to the authority making them to be necessary or expedient.’

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

Comment [Alyn Hick25]:

New provision re order making powers in light of suggestions from the ESR.

OLC paras 52 - also addressed ambiguity between court orders and orders under the Bill; affirmative resolution

Comment [Alyn Hick26]: Assembly Commission setting salary

Clause 52

The Chair, Committee for the Office of the First Minister and deputy First Minister gives notice of his intention to oppose the question that clause 52 stand part of the Bill.

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

Clause 55, Page 22, Line 2

Leave out ‘paragraph 11’ and insert ‘paragraphs 5(2) and 11’

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

Comment [Alyn Hick27]:

OLC - para 68 - power to make arrangements re transfer of staff needs to commence earlier. The amendment provides for commencement one month after Royal Assent.

Clause 55, Page 22, Line 3

At end insert -

‘(a) section 14(2)(d),’

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

Comment [Alyn Hick28]:

OLC para 56 - same delayed commencement for the other provisions which only relate to universities.

Clause 55, Page 22, Line 23

At end insert -

‘(c) section 11(c),

(d) section 29,

(e) section 30(4),

(f) section 36,

(g) section 37(3).’

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

Comment [Alyn Hick29]:

OLC para 58 - delay commencement of other provisions dealing exclusively with own initiative investigations (sections 8 & 9)

Schedule 1, Page 23, Line 5

At end insert -

‘1.—(1) The person for the time being holding the office of the Northern Ireland Public Services Ombudsperson is by that name a corporation sole.’

Comment [Alyn Hick30]:

OLC para 60-62

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

Schedule 1, Page 24, Line 40

Leave out sub-paragraph (4) and insert -

‘(4) But ☐—

- (a) a person is not disqualified from being appointed as Ombudsperson by virtue of being the Northern Ireland Judicial Appointments Ombudsman,
- (b) the Ombudsperson is not prevented from being appointed as the Northern Ireland Judicial Appointments Ombudsman.’

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

Comment [Alyn Hick31]:

OLC - para 63-64
Concerned that there seems to be an implication that the rules on disqualification are different for the two offices so that a person can be disqualified for one but not the other. Amendment clarifies.

Schedule 2, Page 28, Line 40

Leave out ‘appointed’ and insert ‘transfer’

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

Comment [Alyn Hick32]:

OLC para 67
-Commented that there wasn’t actually an appointed day - various amendments below

Schedule 2, Page 29, Line 4

Leave out ‘appointed’ and insert ‘transfer’

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

Schedule 2, Page 29, Line 11

Leave out ‘appointed’ and insert ‘transfer’

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

Schedule 2, Page 29, Line 12

Leave out ‘appointed’ and insert ‘transfer’

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

Schedule 2, Page 29, Line 13

Leave out ‘appointed’ and insert ‘transfer’

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

Schedule 2, Page 29, Line 19

Leave out ‘appointed’ and insert ‘transfer’

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

Schedule 2, Page 29, Line 22

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 29, Line 24

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 30, Line 16

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 30, Line 21

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 30, Line 36

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 31, Line 3

Leave out sub-paragraph (2) and insert -

'(2) Accordingly, Article 4(4) to (6) of, and Schedule 1 to, the Commissioner for Complaints (Northern Ireland) Order 1996, or, as the case may be, Article 5(4) to (6) of, and Schedule 1 to, the Ombudsman (Northern Ireland) Order 1996 continue to have effect with respect to such persons.'

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

Schedule 2, Page 31, Line 5

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 31, Line 7

Leave out 'appointed' and insert 'transfer'

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

Comment [Alyn Hick33]: Pension saving provision in respect of previous office holders.

ESR recommended that it was better to preserve the pension provisions in the existing legislation rather than repeal all and leave a delegated power for DFP to remedy.

Schedule 2, Page 31, Line 10

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 31, Line 29

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 31, Line 31

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 31, Line 31

Leave out 'but' and insert 'and'

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

Schedule 2, Page 31, Line 32

Leave out 'no complaint was' and insert 'a complaint could have been, but was not'

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

Schedule 2, Page 31, Line 33

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 31, Line 34

Leave out 'appointed' and insert 'transfer'

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

Schedule 2, Page 32, Line 1

Leave out 'appointed' and insert 'transfer'

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

Schedule 3, Page 32

Leave out lines 9 to 21 and insert -

'NORTHERN IRELAND DEPARTMENTS

A Northern Ireland department'

Public Services Ombudsperson Bill

DL PSO

Comment [Alyn Hick34]:

OLC para 71

To make provision in relation to actions taken before these provisions come into operation - schools come in on 1 April 2017 and these two amendments accommodate that possibility.

Comment [Alyn Hick35]:

OLC paras 73-74

Referring to "A Northern Ireland Department" accommodates any reorganisation and renaming of departments.

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

Schedule 3, Page 32, Line 29

Leave out 'A' and insert 'The board of governors of a'

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

Comment [Alyn Hick36]:

OLC para 72 - correcting the legal decision making entity

Schedule 3, Page 33

Leave out lines 30 to 32

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

Schedule 3, Page 34, Line 27

At end insert -

'The Health and Safety Executive for Northern Ireland'

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

Comment [Alyn Hick37]:

This and preceding amendment remove the Health and Safety Agency

OLC para 73 also flagged

Schedule 3, Page 35, Line 2

Leave out paragraph 1

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

Comment [Alyn Hick38]:

Universities and constituent colleges - this has been moved up to sit in clause 18

Schedule 4, Page 35, Line 30

Leave out from 'Article' to '1991' on line 31 and insert 'section 203 of the Planning Act (Northern Ireland) 2011'

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

Comment [Alyn Hick39]:

Drafter highlighted and Committee has agreed to amend to cite updated legislative basis for the Planning Appeals Tribunal OLC 75 - also flagged

Schedule 5, Page 36

Leave out lines 17 to 24

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

Comment [Alyn Hick40]:

OLC para 77 - drafter agrees that this can be removed - purpose was to prevent health bodies bringing complaints. - OLC pointed out that it was prevented because they were not a member of the public for clause 5(5)

Schedule 5, Page 36, Line 31

Leave out sub-paragraph (2) and insert -

'(2) But the Ombudsperson may investigate that action, notwithstanding any limitation of time imposed by section 26, if conditions 1 and 2 are satisfied.

(3) Condition 1 is that either ☐—

(a) the Attorney General has decided not to proceed with an investigation,

(b) the Attorney General has decided not to institute proceedings, or

(c) there has been a final determination of those proceedings.

(4) Condition 2 is that ☐—

Comment [Alyn Hick41]:

OLC para 76 - drafter has revised to avoid use of "provided that" as OLC suggested.

