

Review of the Governance and Accountability Arrangements for the NIAO and NIPSO

Written evidence submitted to the Audit Committee of the Northern Ireland Assembly

Dr Richard Kirkham¹

1. I am grateful to the Committee for inviting me to submit evidence to this inquiry. I am a Senior Lecturer at the University of Sheffield whose main area of research interest for almost 20 years has been administrative justice, with a particular focus on the ombudsman institution.² In addition, in the past I have been part of commissioned projects to review the work of three different ombudsman schemes.³

2. The Committee is examining the governance and accountability arrangements for the NIAO and the NIPSO. In this submission, I will keep my focus on the NIPSO and at the end of the paper make a few tentative suggestions that the Committee might like to explore. Whilst my comments may also have relevance for the NIAO, there is an important differential between the two offices in terms of scale. The NIPSO is a relatively small organisation with a prospective budget under £4 million⁴ and approximately 50 staff.⁵ By contrast, NIAO is larger with a public expenditure of under £9 million⁶ and approximately 100 staff.⁷ That is not to imply that accountability is less important in smaller institutions such as with the NIPSO, but it is to suggest that any modifications to the current governance arrangements should be proportional to the scale of the office.

The accountability and governance debate: ombudsman style

3. I note from the submissions that you have received from Professor Heald and Dr Foster that the arguments around the importance of strong accountability and governance arrangements in the design of public institutions have already been rehearsed before the committee, and I will not repeat the arguments in full here. I will though mention two particular factors in the context of a public service ombudsman institution, which emphasise the importance of establishing accountability and governance arrangements which integrate a strong input of an elected

¹ Senior Lecturer, School of Law, University of Sheffield.

² Some of my leading publications include T. Buck, R. Kirkham, and B. Thompson (2011) *Administrative Justice and the Ombudsman Enterprise*, (Farnham: Ashgate Publishing); M. Hertogh and R. Kirkham (eds), *Research Handbook on the Ombudsman*, (Edward Elgar, 2018); R. Kirkham and C. Gill (eds) *A Manifesto for Ombudsman Reform* (Palgrave MacMillan, 2020).

³ “The Parliamentary Ombudsman: Withstanding the test of time”, in Fourth Report of the Parliamentary Commissioner for Administration, *The Parliamentary Ombudsman: Withstanding the test of time*, HC 421 (2006-07); *A Review of the Gibraltar Public Services Ombudsman* (62 pages) available from the Gibraltar Public Services Ombudsman; R. Thomas, J. Martin and R. Kirkham, *External Evaluation of the Local Government Ombudsman*. (2013).

⁴ Audit Committee, *Audit Committee position to the Finance Minister on the draft Budgets for the Northern Ireland Audit Office, Northern Ireland Public Services Ombudsman ad Northern Ireland Assembly Commission 2021-22*, 14 December, 2020, p.4.

⁵ NIPSO, *Annual Report 2019-20*, 44.

⁶ Audit Committee, *Audit Committee position to the Finance Minister on the draft Budgets for the Northern Ireland Audit Office, Northern Ireland Public Services Ombudsman ad Northern Ireland Assembly Commission 2021-22*, 14 December, 2020, p.7.

⁷ NIAO, *Annual Report 2019-20*, 80.

assembly. These are the importance of protecting the status of an ombudsman and the need to keep an ongoing check on the relevancy of an ombudsman's work.

4. On the status point, it needs to be recognised that however laudable the functions of an ombudsman are the office occupies an uncertain place in the constitutional order, both in terms of its role and status, and is vulnerable to shifts in popular and democratic sentiment.⁸ Several UK-based ombudsman schemes have experienced public criticism in recent years from dissatisfied complainants⁹ and governments have occasionally been willing to slash the budgets of ombudsman schemes.¹⁰ There are legitimate concerns about the potential for ombudsman schemes to get things wrong that need to be taken seriously, and as with all watchdogs this potential gives rise to a demand, and a need, for an ombudsman to account for its delivery of functions and adherence to appropriate standards in its performance. But at the same time, in the face of such ongoing pressure, accountability to an elected assembly is an important means through which the public status of the office can be bolstered and the institution supported in its scrutiny of executive decision-making. To be at its most effective, an ombudsman needs to be able to point out that its work has been scrutinised and is supported by the democratic branch of the state.

