

Lord Morrow MLA, Chairman of Ad Hoc
Committee

Committee Office Room 404

Parliament Buildings

BT4 3XX Ballymiscaw, Stormont, Belfast

Ireland

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IOI Submission to Ad Hoc Committee established to scrutinise NIPSO Bill

Dear Lord Morrow MLA,

On behalf of the International Ombudsman Institute (the IOI) I would like to thank the Committee established to scrutinise the NIPSO Bill for the opportunity to submit written evidence on the proposed Bill.

The IOI welcomes this Bill which will reform and modernise the Office of the Northern Ireland Ombudsman. The IOI also congratulates the Chair and members of OFMdFM Committee for their initiative in bringing forward this legislation and their detailed consideration of the policy issues relating to the creation of the Office of the Northern Ireland Public Services Ombudsperson. It is noteworthy that this Bill is the first Bill to be introduced by a Statutory Committee of the Northern Ireland Assembly since its inception in 1998. Many of the proposed provisions contained in the Bill are specific to Northern Ireland. The comments in this correspondence therefore will focus on several issues of general concern to the IOI and of relevance to its membership in relation to the detailed proposals for NIPSO. By way of background to my response before dealing with those issues I will provide some context on the role and worldwide membership of the IOI.

1. International Ombudsman Institute (IOI)

The International Ombudsman Institute was established in 1978 and is the only global organisation for the cooperation of more than 170 offices of ombudsmen. The purpose of the IOI

is to promote the concept and institution of Parliamentary Ombudsman and the IOI encourages and facilitates cooperation and mutual support between its members. The IOI develops and operates programmes enabling an exchange of information and experience between Parliamentary Ombudsmen throughout the world as well as developing training and fostering their professional development through cooperation, shared aims and ethos. The IOI endorses and supports the independent institution of the Parliamentary Ombudsman by fostering the autonomy and independence of such offices.

The IOI is organised in six regional chapters: Africa, Asia, Australasia & Pacific, the Caribbean & Latin America, Europe and North America and its headquarters is located in the Austrian Ombudsman Board's offices in Vienna.

It is important to note that the IOI is the global representative body of 'Parliamentary' ombudsmen and that is because such institutions are closely linked to the legislature or legislative Assembly from whom they derive their powers and influence in order to hold the government or Executive body to account. In doing so Parliamentary Ombudsmen are part of the constitutional fabric of the necessary checks and balances between the citizen and the power of the state. A Parliamentary Ombudsman traditionally is appointed and funded by the legislative body to which they report. The Northern Ireland Ombudsman is a long standing member of the IOI complying with the strict criteria for institutional membership regarding independence and accountability. The current incumbent also served as Vice President of the IOI and was awarded Honorary Life Membership.

2. NIPSO's Links to the Northern Ireland Assembly

The IOI believes that the provisions of the NIPSO Bill are particularly commendable as they strengthen the important links between the NIPSO and the Northern Ireland Assembly, and in establishing the NIPSO as an Officer of the Assembly. The IOI notes and welcomes the proposals in the NIPSO Bill providing that the Office holder cannot come under the direction of any Executive Minister or the Secretary of State body in jurisdiction as this provision underscores the independence of the NIPSO office holder.

The IOI welcomes the enhanced power of the NIPSO to publish reports in the public interest. In the IOI view these powers are particularly commendable as they add to the transparency of the ombudsman's work.

Parliamentary Ombudsman recommendations are not binding. The Ombudsman must rely therefore on his powers to report to the legislature in order to achieve compliance with his recommendations. The IOI considers that the proposal in the NIPSO Bill for a 'special' report where injustice remains unremedied is particularly important for providing a mechanism for ensuring that the NIPSO's recommendations are successfully implemented.

3. Protecting the title Ombudsman

To become a member of IOI a Parliamentary Ombudsman must fulfil established criteria of which there are two key elements; 'independence' and 'accountability'. An important facet of independence relates to the appointment of the Ombudsman. IOI considers in particular the proposed changes in the NIPSO Bill to move the responsibility for the appointment of the NIPSO to the Northern Ireland Assembly.

The Bill also provides for new accountability arrangements and the IOI notes the proposal that the NIPSO will report to the Audit Committee of the Assembly on its efficiency and performance. These changes again will, the IOI believes, strengthen the working relationship between the NIPSO and the Assembly so as to ensure public trust and confidence in the Office and the Office holder.

The use of the title Ombudsman has been protected in law by some countries such as New Zealand and Malta. The description can only be used with the permission of the Ombudsman himself who has been established by Parliament or in some instances (as in Ireland) with the permission of the legislature. Protection for the title is not currently provided for in the NIPSO Bill but may be a provision that the Ad Hoc Committee may wish to consider as this would allow the use of the title to be controlled and avoid confusion in the eyes of the public. The title 'Ombudsman' is used in some instances to describe a body with complaint handling functions only that do not have Parliamentary Accountability can be confusing for the public seeking to access the office and also the bodies in jurisdiction. The proliferation of bodies using the title ombudsman does dilute the effectiveness of those offices which meet the criteria for a Parliamentary Ombudsman.