- (a) a person aggrieved complains that the action resulted in the person aggrieved sustaining injustice in consequence of maladministration,
- (b) that injustice has not been remedied, and
- (c) the Ombudsperson is satisfied that there are reasonable grounds for that complaint.’

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

Comment [Alyn Hick42]:

OFMDFM Ctte agreed this amendment to the Justice (NI) Order 2002 in light of agreement on the value of the transfer of budget from DoJ to the NIPSO regarding NIJAO functions.

Comment [Alyn Hick43]:

OLC para 79
The Bill currently provides that a power to direct the NIJAO to include certain matters in his report, previously exercisable by DoJ should now be exercised by the Assembly.
OLC commented that this was an unusual power and questioned how Assembly could exercise it.
OFMDFM Ctte content that - if it ever needed to be exercised - the Assembly Commission should exercise the power.

Comment [Alyn Hick44]:

OLC para 80 - had suggested that for the Local Gov Act role we need to substitute not only "Commissioner" but "Commissioner's".

However the new title for local government investigations requested by the current Commissioner and agreed by the Minister removes the ...

Comment [Alyn Hick45]:

OLC para 81-83
Drafter has prepared amendment in response to OLC's comments regarding possible ambiguity about how current wording of 63(1) could be interpreted.

Comment [Alyn Hick46]:

OLC para 85 - suggested lines 18-19 not necessary as funding is already covered by section 64 of the Local Government Act 2014.
- Drafter agrees.

Comment [Alyn Hick47]:

This change in title was requested by Commissioner for Complaints and agreed by Minister. OFMDFM Committee is content.

Schedule 6, Page 39, Line 27

At end insert -

‘9. Omit paragraph 13 (financial provisions and directions).’

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

Schedule 6, Page 39, Line 33

After ‘Assembly’ insert ‘Commission’

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

Schedule 6, Page 39, Line 36

After “‘Assembly’ insert ‘Commission’

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

Schedule 7, Page 40, Line 7

Leave out paragraph 2

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

Schedule 7, Page 40, Line 22

Leave out line 22 and insert -

‘63.—(1) The provisions of the 2015 Act set out below have effect in relation to this Part as follows.’

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

Schedule 7, Page 41

Leave out lines 18 and 19

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

Schedule 7, Page 41, Line 27

Leave out line 27 and insert -

““the Commissioner” means the Ombudsperson (within the meaning of the 2015 Act) who is to be known, for the purposes of exercising functions under this Part, as the Northern Ireland Local Government Commissioner for Standards;”.

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

Schedule 9, Page 46, Line 40

At end insert -
,

| | |
|--|----------------|
| The Ombudsman and Commissioner for Complaints (Amendment) Act (Northern Ireland) 2015 | The whole Act. |
|--|----------------|

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

Comment [Alyn Hick48]:
OLC 86
- Drafter previously
highlighted to OFMDFM Ctte



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

21 August 2015

NIAR 374-15

Ray McCaffrey

Information on universities – Northern Ireland Public Services Ombudsperson Bill

1 Introduction

The Committee for the Office of the First Minister and deputy First Minister requested research to inform its decision making around clause 18 of the Northern Ireland Public Services Ombudsperson Bill (NIPSO Bill) which provides for “Matters which may be investigated; universities”. Specifically, the Committee requested information on the following in relation to the **theological colleges** of Queen’s University Belfast:

- whether the colleges are substantially financed out of public funds, directly or indirectly;
- the number and proportion of the members of each college’s governing body who are public appointees;
- whether a college exercises functions on behalf of the Crown or functions conferred by a statutory provision;
- the proportion of students at each theological college studying for a degree awarded by QUB;

- The recourse which those studying for QUB validated degrees currently have to QUB complaints procedures and ultimately to the QUB Board of Visitors;
- The recourse which those studying a degree validated by an institution which is a member of the Office of the Independent Adjudicator (OIA) would have to the complaints procedure of the validating institution and, ultimately, to the OIA.

In addition, the Committee requested information on the following issues in relation to the **teacher training colleges** (St. Mary's and Stranmillis) of Queen's University Belfast:

- The relationship between QUB and each college, including the extent to which they are independent of QUB;
- the number and proportion of the members of each college's governing body who are public appointees;
- the sources of their funding and the extent to which they are substantially financed out of public funds, directly or indirectly;
- the numbers/proportion of their students studying for qualifications or taking courses NOT validated by QUB (as opposed to taking QUB validated courses alongside non-validated courses);
- whether any courses/qualifications are validated by other institutions which would provide a student with access to the OIA or other independent appeal at the conclusion of the college's own complaints procedure.

The queries have been addressed to the extent made possible by the availability and accessibility of information.

Furthermore, the Committee has already received written responses from Queen's University Belfast clarifying the position of St. Mary's and Stranmillis with regard to certain matters. With respect to the theological colleges, a submission was received and included as part of the research request for this paper and is included at Appendix 1.

2 The Theological colleges

The Institute of Theology is made up of Theological Colleges recognised to teach Theology on behalf of Queen's University. In addition to enrolling with the University, each student must register with one of the colleges.

The University's Institute of Theology, headed by a Director, co-ordinates the delivery of Queen's taught programmes within the Colleges and is responsible for maintaining standards, both academic and procedural.

There are two theological colleges recognised to teach **undergraduate** Theology courses on behalf of the University:

- Belfast Bible College
- Union Theological College

The following Colleges are recognised by Queen's University Belfast to teach Theology at **Postgraduate level only**:

- Irish Baptist College
- Edgehill Theological College

Queen's Charter prohibits the University from directly teaching theology. Therefore the colleges in effect deliver the teaching on behalf of the University. Students attending one of the colleges and studying towards a degree awarded by Queen's have recourse to the same facilities as any other student at Queen's. This includes recourse to complaints procedures and appeals processes. There is a clear distinction between Queen's students and students working towards another degree awarded from, for example, the University of Cumbria. Those students cannot avail of Queen's facilities such as libraries and IT, or Disability Service and Counselling Services.

In terms of student complaints, students would bring their complaint to the Institute of Theology, not the individual college, although general areas of concern may be made to the college if the student chooses to do so. However, it is the University that is responsible for student progression and disciplinary matters, the college having no control over such areas.

Funding

The Department for Employment and Learning provides funding for 88 students per annum, with funding distributed proportionately across the two colleges which provide undergraduate teaching on behalf of the University: Union Theological College and Belfast Bible College. Full-time undergraduate students in receipt of a student loan or grant apply in the same way as any other University student, i.e. through the Student Loans Company, with payment of their tuition loan made to the Income Office of Queen's, when thereafter payment will be transferred to the College.