5. A second important feature of accountability which is particularly important in the ombudsman context is the need to challenge the institution to retain relevancy in the manner in which it exercises its powers. The ombudsman needs to avoid being seen as an institution designed primarily to conceal and manage citizen dissatisfaction about the quality of public services. If it is to be an effective accountability agent, it needs also to be seen as playing a valuable role in calling executive power to account, and the Assembly can play a key role in testing the ombudsman's work in this regard. This role should be in the interest of the Assembly, which should be using the ombudsman's work to inform its scrutiny of the Executive. The output of ombudsman investigations, particularly systemic investigations such as the NIPSO's soon to be completed report into the administration of Personal Independence Payments (PIPs) by the Department of Communities, should be matters of profound interest to the Assembly.

Accountability in the ombudsman sector

6. The ombudsman sector in the UK has its foundation in the so-called classical ombudsman model which places an emphasis on the independence on the office.¹¹ This model places significant faith on using legislative design to establish institutional safeguards of independence, and autonomy in expenditure, decision-making and staffing. These safeguards are widely understood as most likely to guarantee full operational separation from the bodies that an ombudsman investigates. These benchmark requirements for an ombudsman office are built into the criteria for membership of the Ombudsman Association (OA),¹² a professional association to which all ombudsman schemes in the UK (public and private) belong.

⁸ Madalina Busuioc and Martin Lodge, 'The reputational basis of public accountability' (2016) 29 *Governance* 247.

⁹ For a good study on this phenomenon, see: C. Gill, and N. Creutzfeldt, 'The 'ombuds watchers': collective dissent and legal protest amongst users of public services ombuds.' *Social and Legal Studies* (2018) 27 (3), 367-388.

¹⁰ R. Thomas, J. Martin and R. Kirkham, *External Evaluation of the Local Government Ombudsman*. (2013).

¹¹ Carl S. 2018. 'The History and Evolution of the Ombudsman Model' in Hertogh, M, and Kirkham, R. (eds), *Research Handbook on the Ombudsman*.

¹² Ombudsman Association, *Rules of Association*, Schedule 1, available at: <https://www.ombudsmanassociation.org/about-us/join-ombudsman-association>

7. By contrast, one area where most legislation, and indeed international standards,¹³ are relatively light on in terms of detail is the expected accountability of the office or governance arrangements. For instance, the Public Services Ombudsman (Northern Ireland) 2016 Act ss.43-47 provides for powers of reporting to the Assembly. Schedule 1, paras.18 and 19 establishes a duty to submit a budget estimate and publish accounts and an audit report. However, there is little extra detail when it comes to accountability requirements.

8. Despite this lack of prescription, a number of common overlapping features can be seen in the sector, which facilitate accountability and governance. The effectiveness of these arrangements should be factored in before recommending any fresh processes are put in place. These include:

Political oversight

9. A measure of formal political external oversight of the ombudsman sector is provided for through scrutiny by the legislature to call to account an ombudsman's operational performance. In the UK, public service ombudsman schemes tend to report their performance annually direct to a legislative assembly. Five¹⁴ of the public service ombudsman schemes in the UK are regularly required to give evidence to the legislature, and your commissioned report details this practice well. A sixth, the Local Government and Social Care Ombudsman (LGSCO), has sometimes been required to give evidence to Parliament.¹⁵ Other schemes can be called before Parliament but such events are rare.¹⁶

8. Evidence sessions before Parliament can be the forum for challenging lines of inquiry on the performance of an ombudsman. However, ordinarily the process is centred on the duty of the ombudsman to report, which allows the office to dictate the focus of scrutiny that takes place. Overall, the intensity of the process is variable and its impact unreliable. Not all sessions lead to a select committee report, they are ordinarily one-off events, and are not necessarily accompanied by any extensive supporting research, or follow-up report.

