



Northern Ireland
Assembly

Audit Committee

OFFICIAL REPORT (Hansard)

Northern Ireland Public Services Ombudsman's Report 2019-2020;
Northern Ireland Local Government Commissioner for Standards'
Annual Report 2018-19; and Northern Ireland Judicial Appointments
Ombudsman's Annual Report 2018-19:
Northern Ireland Public Services Ombudsman

21 October 2020

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Northern Ireland Public Services Ombudsman

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Members present for all or part of the proceedings:

Ms Joanne Bunting (Deputy Chairperson)
Mr Jim Allister
Mr Alan Chambers
Ms Emma Rogan

Witnesses:

Ms Margaret Kelly	Northern Ireland Public Services Ombudsman
Mr Paul McFadden	Office of the Northern Ireland Public Services Ombudsman
Mr John McGinnity	Office of the Northern Ireland Public Services Ombudsman

The Deputy Chairperson (Ms Bunting): Margaret, it is good to see you back with us again. We are seeing you quite frequently, and, Paul, the same to you. We also have John, who is the director of finance, joining us via StarLeaf. Margaret, I invite you to make a short opening statement. I apologise for the fact that I have to limit your time to three minutes on the basis that we are under pressure as another Committee is using the room in 45 minutes.

Ms Margaret Kelly (Northern Ireland Public Services Ombudsman): I will try to speak fast. Members will have noted our 2019-2020 Public Services Ombudsman's report. It was our fiftieth year, which was quite an occasion, and it was the first year in which the total number of complaints to the office exceeded the 1,000 mark. I gave you a breakdown previously of all those statistics.

Since the creation of the Northern Ireland Public Services Ombudsman (NIPSO) under the 2016 legislation, we have seen complaints rise year-on-year. In 2015-16, there were 477 complaints in total, which was a rise of 119%. We believe that that increase in inquiries and complaints is significant and will be sustained. In the current year, it is likely that we will see a little drop around the COVID period. That mirrors other ombudsmen. The rise in complaints is one of the reasons why I want to focus on education, awareness of best complaints-handling practice and shared learning to ensure that we contribute to improvements in public service delivery for the citizens of Northern Ireland.

The report shows that we have made more decisions on complaints and increased the number of complaints concluded at first and final stages. In 2019-2020, we closed 96 stages at the investigative stage, which is the highest ever investigative output for NIPSO. Some 72% of all cases that we take to that final stage are upheld either fully or partially, and, across the board, we identify issues or failings that require some form of resolution in around 45% to 50% of all our cases.

I draw the Committee's attention to the first stage investigation, as that is the point at which we will often seek alternative resolution and settlement. At our last meeting, Deputy Chair, you asked me about best outcomes. I will reiterate that enabling settlements and resolutions is a good example of what might be the best possible outcome for a complainant and does not always necessitate costly and lengthy investigation. There are a number of examples in the annual report, so I will not draw your attention to those.

Members will see that the health sector continues to be the biggest area of complaint, and you will note that a number of other areas are in and around the 10% mark: education; local government; and housing sectors. Those have all risen substantially.

One of the areas that, I think, I flagged with the Committee before is social care. We have a real concern that the confusion around the complaints landscape means that we are not seeing the number of social care complaints that we think that we would be seeing or enabling us to work with social care providers to make sure that they are handled well.

In the annual report, we focus on the strategic importance of supporting learning and improvement and working with others, but, of necessity, that has been ad hoc because, without the dedicated resources to enable a more strategic focus, quite simply, we have not been able to do that, combined with the rise in the number of complaints.

We have undertaken some joint work with the Information Commissioner's Office and the Audit Office on the importance of good record-keeping, and we have had a move to ensuring that the vast majority of our reports are published on our website. We do not publish only where public interest or identification issues mean that we think that we need to not publish, but, in the main, we publish all our reports.

It is really important for us to use that improvement in learning to drive a broader range of change and outcomes. That is one of the things that I want to focus on going forward.

I will stop briefly before I commend the report to you, because John wants to give a brief update on our annual report and accounts for the Committee, which are due; in fact, they are slightly overdue. If that is OK, John will update you on that. Otherwise, I commend the 2019-2020 report to the Committee.

Mr John McGinnity (Office of the Northern Ireland Public Services Ombudsman): Hello.

The Deputy Chairperson (Ms Bunting): Hello, John. Please forgive me, but we are under time pressure. Please make your remarks as brief as possible to allow time for members to ask questions.