Table 1 shows the total number of **Queen's students** registered for the academic year 2014-15.

Table 1: Total students registered on all years during 2014-15¹

| | Bachelor of Divinity | BTh | BA (Joint) | MTh | MDiv | Grad Diploma | PhD | TOTAL |
|------------------------------|----------------------|-----|------------|-----|----------------|--------------|-----|-------|
| Union Theological College | 27 | 71 | 47 | 15 | 4 ² | 5 | 20 | 189 |
| Belfast Bible College | 2 | 17 | 9 | 4 | | 6 | 3 | 41 |
| Irish Baptist College | N/A | N/A | N/A | 2 | | N/A | 0 | 2 |
| Edgehill Theological College | N/A | N/A | N/A | 1 | | N/A | 2 | 3 |
| Total | 29 | 88 | 56 | 26 | | 11 | 25 | 235 |

The following table addresses, insofar as was possible, the specific areas of information requested by the Committee.

¹ Data provided by the Institute of Theology, Queen's University Belfast

² Represents the last student cohort for this pathway.

| | Union Theological College | Belfast Bible College | Edgehill Theological College | Irish Baptist College |
|---|--|---|---|---|
| Whether the colleges are substantially financed out of public funds, directly or indirectly | Union Theological College teaches Ministry students for the Presbyterian Church in Ireland, these students are funded by the Presbyterian Church in Ireland. The College also teaches undergraduate and post graduate students for QUB. These students are mostly paid for via the student loan company however there are also self-funders. | Belfast Bible College is a registered charity: "As we are an independent college, we do not get any government assistance, or funding from a particular church denomination." ³ | | No public funding, however students have access to loans & grants for validated degrees. |
| The number and proportion of the members of each college's governing body who are public appointees | All members of the Management Board and panels of the College are appointed by the Presbyterian Church in Ireland. | The governing body of the College is the Board of Directors, which is drawn from a wide occupational and denominational spectrum. The Board is responsible for the overall direction, management and policy of the College. The Principal, an ex-officio member of the Board, is the College's Chief Executive Officer responsible to the Board for the implementation of their policies and day to day running of the College. | | None. |
| Whether a college exercises functions on behalf of the Crown or functions conferred by a statutory provision | The College base governing document is the 1978 Act of Parliament but the Memorandum of Agreement between QUB and the College is also an important working document | | | No. |
| The proportion of students at each theological college studying for a degree | The proportion of students studying for degrees awarded by QUB varies from year to year but is normally in | The BA (Hons) in Theology is offered in partnership with the University of Cumbria. The University of Cumbria | As an affiliate College of the Institute of Theology at Queen's University Belfast, Edgehill offers | In association with Queen's University Belfast <ul style="list-style-type: none"> • MTh (taught) |

³ <http://www.belfastbiblecollege.com/community/giving.php>

| | | | | |
|----------------|----------------|---|---|--|
| awarded by QUB | excess of 90%. | <p>programme at Belfast Bible College is currently being revalidated. All modules listed are subject to validation by University of Cumbria. Certificate and Diploma Courses are offered in partnership with the University of Cumbria.</p> <p>The BD and BTh programmes are three year full-time honours degrees. These are Queen's University degrees completed through the Belfast Bible College. Belfast Bible College offers a number of Queen's University postgraduate degrees, including:</p> <ul style="list-style-type: none"> • Graduate Diploma in Theology • Masters in Theology • PhD <p>The Postgraduate Diploma in Theological Studies (PGDipTS) is an internal full-time programme of Belfast Bible College. It is designed for those who place a high value on flexibility of study and it is open to candidates with a primary degree (2.2 and above) or equivalent.</p> <p>According to the review for Educational Oversight by the Quality Assurance Agency for Higher Education, the College offered the following higher education programmes, listed with the awarding bodies and full-time equivalent student numbers in brackets:</p> <p><i>Queen's University Belfast</i></p> <ul style="list-style-type: none"> • Bachelor of Divinity/Theology | <p>supervision for prospective Queen's postgraduate students applying for Masters or Doctorate pathways of study in Theology. Foundation Degree & BA in Theology for Ministry. Edgehill College sponsors candidates to study on the Foundation Degree in Theology for Ministry and BA in Theology for Ministry through St. John's, Nottingham.</p> <p>Certificate in Christian Studies. Certificate in Christian Studies</p> <p>The Certificate in Christian Studies (CCS) is a practical course in applied theology, designed to equip Christians of all denominations for ministry and mission, offered through the Distance Learning Programme of St John's College, Nottingham.</p> | <ul style="list-style-type: none"> • PhD (research) <p>5% of students are studying for a degree awarded by Queen's.</p> <p>In association with The University of Chester</p> <ul style="list-style-type: none"> • MA in Theology • DMin in Theology • MPhil (research) • PhD (research) |
|----------------|----------------|---|---|--|

| | | | | |
|---|---|--|--|--|
| | | (BD/BTh) (36.5) •Graduate Diploma in Theology (GDip) (2) •Masters in Theology (MTh) (11) •PhD in Theology (4) | | |
| The recourse which those studying for QUB validated degrees currently have to QUB complaints procedures and ultimately to the QUB Board of Visitors | The College has no recent experience of students taking complaints. The College works within the Memorandum of Agreement between QUB and the College. The College places no restrictions on student's rights to complain. | | | The same as any Queen's student. |
| The recourse which those studying a degree validated by an institution which is a member of the OIA would have to the complaints procedure of the validating institution and, ultimately, to the OIA | | | | The same as any other student studying at such an institution. |

3 St. Mary's and Stranmillis

St Mary's was founded in 1900 and Stranmillis was founded in 1922. Both institutions were designated Colleges of Queen's University Belfast in 1999. The arrangement acknowledged the academic maturity and standing of the Colleges and led to the full integration of their academic provision into Queen's structure.

The partnership built upon the previous relationship under which the Colleges had been 'recognised' by Queen's which validated the BEd degree and other approved courses⁴.