Legal and financial accountability

9. As with all public bodies, an ombudsman is subject to stringent auditing requirements and is required to report annually. There are additionally a range of legal obligations applied to an ombudsman, some from its Parent Act, other obligations derive from general duties, such the

¹³ Eg see the Ombudsman Association, *Criteria for the Recognition of Ombudsman Offices*, ([OMBUDSMAN ASSOCIATION TERMS & RULES](#)), Criteria 5 states: “**Accountability** (a) The Ombudsman, staff members and members of any governing body should be seen to be responsible and accountable for their decisions and actions, including the stewardship of funds. (b) The Ombudsman should publish an Annual Report and Annual Accounts.

¹⁴ The Parliamentary Ombudsman, Health Service Ombudsman, Northern Ireland Public Services Ombudsman, Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales.

¹⁵ Eg Housing Communities and Local Government Committee, *Work of Local Government & Social Care Ombudsman reviewed*, [March 2019](#).

¹⁶ Eg in [February 2019](#), the Service Complaints Ombudsman gave evidence to the Defence Committee. The Committee's explanation for the hearing typifies the Parliamentary approach to such review: ‘The Ombudsman and the new complaints system have now been in operation for approximately three years and the Committee will take evidence from the Ombudsman on 26 February on her role and the effectiveness of the new system’ (see <https://www.parliament.uk/business/committees/committees-a-z/commons-select/defence-committee/inquiries/parliament-2017/service-complaints-ombudsman-17-19/>). Treasury Committee ([2018-19](#)), *Financial Ombudsman Service*.

Human Rights Act 1998, Freedom of Information Act 2000, data protection laws¹⁷ and the Equality Act 2010. Ombudsman schemes are subject to judicial review and there is a growing body of case law bespoke to the ombudsman sector.¹⁸ The litigation involving Northern Ireland schemes is to date relatively small in number.¹⁹

10. The supervisory role of the court may be rare and does not yield much by way of redress for individual complainants, but it can have a significant influence on the sector in the way it designs its decision-making processes. Not only do the courts provide institutional support for the authority of the ombudsman process but they interrogate and probe the integrity and robustness of the legal framework around the ombudsman sector. Occasionally, this work encourages the development of higher standards in decision-making. Additionally, the courts can provide support for the ombudsman sector by clarifying the institutional relationships between an ombudsman and other organisations, and the responsibilities owed towards an ombudsman.

Influence of the profession

11. In the UK, the Ombudsman Association (OA) acts as a professional coordinating body, bringing together the different schemes operating in the sector, including the NIOA. The OA does not have a formal regulatory role, but a form of professional peer control to uphold standards in the sector is exerted by the OA. The OA membership criteria also help homogenise an international standard for the institution, by effectively integrating the criteria of the International Ombudsman Institute (IOI)²⁰ and the Venice Principles.²¹

12. The OA has multiple purposes and operates more as a vehicle for the evolution and dissemination of best practice than a regulator. Over time, the ambition of the OA has increased. For instance, by way of guidance it has in recent years put in place a Service Standards Framework²² and a Caseworker Competency Framework²³ for its members. Neither framework is enforceable, however.

Other forms of accountability/oversight

13. Most ombudsman schemes are very well aware of the dangers of under-accountability and have moved to supplement existing arrangements with fresh layers of scrutiny. For instance, in recognition of the demand of complainants for decisions to be reconsidered, schemes have integrated processes of internal review. Similarly, many schemes have established advisory boards to provide critical oversight in addition to audit and remuneration committees. In order to ensure that the ombudsman is properly tuned in to the needs of potential complainants, some schemes consult regularly with advisory panels made up of former complainants or user

¹⁷ The Data Protection Act 1998 was one of the issues in a claim for the Police Ombudsman for Northern Ireland to disclosing information in *Morley v The Ministry of Defence and others* [2019] NIMaster 1, transcript available through Lexis Library.

¹⁸ R. Kirkham and E. O'Loughlin, 'Judicial Review and Ombuds: A Systematic Analysis' *Public Law* [2020] 679-700.

¹⁹ There are, however, more cases if you include the Northern Ireland Police Ombudsman.