4. Merger into a Single Office

Globally best practice examples demonstrate that direct access and transparent structures are important for the citizen and also the credibility of the Ombudsman institution. Structural, organisational and legislative barriers restricting access to the ombudsman's office should be as low as possible and there should be no delay in accessing the Ombudsman. Separate legislative instruments and organisational structures will often result in complexity, which can inhibit the work of the ombudsman institution.

For these reasons the IOI welcomes the proposed merger of the two statutory offices of Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints. The IOI also welcomes the Assembly's proposals for improved accessibility for the citizen seeking to use the office by removing the requirement for MLA sponsorship for complaints about Parliamentary bodies (central government). The IOI believes this is an important initiative and

this will enhance the public's ability to go directly to the NIPSO and for these reasons the IOI welcomes the proposed merger into a single office.

5. The title 'Ombudsperson'

The NIPSO Bill creates the office of the Northern Ireland Public Services **Ombudsperson**. The word 'Ombudsman' is gender neutral and internationally accepted and recognised. The word is Scandinavian in origin and means 'representative'. The proposed title for the holder of the new office is somewhat confusing given that the NIPSO Bill provides for liaison with the Irish, Parliamentary, Scottish and Welsh ombudsmen.

The IOI also considers it is confusing from an IOI membership perspective for the office to hold NIPSO Bill also provides for the transfer of the functions of the NIJAO to the NIPSO. The IOI believes that there is room for some confusion on the part of the public, the bodies in remit and IOI members when using the terms Ombudsperson and Ombudsman in referring to a single office.

6. Own Initiative Investigations

The IOI highly welcomes the proposal by the Northern Ireland Assembly to provide the NIPSO with a power to commence an investigation on his own motion. This proposal reflects well the role of the ombudsman in today's world and is common in the IOI membership. For instance, most European Ombudsmen, e.g. the Austrian, Irish, and Swedish Ombudsmen as well as the Ombudsman of the European Union all have own motion powers as does the New Zealand and the Namibian ombudsman. The power to conduct an investigation or systemic review on his own initiative adds significantly to the valuable work of the Ombudsman in Northern Ireland and will be an important tool to improve public administration through NIPSO recommending system wide improvements.

The Ombudsman will frequently have information that may indicate that there are shortcomings but also frequently own motion investigations can be used where no complaints have been received for instance where the complainant is 'voiceless' such as a person in an institutional setting who fears reprisal if a complaint is made. The IOI experience of such powers is that these types of investigations will often lead to recommendations that affect a large number of people beyond the scope of a single complaint. In this context the specificities of the Northern Ireland structures have to be reflected and it is noted and the IOI considers it both commendable and necessary that there is a proposed provision in the NIPSO Bill to ensure consultation and cooperation between NIPSO and other investigative bodies to avoid overlap and duplication.

However, the IOI considers that the proposals in the NIPSO Bill narrows the scope of the own motion power to circumstances where there is evidence of systemic maladministration with a requirement to publish decision making criteria. Perhaps the Ad Hoc Committee could consider

removing or adjusting these provisions so that the NIPSO is not limited in the exercise of his discretion to commence an own initiative investigation. The Ombudsman in investigating complaints of maladministration has a deep insight into the public administration and where shortcomings may exist and therefore it is not in the IOI view necessary to restrict his ability to commence an own initiative investigation and consideration should be given to providing a broad discretion as enjoyed by the European Union and Irish Ombudsman. Such discretion must be exercised reasonably and lawfully and would be subject to the oversight of the Administrative Court jurisdiction.

There may be a concern that giving a broad discretion to the NIPSO to commence an own motion investigation may not provide sufficient controls over a new NIPSO. However, the new accountability arrangements provided for in the NIPSO Bill seem to ensure oversight over the activities of the NIPSO given the new reporting to the Audit Committee of the Northern Ireland Assembly.

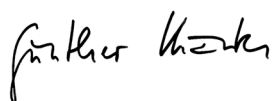
From an IOI perspective there has not been any evidence to support the view that the own motion power has been used irresponsibly by members. The Ombudsman's insight and learning from his role in investigating individual citizen complaints of maladministration is an important consideration for the Ad Hoc Committee when considering the NIPSO proposals for own initiative investigations.

Conclusion

May I take this opportunity to thank the Chair and members of the Ad Hoc Committee for their consideration of the IOI's views in this important reform of the Ombudsman's Office and legislation.

Yours Sincerely

Secretary General of IOI



Dr. Günther Kräuter