⁴ <http://www.qub.ac.uk/home/TheUniversity/UniversityColleges/>

| | St. Mary's | Stranmillis |
|---|--|--|
| The relationship between QUB and each college, including the extent to which they are independent of QUB | <p>The 2013-14 Annual Report states:</p> <p>St Mary's is academically integrated with Queen's University whilst at the same time it is an autonomous institution of higher education and directly accountable to government. Such an arrangement requires good relationships to be in place for it to be most effective. The relationship is managed through a Memorandum of Agreement (MoA), and the most recent memorandum was agreed in June 2010. Senior members of staff at St Mary's are members of high-level committees at Queen's including Academic Council and thereby have an input into the academic decision-making processes at the University. There are effective lines of communication between St Mary's and Queen's at all levels.</p> <p>Applications for enrolment at St. Mary's are made directly to the college⁵.</p> | <p>Stranmillis University College was established in 1922 under the Ministries of Northern Ireland Act 1921. The College receives funding from the Department for Employment and Learning under Article 66(2) of the Education and Libraries (NI) Order 1986. As a result of the approval by Parliament of the Colleges of Education (NI) Order 2005, the College became a legally incorporated Higher Education Institution on 1 October 2005 and is integrated academically with Queen's University Belfast through an Agreement dated May 2002.</p> <p>As Part of the Financial Memorandum between the Department for Employment and Learning and Stranmillis University College, "Stranmillis University College shall subscribe, either directly or indirectly, to the following bodies...QAA (as a College of Queen's University Belfast".</p> <p>Stranmillis became a University College of Queen's University in 1998, and since 2012 has been classified as a Non-Departmental Public Body, sponsored by the Department for Employment and Learning.</p> <p>Applications for admission to Stranmillis University College are submitted through UCAS in the normal manner.⁶</p> |
| The number and proportion of the members of each college's governing body who are public appointees | <p>The Board of Governors at St. Mary's comprises the following Members:</p> <ul style="list-style-type: none"> • Four ex-officio Governors • Eight nominated Governors • Six Governors nominated by the Trustees in consultation with the Roman Catholic Bishops of the Catholic Dioceses of Armagh, | <p>Membership of the Governing Body consists of not more than 18 members of whom:</p> <p>(a) Not less than one-half shall be persons appearing to the Department [for Employment and Learning] to be, or to have been, engaged or employed in business, industry or any profession;</p> |

⁵ <https://www.qub.ac.uk/directorates/StudentPlus/MarketingRecruitmentandAdmissions/admissions/UndergraduateAdmissions/ApplyingtoQueens/ApplicationsforEducationdegrees/>

⁶ As above

| | | |
|---|--|--|
| | <p>Clogher/Kilmore, Derry and Dromore</p> <ul style="list-style-type: none"> • One Governor from the Academic Staff, appointed by the Academic Board • One student representative Governor elected by the Students' Union • Six representative Governors • Four Governors appointed by the Department for Employment and Learning in consultation with the Trustees • Two Governors appointed by the Senate of Queen's University Belfast | <p>(b) One shall be the Principal of the College</p> <p>(c) Two shall be elected by staff employed at the College of whom:</p> <p>(1) One shall be elected by teachers employed from amongst teachers; and</p> <p>(2) One shall be elected by other staff so employed from among such other staff;</p> <p>(d) One shall be elected by students of the College from among such students;</p> <p>(e) Not more than two may be persons co-opted by other members of the Governing Body.</p> <p>The Operating Framework goes on to state that: "The Department for Employment and Learning is responsible for appointing all Members of the Governing Body, including the Chairman".</p> |
| The sources of their funding and the extent to which they are substantially financed out of public funds, directly or indirectly | <i>See section 4</i> | <i>See section 4</i> |
| The numbers/proportion of their students studying for qualifications or taking courses NOT validated by QUB (as opposed to taking QUB validated courses alongside non-validated courses) | <p>All awards are Queen's awards.</p> <p>The following is the number of entry places available in September 2013, by academic programme:</p> <p>BEd Primary 94</p> <p>BEd Post Primary 49</p> <p>PGCE (IME) 20</p> <p>BA Liberal Arts 110</p> <p>The total number of course applications received was 2,767. This compares to 2,837 course applications in 2012. The number of applications received for the BEd was 1,696 and for the Liberal Arts it was 1,071.</p> | <p>The 2015-18 Corporate Plan states:</p> <p>All the University College's accredited courses lead to qualifications validated and awarded by Queen's University, Belfast.</p> <p>The following is the undergraduate enrolment for 2013-14:</p> <p>BEd Primary: 95</p> <p>BEd Post Primary: 50</p> <p>BA Early Childhood Studies: 65</p> <p>FD (Early Childhood Studies): 32</p> <p>BSc Health & Leisure: 41</p> <p>FD (Health & Leisure): 23</p> |

| | | |
|---|--------------------------------|---|
| | | The inclusion of part-time courses brings the total undergraduate enrolment to 401. |
| Whether any courses/qualifications are validated by other institutions which would provide a student with access to the OIA or other independent appeal at the conclusion of the college's own complaints procedure. | All awards are Queen's awards. | All awards are Queen's awards. |

4 Funding for the teacher training colleges

St. Mary's and Stranmillis

The following is a breakdown of the funding allocated to St. Mary's University College and Stranmillis University College⁷.

Table 2: St. Mary's

| | Teaching funds | Research funds | Other (funding for a variety of smaller initiatives or purposes) | Initial Teacher Education | Total |
|----------------|----------------|----------------|--|---------------------------|-------------|
| | £m | £m | £m | £m | £m |
| 2014/15 | 0.95 | - | 0.31 | 3.46 | 4.72 |
| 2013/14 | 0.96 | - | 0.31 | 3.39 | 4.66 |
| 2012/13 | 1.01 | - | 0.22 | 3.57 | 4.80 |

Table 3: Stranmillis

| | Teaching funds | Research funds | Other (funding for a variety of smaller initiatives or purposes) | Initial Teacher Education | Total |
|----------------|----------------|----------------|--|---------------------------|-------------|
| | £m | £m | £m | £m | £m |
| 2014/15 | 0.92 | 0.05 | 0.39 | 3.37 | 4.73 |
| 2013/14 | 0.93 | 0.05 | 0.39 | 3.39 | 4.76 |
| 2012/13 | 0.97 | 0.05 | 0.63 | 3.37 | 5.02 |

5 Office of the Independent Adjudicator – England and Wales

Higher Education Act 2004

The Higher Education Act 2004 required the appointment of a body to run a student complaints scheme in England and Wales. The Office of the Independent Adjudicator

⁷ Information in the table is taken from correspondence from the Department for Employment and Learning dated 30 December 2014.

was established to administer this scheme, to which all universities in England and Wales must subscribe⁸.

Section 20 of the 2004 Act provided that Visitors of qualifying institutions would no longer have any jurisdiction over student complaints.