²⁰ International Ombudsman Institute, *Bye-Laws*, (2012) (Available at: file:///C:/Users/lwlrnk/Downloads/IOI%20By-laws_Final%20Version_(November%202012)_EN.pdf)

²¹ Council of Europe, Principles on the Protection and Promotion of the Ombudsman Institution, CDL-AD(2019)005-e.

²² Ombudsman Association, [Service Standard Framework](#)

²³ Ombudsman Association, [Caseworker Competency Framework](#)

organisations. A further area of good practice in recent years has been the use of independently established reviews and peer reviews to provide critical reflection on the operation of ombudsman schemes.²⁴

The Northern Ireland Model

Institutional and reporting safeguards

14. The NIPSO was recently established by way of new legislation (the 2016 Act) which merged the roles of two former ombudsman schemes and modernised the law. In doing so, the Public Services Ombudsman (Northern Ireland) Act 2016 has enshrined in law the key internationally recognised institutional safeguards expected of the office, in terms of appointment, length of tenure and funding of the office. I would suggest that there is no clear reason to reconsider these arrangements.

15. The 2016 Act also outlines in some detail different potential options for the NIPSO to report to the Assembly²⁵ and provides for a duty for the NIPSO to consult on the application of one particular power - namely the power to initiate an investigation without the receipt of a complaint.²⁶ The reporting powers mirror those of the predecessor schemes and elsewhere, and should be left untouched as there is no evidence to suggest that there is a problem with their operation. The consultation arrangements for own-initiative investigations are new and could arguably be improved upon. However, they have only been used once so far and it is too early to draw conclusions on their efficacy. Hence, there should be no revisions at this stage to this aspect of the scheme's governance arrangements.

16. However, as with most legislation, the 2016 Act is relatively light on in terms of detail on the expected accountability of the office or governance arrangements. In this section, I consider some of the refinements that could be made to reinforce the existing situation.

(i) Formalising in statute the status of the Ombudsman as an Officer of the Assembly

17. Public service ombudsman schemes around the world are traditionally affiliated closely with their legislative assembly. There are a number of arguments for fully recognising the close relationship between the Assembly and the Ombudsman.

18. Firstly, ombudsman schemes are a non-standard innovation in that they purport to exercise significant investigatory power over public authorities but possess no powers to enforce their

²⁴ By way of example, see Thomas et al, n. 3 above; Tyndall, P., Mitchell C., & Gill, C. (2018) *Value for Money Study: Report of the Independent Peer Review of the Parliamentary and Health Service Ombudsman*.

Retrieved November 8, 2019, from

https://www.ombudsman.org.uk/sites/default/files/Value_for_Money_report_final.pdf

²⁵ Ss.43-47

²⁶ S. 29.—(1) Before commencing an investigation under section 8, the Ombudsman must—

(a) prepare an investigation proposal, and
(b) submit that proposal to any listed authority which it is proposed be investigated.

(2) The investigation proposal must set out—

(a) the reasons for the proposed investigation, and
(b) how the criteria referred to in section 9 have been met

findings. In these circumstances, an ombudsman is greatly assisted in being able to take advantage of the added status given to it by being seen to be affiliated to a legislative assembly.

19. Secondly, ombudsman schemes need to be able to demonstrate their independence if they are to gain the confidence of all their users. Being affiliated to the legislative assembly is an important means by which this independence can be demonstrated.

20. Third, in the rare event that a public authority resists the recommendations of an ombudsman, the legislative assembly possesses the constitutional authority to place pressure on the public authority to comply. Should the public authority continue to refuse to comply, the assembly can provide the appropriate forum within which the public authority can be required to defend that decision.

21. Fourth, the Assembly is the most appropriate body to provide scrutiny of the work of the ombudsman. For reasons of maintaining the independence of the ombudsman, the chief scrutiniser cannot be the executive branch. The Assembly, therefore, is the best available choice.

22. To cement this relationship, Brian Thompson²⁷ has submitted evidence to suggest that the Committee should consider granting the NIPSO formal Officer of the Assembly status, which could be confirmed by a legislative amendment. Arguably, in the case of the NIPSO, the relationship between the ombudsman office and the Assembly is already sufficiently strong, making this measure unnecessary. The measure might also confuse given the office's remit over local government. However, its great benefit would be to integrate the work of the NIPSO more firmly within the focus of the Assembly.