Section 11 of the Act sets out the qualifying institutions that are subject to the scheme, which includes all universities in England and Wales, constituent colleges of universities such as the colleges of Oxford and Cambridge:

“Member Higher Education Provider” or “Member HE Provider” means a Qualifying Institution under part 2 of the 2004 Act; that is, any of the following institutions in England or Wales:

(a) a university (whether or not receiving financial support under section 65 of the Further and Higher Education 1992) (“1992 Act”) whose entitlement to grant awards is conferred or confirmed by an Act of Parliament, a Royal Charter or an order under section 76 of the 1992 Act;

(b) a constituent college, school or hall or other institution of a university falling within (a) above;

(c) an institution conducted by a higher education corporation, as defined by section 90(1) of the 1992 Act;

(d) a designated institution, as defined by section 72(3) of the 1992 Act;

(e) (with effect from 1 September 2015) an institution (other than one within paragraphs (a) to (d), above) which provides higher education courses which are designated for the purposes of section 22 of the Higher Education Act 1998 by or under regulations under that section;

(f) (with effect from 1 September 2015) an institution (other than one within paragraphs (a) to (e), above) whose entitlement to grant awards is conferred by an order under section 76(1) of the 1992 Act.

*The term Member HE Provider shall also include: Non-qualifying Institutions which have joined the Scheme with the consent of the Board;*⁹

UK Council for International Student Affairs

The UK Council for International Student Affairs (UKCISA) offers the following guidance:

Complaints to awarding bodies

⁸ <http://www.oiahe.org.uk/about-us.aspx>

⁹ <http://www.oiahe.org.uk/media/100294/oia-rules-july-2015.pdf>

If you are studying a qualification which is awarded by a different organisation to the institution where you are studying, eg if you are studying at a college for a degree awarded by a university, you may be able to raise relevant complaints with the awarding body, as well as the college.

What complaints you can raise with the awarding body will depend on the basis of the agreement between the two organisations, but might cover matters such as poor teaching or inadequate library services, where the awarding body has set standards for the college to follow. It is less likely to cover non-academic matters such as accommodation.

If you are not satisfied with the response you receive from the awarding body, you will also be able to complain to organisations responsible for its review or oversight. For example, if you are studying a degree from University X at College Y and University X is reviewed by the Quality Assurance Agency and a member of the Office of the Independent Adjudicator Scheme, you would be able to raise relevant complaints with these organisations¹⁰.

6 Scotland

In Scotland, complaints about institutions of further and higher education are handled by the Scottish Public Services Ombudsman (SPSO). As part of its remit, the SPSO publishes model complaints handling procedures (CHPs) – the further and higher education sector CHPs were published in December 2012.

These CHPs were published under section 16B of the SPSO Act 2002 (as amended by the Public Services Reform (Scotland) Act 2010). All universities and colleges were required to adopt the model CHP for their sector as soon as possible.

Complaints involving other organisations or contractors who provide a service on behalf of the Institution

If an individual complains to the Institution about the service of another organisation, but the Institution has no involvement in the issue, the individual should be advised to contact the appropriate organisation directly.

Where a complaint relates to an Institution service and the service of another organisation the complaint must be handled through the CHP. In particular, the same timescales will apply. This relates to complaints that involve services provided on the Institution's behalf (such as partner institutions and contractors) or to those provided by a separate organisation (such as awards agencies). If enquiries to an outside organisation in relation to the complaint are required, care must be taken to comply with Data Protection legislation and the guidance on handling personal information...¹¹

¹⁰ <http://www.ukcisa.org.uk/International-Students/Study-work--more/Other-useful-information/Complaints-about-your-institution/#>

¹¹ The Scottish Higher Education Model Complaints Handling Procedure

7 Republic of Ireland

The Ombudsman Amendment Act 2012 brought universities and other publicly funded third level colleges (institutes of technology, education training boards (formerly VECs) and other bodies in the education sector such as Student Universal Support Ireland (SUSI)) under the remit of the Ombudsman (with effect from 1st May 2013).

The 2014 Annual Report of the Ombudsman lists the number of complaints received in that reporting year along with the number of complaints closed for each institution. In total, the figures for 2014 were 218 complaints received and 221 closed. Of these, Student Universal Support Ireland (SUSI) made up the majority of complaints (89 received) followed by the State Examinations Commission (43 complaints received). By way of comparison, Trinity College Dublin, University College Cork and University of Limerick were the subject of 14 complaints in total.

The Ombudsman's website lists those colleges which are recognised colleges of Universities as falling within his remit. For example, the National College of Art and Design is a recognised college of University College Dublin, although both are listed as subject to review by the Ombudsman. To take another example, the same is true of St. Patrick's College, Drumcondra, which is a college of Dublin City University – both are listed separately under the Ombudsman's remit.

St. Patrick's website confirms that: "St Patrick's College is a college of Dublin City University. All College courses are accredited by the University and students of the college are students of the University"¹².

¹² http://www.spd.dcu.ie/site/prospective_students/faq.shtml

Appendix 1

Status of the Colleges

Theological colleges and the University Colleges have their own independent governance structures and hence their responsibility for the conduct of their students. They are academically integrated with us for the purpose of receiving our academic award. For that they are entitled to use our processes of academic appeal.

The term constituent college applies to level of academic integration only but they are not “owned” by Queen’s. They are independent in terms of governance and management.

Below is the section of the Memorandum of Agreement for Stranmillis University ...The St Mary’s MOA is largely identical. (Also below is)5 the section on complaints / appeals and discipline which is a reiteration of what we discussed on Tuesday.

SECTION 3: THE LEGAL CAPACITY OF THE PARTIES TO ENTER INTO THE AGREEMENT, THE GOOD STANDING AND FINANCIAL STATUS OF THE COLLEGE, THE UNIVERSITY COLLEGES JOINT LIAISON GROUP

6. Queen’s University of Belfast, founded as Queen’s College Belfast in 1845, received its original Charter as a university in 1908. The current Charter, granted in 1982, and revised in 2001, provides for a governing body, the Senate, representative of the local community and the University, and an Academic Council which, subject to the power of the Senate, controls the internal academic affairs of the University. The University receives most of its funding from the Northern Ireland Department for Employment and Learning (DEL).

The chief executive officer of the University is the Vice-Chancellor who has delegated to the Pro-Vice-Chancellor for Education and Students responsibility for overseeing the implementation and operation of this Agreement.

The address of the University is: Queen’s University Belfast
Belfast
BT71NN

7. Stranmillis University College is an interfaith institution originally founded in 1922 to provide state-funded teacher training. From 1 October 2005 the College is an incorporated body, under the control of its Governing Body, following the passage of the Colleges of Education (Northern Ireland) Order 2005. The Governing Body is directly appointed by the Minister with responsibility for Higher Education in Northern Ireland and is responsible to the Department for Employment and Learning (DEL) for the management of the College. It is accredited by the Department of Education as an

institution providing courses of Initial Teacher Training leading to eligibility to teach and is funded by DEL. The College's grounds and buildings have been transferred to the College's governing body.

The senior officer of the College is the Principal who is responsible for overseeing the implementation and operation of this Agreement.

The address of the College is: Stranmillis University College: a College of

Queen's University Belfast

Stranmillis Road

Belfast

BT9 5DY

Student Complaints and Appeals, Student Discipline

2. Students enrolled in the College on University programmes are registered as students of the University for the purpose of achieving an academic award. They have access to certain University facilities and services as indicated above and to a variety of complaints and appeals procedures.
3. In academic matters, students in the College have access to the same complaints and appeals procedures as other students of the University. In non-academic matters, students have access to College complaints and appeals procedures as approved by the University.
4. Students will be subject in relation to academic matters to the University disciplinary procedures. In non-academic matters they will be subject to the College disciplinary procedures.



Mr Mike Nesbitt MLA
Chairman
Committee for the Office of First and deputy First Minister
Parliament Buildings
Stormont
BELFAST
BT4 3XX

28 August 2015

Dear Mr Nesbitt

NIPSO BILL – COMPLAINTS STANDARDS AUTHORITY (CSA) ROLE

I refer to the letter of 25 August 2015 from Ms O'Hanlon relating to the financial implications of a CSA role for the NIPSO, assuming provision on a similar basis to that in Scotland.

I have had the opportunity of corresponding with my colleague, Jim Martin, the Scottish Ombudsman (SPSO), on this issue and he has confirmed that the issue of costs to the bodies in SPSO jurisdiction of complying with the requirements of the CSA have never been raised by any body or sector within the Scottish public service.

The SPSO has also confirmed that in terms of assessing the impact on public bodies there was a limited impact in relation to their involvement in working groups, the development and implementation of complaint recording systems, raising staff awareness and rolling out the standardised complaints procedures. I have been advised that there has been a positive impact on resources because most Scottish public bodies removed at least one or in some cases two expensive and repetitive stages of their complaint handling processes. The sectors now are averaging over 85% complaints resolved at the first (5 days) stage of the standard complaints procedure as a result of the focus on frontline resolution of complaints; so these are not even progressing to stage 2 (20 days) of investigation. One significant new development, which will be important to the Assembly, is that all public bodies can now give an accurate account of all complaints received and how they have been disposed of. This allows an important comparative examination of their complaints performance.

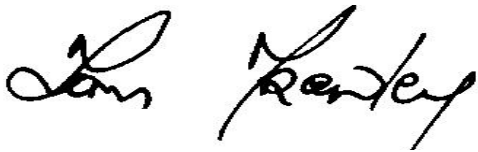
SPSO confirmed also that at the start of this new process, bodies raised the issue of investment in training for frontline staff to be able to handle the early resolution of

complaints. The office identified this as an area for support and the Scottish government resourced costs for SPSO to develop e-learning modules for each sector as an online resource which is available on www.valuingcomplaints.org.uk.

In relation to the question as to whether the NIPSO office could undertake the CSA role with no additional funding, having consulted with the Scottish Ombudsman on the resources made available to him to undertake this role, I do not consider that this would be possible without additional financial support. The SPSO have confirmed that initially resourcing the CSA role required 3 additional full time members of staff because a substantial amount of preparation was undertaken for implementation. I am informed that over time this has reduced to now only 1.5 full time members of SPSO staff. It is be my view that given the differences in scale this could operate effectively in Northern Ireland with 2 additional full time members of staff initially and subsequently dropping over time to one full time member of NIPSO staff. However, I am mindful of the difficult financial climate and might I suggest that the Committee consider legislating for the CSA role within NIPSO with a commencement date to be set by the Assembly or the Assembly Commission at a later stage when hopefully there may be adequate funds available for NIPSO to undertake this role.

I trust the Committee finds this information and my views helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T J Frawley', written in a cursive style.

T J FRAWLEY
NI OMBUDSMAN

CC: Lord Morrow, Chairman, Ad Hoc Committee

6th July 2015



Mrs Kathy O'Hanlon
Assembly Clerk for the Office of the First Minister
and Deputy First Minister
Parliament Buildings
Ballymiscaw, Stormont
Belfast
BT4 3XX

Dear Mrs O'Hanlon,

I am writing to your committee in relation to the Public Services Ombudsperson Bill currently before the Northern Ireland Assembly. In this respect, I am making a submission seeking an amendment to Schedule 3 'Listed Authorities' – 'Education and Training' to have 'The General Teaching Council for Northern Ireland' (the Council) listed as a body which comes under the remit of the Public Services Ombudsperson Bill.

The Council was established by the Education (Northern Ireland) Order 1998 and subsequent responsibilities were set out in the Education (NI) Orders 2003 and 2006 and Department of Education regulations and circulars as follows:

- Establishing and maintaining a register of teachers in Northern Ireland;
- The provision of a professional code for registered teachers;
- The promotion of standards;
- The approval of qualifications leading to registered teacher status including the accreditation of courses of Initial Teacher Education in Northern Ireland; and
- Regulatory functions relating to professional conduct.

In addition, the Council has a statutory responsibility to provide advice to the Department of Education and employing authorities on a wide range of issues, including the training, the career development and performance management of teachers.

In April 2012, the Council was officially classified as a Non Departmental Public Body (NDPB) and it is now an arm's length body (ALB) of the Department of Education and is subject to the governance and accountability stipulations set out in a Management Statement and Financial Memorandum (MSFM).

The Council has a governing board of 33 and is presently constituted as follows:

- 14 members are directly elected by teachers

- 5 members are nominated to GTCNI by Teaching Unions via the Northern Ireland Teachers' Council
- 4 members are nominated by employing authorities
- 4 members are appointed by the Department of Education
- 6 members are nominated to the Council by the following bodies:
 - Comhairle na Gaelscolaíochta
 - Governing Bodies Association
 - Northern Ireland Council for Integrated Education
 - Transferor Representatives' Council;
 - Trustees of Catholic Schools; and
 - Universities' Council for The Education of Teachers (NI)

The Chief Officer of the Council is known as the Registrar.

In making this submission to your committee, the Council wishes the remit of the Public Services Ombudsperson Bill to cover only the services provided by the Council to teachers in Northern Ireland and, where appropriate, the general public. At a practical level, referrals under the Public Services Ombudsperson Bill will become the final step of the Council's current Complaints' Policy. However, the Council does not anticipate the Public Services Ombudsperson Bill will have any jurisdiction with respect to the Council's present or future regulatory responsibilities. The Council's current and future regulatory process are covered by the High Court for Northern Ireland, in terms of judicial review and final appeals relating to regulatory determinations made against teachers.