(ii) Oversight Committees

23. Brian Thompson in his submission also discusses the option of reconsidering the organisation of the Assembly's oversight of the NIPSO.²⁸ I would concur with his analysis of the ideal type of accountability relationship that a public watchdog institution such as an ombudsman, or an auditor, should have with its partner legislative body. Brian Thompson's paper recognises three forms of accountability relationship that a watchdog should have with the legislative assembly - sponsorship, scrutiny and support - with, ideally these relationships overseen by a separate legislative committee. However, an issue here is one of scale and cost, which makes it more difficult to justify in a chamber of the Assembly's size a complete separation of roles amongst three separate committees.

24. The de facto solution that the NI Assembly appears to have come to is to manage most of the Assembly/NIPSO business through the Audit Committee and the Assembly Commission. As Brian Thompson's submission alludes to, this set-up does create some tensions between the role of the Audit Committee as a sponsor of the Ombudsman (ie responsible for considering the estimate prepared by the Ombudsman), as a scrutiniser of the office, and as a supporter of the office in its engagement with the public sector and in particular the Executive. My

²⁷ Available at: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/audit-committee/review-of-the-governance-and-accountability-arrangements-for-the-niao-and-nipso/>

²⁸ Ibid.

preference would be for the establishment of a separate committee to be responsible for supporting and sponsoring the work of all the key watchdog institutions in Northern Ireland, leaving the Audit Committee responsible for scrutinising its operational performance. However, if this is not a viable solution might it be possible to create other channels into the Assembly for the Ombudsman - such as a right to petition the floor of the Assembly? Or a special reporting right should the office-holder feel dissatisfied at its treatment from the Audit Committee, akin to the Lord Chief Justice's power to report in the case of the Westminster Parliament?²⁹ It would likely remain an unused nuclear option, but also a powerful reminder to the Assembly that its role of calling the ombudsman to account must not get confused with its role of supporting the Executive.

(iii) Refining the memorandum of understanding

25. In a recent book collection, together with a colleague Chris Gill, I developed what we called a 'manifesto for ombudsman reform' in relation to reforming the Whitehall based ombudsman schemes. Within our proposals we recommended the following:

The key to safeguarding against the misuse of the expanded powers and broader role for the [proposed new public services] ombudsman ... will be to ensure robust accountability arrangements. To facilitate this process, the new legislation should map out a clear list of duties that the PSO should be required to report on. This list will go further than the relatively undefined reporting duties on the office at present. The significance of this approach is that it will chart the expectations of the office as of now (more duties can be added if and when new expectations are made of the office), but will leave it to the PSO to select and adapt the most appropriate approach with which to fulfil the duty. The PSO, therefore, as the authority best placed to make judgements on effective strategies and choices, is left to manage public resources across its range of duties, but an obligation to transparency both of stated strategies and of delivery will render the office regularly accountable for those choices.³⁰

26. We then went on to list some of the aspects of the ombudsman's work that a new scheme might be required to report on in areas concerning performance, complainant experience, legal claims brought against the office, engagement with citizens and other stakeholders, liaison with other oversight bodies, such as auditors, and on the promotion of administrative justice more generally.

27. The idea behind this approach was to encourage more transparency in ombudsman reporting and to give Parliament more information with which to scrutinise the ombudsman's work, without being prescriptive in the solutions adopted. Most ombudsman schemes are already responding to the need to provide more transparency through such initiatives as publishing all of their decisions. The NIPSO, for instance, is one of several ombudsman schemes that has experimented with various outreach and partnership forums to engage with stakeholders. Prior to Covid it also operated a 'Regulation and Oversight Forum' to consult and share information with other oversight bodies 'so as to avoid overlap and duplication of work'.³¹

28. To cement this understanding of the NIPSO's duty to be transparent about its operations, the Memorandum of Understanding between the Audit Committee and the NIPSO could be

²⁹ Constitutional Reform Act 2005, s.5(1) 'The chief justice of any part of the United Kingdom may lay before Parliament written representations on matters that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in that part of the United Kingdom.'