Officers of the Council can supply further information or clarification that your committee may require.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Gerry Devlin', is written over a horizontal line.

Mr Gerry Devlin
Senior Education Officer



Ombudsman Northern Ireland

Mr Mike Nesbitt MLA
Chair of Committee for OFMdfM
Room 435
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

2nd July 2015

Dear *Mr Nesbitt,*

NIPSO BILL – REQUESTED AMENDMENT TO SCHEDULE 1 OF THE NIPSO BILL

I refer to the current draft of the proposed NIPSO bill and in particular schedule 1 of the Bill as it is currently drafted relates to delegation by the NIPSO only to members of staff (paragraph 14) as follows:

'5) Any function of the Ombudsperson may be performed by any member of staff of the Ombudsperson authorised by the Ombudsperson for that purposes'

I would be obliged if the Committee would consider amendment to extend the power of delegation to 'any other person'. This is to deal with two possible circumstances that may arise.

Firstly, such a provision would allow the NIPSO to invite another Ombudsman to undertake an investigation if the NIPSO were conflicted and also members of his senior staff were also conflicted. For instance, if the complaint were from a former member of NIPSO staff or about a body that the new NIPSO may have been employed by previously, in the interests of openness and transparency it would be important that another Ombudsman deals with the complaint. Currently I have a Protocol with my Scottish and Welsh colleagues in relation to cases where they are personally conflicted and I attach a copy for your information.

Secondly, I am aware that some stakeholders have requested an external review process and that the Committee is considering this issue. I am aware from my colleague in Scotland that this can be an expensive process and would suggest that an alternative would be to make provision in the NIPSO Bill for delegation to another person such as another Ombudsman.

I am also writing to the Chair of the Ad Hoc committee in similar terms.

ASSEMBLY OMBUDSMAN FOR NORTHERN IRELAND
NORTHERN IRELAND COMMISSIONER FOR COMPLAINTS

Your officials are most welcome to contact me for any clarification that may be required regarding this matter. May I take this opportunity to wish you as Chair and the members of the Committee and staff a very enjoyable summer recess.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Dr Frawley', with a stylized flourish extending from the end.

Dr Tom Frawley CBE
Northern Ireland Ombudsman

Protocol
between
The Scottish Public Services Ombudsman (Transferor)
and
Northern Ireland Ombudsman (Transferee)

For Delegation of the Investigation Function of the Transferor

Definitions: The Transferor shall be the Scottish Public Services Ombudsman (SPSO)

The Transferee shall be the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints (NIO)

The Parties shall mean SPSO and the NIO

1. Introduction

This Protocol is made pursuant to paragraph 12 of schedule 1 of the Scottish Public Services Act 2002 (SPSO Act) or Transferor equivalent. The purpose of this Protocol is to describe the arrangements for transferring the investigation of a complaint between the SPSO and the Northern Ireland Ombudsman.

Both SPSO and the Northern Ireland Ombudsman have policies and procedures in place to ensure that conflicts of interest whether real or perceived are managed appropriately. As part of that management, they have agreed that in some cases, the complaint should be investigated by the other body. This Protocol sets out the arrangements for an investigation.

Nothing in this Protocol affects the individual accountability of each party and they remain responsible for the decision in any complaint transferred by them.

2. Responsibility for the decision in relation to the complaint

The Transferor remains responsible for the decision in relation to the complaint which has been transferred by them. This Protocol does not change or impact on any statutory obligations of the Transferee. The Transferor is responsible for ensuring that the transfer is appropriate and does not conflict with their statutory powers and functions.

The final decision to delegate an investigation remains with the Transferor.

It is important that the Transferee recognises throughout that they are acting not in their own capacity but with the delegated authority of the Transferor and that this may impact on how they can conduct any investigation.

3. Making the Transfer

Prior to the transfer of any information relating to the complaint an agreement will be signed by the Transferor and Transferee which provides the Transferee with the delegated authority of the Transferor. The authorisation will be in a standard format to be agreed between the bodies and can be amended for specific situations if required. The authorisation will contain as a minimum the following details:

- For the Transferee to have the delegated powers of the Transferor for the purposes of investigating a particular complaint;
- The details of the complaint has been agreed with the complainant by the Transferor;;
- The complaint has been accepted by the Transferor as lying with the Transferor's jurisdiction;
- That the delegated authority extends to specified members of the Transferee's staff;
- Where appropriate, that the Transferee confirms they agree that any information obtained by them in relation to the complaint should not be retained permanently but returned in full at the conclusion of the investigation and any copies held whether electronically or otherwise destroyed in accordance with the Transferor's retention and destruction schedule. In the event of any subsequent legal proceedings, the Transferor will provide the Transferee with all relevant information for the purposes of giving any witness statement or other evidence;
- While investigating the complaint the Transferee will ensure appropriate security measures are undertaken in respect of the information received from the Transferor and any further information obtained;
- That the delegated authority will continue for the duration of the investigation and this may include some work beyond the submission of the report to the parties; and
- That the delegated authority will include the ability to take appropriate action where the Transferee becomes aware of a real and immediate risk to any person.

For the avoidance of doubt, the terms of the authorisation will not alter the Transferor's or Transferee's joint responsibility to ensure security of the personal data they hold in accordance with the seventh data protection principle. Both Transferor and Transferee will ensure they act in accordance with the Information Acts¹ throughout. Where this may differ between jurisdictions, the Transferor and Transferee will at all times apply the relevant statutory provisions in relation to requests for information.

Once the authorisation has been agreed the Transferor will provide the Transferee with the following:

¹ Information Acts are the Data Protection Act 1998, Freedom of Information Act 2000 [in Scotland the relevant legislation is the Freedom of Information (Scotland) Act 2000] and Environmental Information Regulations 2004.

- A statement of complaint as agreed with the complainant;
- All relevant information obtained relating to the complaint;
- Contact details for the complainant and the body complained of and confirmation that both parties to the complaint have been informed of the transfer, and the identify of the Transferee as well as the purposes for which their personal information will be processed and to whom it may be disclosed, to include information about any reasonable adaptations that have been made;
- The legislative provisions which may be relevant to the investigation of the particular complaint.

4. Conduct of an Investigation

The Transferee will conduct the investigation in accordance with the delegated authority and with any statutory provisions relating to the complaint. The Transferee need not comply with specific process or guidance set out by the Transferor which would apply to their own staff. This recognises that it would be difficult for either body to have in place identical or to accommodate a completely new investigation process or practice.