³⁰ R. Kirkham and C. Gill (eds) *A Manifesto for Ombudsman Reform* (Palgrave MacMillan, 2020), p. 28.

³¹ NIPSO, *Annual Report 2019-20*, 40.

amended to widen the reporting expectations of the NIPSO and the areas of the NIPSO's work that the Audit Committee should be scrutinising.

(iv) Corporate Sole or Bodies Corporate

29. Helen Foster's submission to the Committee notes that all statutory audit institutions in the UK operate with a board which provides support and constructive challenge to the audit body, albeit that the NIAO operates within a corporate sole model unlike other UK public audit schemes.³² Over the last couple of decades there has also been a move towards this 'board' model across the ombudsman sector, partly influenced by the predominance of the use of boards amongst private sector ombudsman schemes and its growing popularity across the public sector.³³ In the public sector, however, such boards are advisory only and set up by ombudsman schemes on a voluntary basis, rather than by way of statute. Further, the idea of moving towards a corporate board model has generally been resisted, largely on the basis that such a move might endanger the independence of the institution by bringing externally appointed rival seats of power within the ombudsman office.

30. The one exception to the dominance of the corporate sole model in the ombudsman sector is the Public Services Ombudsman Bill 2016, which now looks as if it is formally off the government agenda. Within the Bill was a detailed proposal to introduce a corporate board model of governance, under which a statutory board would have been established with the membership of the board appointed by Parliament. The responsibility of the board would have been to scrutinise the work of the new PSO and account to Parliament for this function.

31. I have written elsewhere, in the context of an anticipated Whitehall based public sector ombudsman scheme, that a corporate board model for the ombudsman is appropriate. The reason for this is that other methods of oversight, including through the legislature, are intermittent and sometimes slow to react. The ombudsman sector has historically largely free of scandal amongst its leadership. However, there have been instances in the ombudsman sector when inappropriate or poor decision-making by the office-holder could possibly have been picked upon more quickly if an active and suitably powerful corporate board had been in place.

32. Notwithstanding this concern, I would not recommend changing the statutory model of oversight for the NIPSO, as for an organisation of its scale it would be a disproportionate response to the potential dangers. As noted above, there are already multiple other routes through which ombudsman schemes can be subject to scrutiny and seek advice, and these should be explored first before considering the proposed 2016 Whitehall model.

33. The most important form of scrutiny is from the Assembly itself and the work of the Audit Committee. As noted above, I would argue for an enhanced recognition of this role in the standing orders for the Assembly³⁴ and ideally the involvement of an additional committee to support the work of the NIPSO.

³² H. Foster, p.17

³³ Cabinet Office. (2017). *Corporate Governance in Central Government Departments*. Retrieved November 7, 2019, from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf

³⁴ The NIPSO is currently referred to under order 58: [Standing Orders as amended 4 October 2016 \(niassembly.gov.uk\)](https://niassembly.gov.uk)

34. Realistically, it is unlikely that any legislative committee would have sufficient time to guarantee that it could scrutinise the work of an ombudsman more than on an annual basis. In Northern Ireland, there is also the recent history of the Assembly not sitting which left the NIPSO without legislative scrutiny. Given this potential gap occurring again, thought should be given to encouraging the NIPSO introducing an advisory board model to supplement existing internal governance reassurance, as currently provided by the Audit and Risk Committee. This is the approach taken by the Public Services Ombudsman for Wales (PSOW) (although not the Scottish Public Services Ombudsman), which operates an advisory panel, as does the Parliamentary and Health Services Ombudsman. The Local Government and Social Care Ombudsman effectively has an equivalent form of Board, called a Commission as per the Local Government Act 1974. The Welsh example is more pertinent though as it operates on a similar scale to the NIPSO. The Advisory Panel's terms of reference are as follows:³⁵

Status of the Advisory Panel

The Advisory Panel is a non-statutory forum whose main role is to provide support and advice to the Ombudsman in providing leadership and good governance of the office of the Public Services Ombudsman for Wales. The Advisory Panel also brings an external perspective to assist in the development of policy and practice. The Advisory Panel provides specific advice and support to the Ombudsman on:

- vision, values and purposes;
- strategic direction and planning.

The Advisory Panel is an advisory only body to the Ombudsman, and does not make decisions in its own right.

Role of the Panel

To assist the Ombudsman in establishing:

- governance arrangements, including Terms of Reference of any sub-committees;
- the PSOW's strategic direction, aims and objectives and targets;
- key business policies;
- key employment strategies and policies.

To scrutinise and assure:

- the Three Year Strategic Plan and the Annual Operational Plan;
- high level budget allocation;
- the budget estimates submission to the Finance Committee of the National Assembly for Wales.

To monitor and review:

- operational performance and delivery;
- financial performance;
- effectiveness of employment strategies and policies;
- diversity and equal opportunities, particularly in relation to the Equality Act 2010 external communications strategies and stakeholder relations;

³⁵ See [Advisory Panel – Terms of Reference](#)

- health and safety and business continuity.

35. It can be seen from the terms of reference for the PSOW's Advisory Panel that it is set up to explore issues similar to those that a legislative committee would look at but on a more frequent basis, meeting three or four times a year. The Advisory Panel also produces a review each year³⁶ and is made up of a collection of former ombudsman, auditors and leading figures from the bodies overseen by the office.

36. To conclude, therefore, I would advise the Audit Committee to explore, possibly with the input of the PSOW, the usefulness of this internal layer of oversight, and explore also with the NIPSO the reasons why this format has not been adopted by the office up to this point. As mentioned above, I think it would be a disproportionate approach to force this model of governance on the NIPSO through building in a statutory board. Such a move would also raise the prospect of the Assembly becoming responsible for appointing members to a prospective internal board, which in turn may compromise the autonomy of the NIPSO. But were the NIPSO to implement an internal arrangement it would provide added assurance that organisational problems within the office would be identified earlier than otherwise would be the case.

(v) Providing for periodic review

37. A further option to add scrutiny and oversight to an ombudsman scheme is to build in a practice of periodic external or peer review. This has been experimented with in the ombudsman sector in recent years, and in Australia the Queensland Ombudsman is required by statute to establish an external review of its work at least once every 7 years.³⁷ Notably, the Public Administration Select Committee recently commended this practice in relation to the Parliamentary and Health Services Ombudsman.

The Committee recommends that the PHSO repeat a peer review process every three to four years. For future reviews it also recommends that the PHSO considers how to reach outside the Ombudsman sector to obtain informed perspectives from professional peers with relevant experience in related sectors. This would potentially add further value to a review's conclusions in the eyes of Parliament and the public. Engaging directly with people with direct experience of the PHSO's service and other stakeholders would also add value and complement existing customer satisfaction data.³⁸

38. To maximise the perception of independence and actively to engage ongoing scrutiny, such periodic reviews should directly involve, and report to, the legislature.

Conclusion

39. I do not recommend radical reforms of the NIPSO accountability and governance arrangements. However, the Committee might like to take this opportunity to consider the following options:

³⁶ The 2019-20 review can be found through this [link](#).

³⁷ Queensland Ombudsman Act 2001

³⁸ House of Commons Public Administration and Constitutional Affairs Committee, *PHSO Annual Scrutiny 2017/18: Towards a Modern and Effective Ombudsman Service* HC1855 (2017-19), p.9.

- (i) Formalising the NIPSO as an officer of the Assembly status.
- (ii) Establishing a separate committee in the Assembly that would be responsible for the appointment and funding of the NIPSO and the NIAO, leaving the Audit Committee responsible for scrutinising the work of these watchdogs. Alternatively, the 2016 Act might be amended to grant the NIPSO a specific reporting power to the Assembly in the highly unusual circumstance that the office was dissatisfied at its treatment from the Audit Committee.
- (iii) Revising the Memorandum of Understanding between the Audit Committee and the NIPSO in order to widen the reporting expectations of the NIPSO and the areas of the NIPSO's work that the Audit Committee should be scrutinising.
- (iv) Encouraging the NIPSO to introduce an Advisory Board along the lines of the Public Services Ombudsman for Wales.
- (v) Encouraging an expectation that the NIPSO commission a periodic independent review of the office, perhaps once every other session of the Assembly.