5. Information and Document Storage

It is important that it remains possible for the quality of the investigation to be assessed by the Transferor and during the investigation the Transferee will ensure that:

- All information and documents received are carefully stored electronically on a secure network and details kept for the duration of the investigation;
- Hard copies are kept of all communications relating to the complaint;
- Clear file notes are made which can show the reasons behind requests for information and any decisions made under the authorisation;
- Updates on progress are sent to the complainant and Transferor on a six-weekly basis.

The Transferee will decide how to conduct the investigation and this will include how often and how they communicate with the parties involved. However, the Transferee should be aware that any complaint about the service provided will be dealt with in line with the Transferor's service complaint process as they remain responsible for ensuring the quality of the service that is delivered in accordance with section 11 below.

6. Expert Advice

The Transferee may obtain expert advice if they consider this is required. As the Transferor may already have agreements in place with expert advisers, they should first contact the Transferor to see if an advisor is already available. If not they will need to seek formal and written confirmation for the expenditure from the Transferor prior to using an external adviser.

7. Expenses

The Transferee is also entitled to have any travel and subsistence expenses refunded in relation to this investigation that have had prior written approval of the Transferor. This is also required if it appears that the cumulative expenses below the agreed limit will go above that level.

8. New matters and evidence of risk that arise during an investigation

If during an investigation it appears to the Transferee that new issues or significant information which may indicate a risk to any person or which raise some concern have arisen, they should immediately contact the Transferor. It is a matter for the Transferor to decide whether any new issue should be dealt with alongside the original complaints agreed. The Transferor will also decide how to deal with information that indicates a risk to any person. The exception to this is when the Transferee becomes aware of an imminent and real danger to any person. In these circumstances they can act immediately and inform the relevant person and the Transferor as soon as possible in accordance with the Transferor legislation.

9. Conclusion of the Authorisation

At the conclusion of their investigation, the Transferee should send to the Transferor by recorded delivery/secure mail:

- All documents/information received by the Transferee relating to the complaint;
- All evidence obtained during the investigation;
- All documents created by the Transferee during the investigation;
- A report on the investigation which should include:
 - Details of steps taken
 - Summary of evidence obtained
 - Details of findings and conclusions
 - Recommendations about:
 - Whether or not the complaint should be upheld
 - The injustice that has been caused in consequence of the maladministration or service failure and those elements that may require a remedy
 - Remedy that may be appropriate
 - A statement that all information held by them in connection with this matter has been returned and anything held on the Transferor's system has been destroyed.
 - Confirmation that the complainant and the body have both been informed that the complaint has been returned and that they should expect to receive the final report from the Transferor.

10. Decisions and Recommendations

When making recommendations the Transferor must consider:

- The decision will remain that of the Transferor;
- The recommendations ultimately made will need to be in line with the Transferors own powers and policy on redress.

11. Dealing with Disputes and Complaints

The decision to transfer does not prevent the complainant or the body from using any of the systems or processes in place by the Transferor for dealing with challenges to the decision or complaints about service. This will include any arrangement the Transferor may have for independent review. This point should be made clear by the Transferor to the complainant and body when they explain that the complaint has been transferred.

If a complaint or challenge relates to any aspect of the Transferee's involvement they should inform the Transferee who will have an opportunity to make representation. The final decision will remain with the Transferor who should inform the Transferee of the outcome.

In some cases when a decision is made to reopen a complaint on the basis of a challenge, it may be appropriate for the Transferor to ask the Transferee to undertake some additional work. This may occur when, for example, new evidence has been provided by the complainant. The authorisation will include this work. The Transferee should provide the Transferor with:

- The complete file including all the information and documents obtained;
- A statement which sets out clearly the decisions and any action taken or remedy recommended;
- Any relevant information about the limits of which is required.

Once the additional work has been completed, the Transferee should again return all the documents; and any additional documentation along with a report detailing;

- Action taken;
- Any new information obtained;
- Recommendations; and
- Confirmation that all additional information on any system held by the Transferee has been destroyed.

12. Contacts and Review

The Transferor and Transferee will provide each other with a single point of contact for each complaint. The general contact for any matters which relate to this Protocol is the Deputy Northern Ireland Ombudsman.

This Protocol will be reviewed after every transfer to ensure it remains fit for purpose and it will be reviewed annually.

Signed: _____
JIM MARTIN, SPSO (Transferor)
Date: February 2013

Signed: _____
TOM FRAWLEY, NIO (Transferee)
Date: February 2013



Mike Nesbitt MLA
Chair for the Committee for
the First Minister and deputy First Minister
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Our Ref: SUB/1075/2015

Your Ref:

01 July 2015

Mike, a chara

I am writing to you regarding the Public Services Ombudsperson (NIPSO) bill, which I understand your Committee is taking forward by way of a Private Members Bill.

I note that the Rural Development Council (RDC), is included in Schedule 3 of the NIPSO bill which, if enacted, would require the RDC to comply with various Section 75 reporting requirements, which are not relevant to the organisation given its independent status with no decision making powers. Moreover, the RDC staffing numbers fall below Section 75 reporting thresholds.

I can advise that the Equality Commission is fully supportive of excluding the RDC from this undertaking and I would therefore ask your Committee to remove the organisation from Schedule 3 of the Bill.

I am copying this letter to William Irwin MLA, Chair for the Agriculture and Rural Development Committee.

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MICHELLE O'NEILL MLA
Minister of Agriculture and Rural Development



FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice
www.dojni.gov.uk

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Our ref: SUB/974/2015

Claire McCanny
Senior Assistant Assembly Clerk to the Committee
Ad Hoc Committee on the NIPSO Bill
Northern Ireland Assembly
Parliament Buildings
BELFAST
BT4 3XX

7 August 2015

Dear Claire,

NORTHERN IRELAND PUBLIC SERVICES OMBUDSPERSON (NIPSO) BILL

Further to my letter of 22 May on the above Bill, I wrote to the Justice Committee on 4 June. In that letter, which I understand was shared with you, I indicated that further consideration would be given to the listed authorities in Schedule 3 to the NIPSO Bill relating to policing, criminal justice and law.

The Police Rehabilitation and Retraining Trust (PRRT) is an arm's-length body of the Department, established as a body corporate under the Police Rehabilitation and Retraining Trust Regulations 2014. PRRT, therefore, exercises functions conferred on it by a statutory provision. Consequently, the Department would submit that Schedule 3 to the NIPSO Bill be amended to include PRRT as a listed authority relating to Policing, Criminal Justice and Law.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice
www.dojni.gov.uk

I would be grateful if the Committee would give consideration to amending the Bill at the appropriate juncture. I have written to the Clerk to the Committee for Justice to notify the Committee of the Department's request.

A handwritten signature in black ink that reads "Tim Logan".

TIM LOGAN
DALO