Mr McGinnity: I will give you an account of where our annual report and accounts are at. As the ombudsman said, we would ordinarily have those for the Committee to consider at this point. There are three main contributory factors to the delay. First, COVID-19 is a general delaying factor on all bodies' annual reports and accounts. Secondly, in mid-August, we received guidance from the Department of Finance that caused us to look at a backdated holiday pay issue, which, ultimately, had a significant impact on our financial statements. Thirdly, with Margaret having just joined us on 19 August, it was necessary to significantly rewrite much of the narrative that had already been written when Paul was acting ombudsman. A combination of those factors has led us to where we are today. The final version of the accounts is with the Audit Office, and we expect them to be certified by the end of this week or, at the latest, early next week.

I will leave it there. I am happy to take comments or questions.

The Deputy Chairperson (Ms Bunting): Thanks, John. I will open the floor to members, starting with members in the room.

Mr Allister: You wrote and told us that, of the 1,043 complaints, 324 were not pursued because they were outside the remit. Within that, the category of alternative legal remedy is available. That one is tricky, because, theoretically, there could be a judicial review with most incidents of maladministration. It is a facility through which you could knock out complaints on that technicality, but, practically, for most people, it is not a viable option because of the threat of excessive costs. If somebody is eligible for legal aid, they have nothing to lose, but, if they are not, a judicial review is a big undertaking due to the risk of cost. Is it fair to use the category of alternative legal remedy not to investigate something?

Ms Kelly: Each of those categories can be straightforward or complex. There is often a degree of complexity in each case within those, and the team looks at that in detail. I will ask Paul to take you through the process, because he is more familiar with it than I am.

Mr Paul McFadden (Office of the Northern Ireland Public Services Ombudsman): It comes from a provision in the legislation that means that the ombudsman is unable to take forward complaints where an alternative legal remedy is available. I will make a general point before I go into the detail. That provision is there to reflect the ombudsman's role as the alternative to the courts. That is the advantage of the ombudsman in many ways. It means that things are not going through the court process, and it is a free and accessible service.

You are absolutely right that it is not viable for many people to pursue that option. That is the assessment that is made. It can be complex when assessing whether there is a reasonable alternative legal remedy for that person. Obviously, there is a range of factors. We often determine that we cannot pursue it in cases in which proceedings have been commenced by the individual. That can also arise later on in the first or second investigative stage. In such cases, it is not, usually, possible for us to determine that it is not reasonable for that person to pursue that when they have commenced with proceedings. There is always a case-by-case approach, but we take into account the fact that it is not always viable.

Mr Allister: You make a very subjective judgement.

Mr McFadden: It is always on a case-by-case, on-the-facts basis.

Mr Allister: Is it sufficient for someone to say, "I could take a judicial review, but I can't afford it"?

Mr McFadden: Yes, if that is a reasonable assessment. We have internal guidance and training for our staff on that. It is an issue that arises across other ombudsman organisations, because they have similar provisions. It can be a difficult area, because it is such a subjective judgement, but we have put a lot of effort into training our staff and getting them up to speed to make sure that the decisions are correct.

Mr Allister: If someone could have taken a judicial review but has missed the three-month time limit, does that make it easier for them?

Mr McFadden: Again, it comes down to whether it is reasonable for them to have that alternative legal remedy. If it is not, that would come into the decision-making process.

Mr Allister: Is the decision about whether it is reasonable to have the alternative legal remedy based on that moment in time?

Mr McFadden: When they bring it to the ombudsman, we assess whether, at that point, there is a reasonable alternative legal remedy [*Inaudible.*]

Mr Allister: It might be smart to miss the window before you make your complaint to the ombudsman.

Mr McFadden: Again, there is a range of factors. We would be happy to write to you with more information on how we make those assessments and how we guide ourselves in making them.

Ms Kelly: It is important that we do not duplicate, and the provision is there to prevent us from duplicating any role. We are a different and separate role from the courts, as you know. Again, I am happy to provide follow-up detail. I want to draw attention to things like matters outside our jurisdiction. For some things, that might be relatively straightforward, but for others, it can be really complex around whether the matter is in our jurisdiction. Often, we have to recourse to our internal legal advice to decide that. Even though it can look like they all fall outside and we have just made that decision, often, there is a very complex decision-making process behind that, taking into account a huge number of factors.

Mr Allister: I have one other, separate point. You have told us the number of complaints, and I appreciate that it is hard to compare the receipt of the number of complaints in any given year with the

outcomes, but, in the year that you are reporting on, just remind us how many complaints were upheld.

Ms Kelly: Sorry, I need to go back to my notes. Of all the cases that we took to final stage, 72% were upheld, either fully or partially. If you look across all our cases that went to first stage or final stage, you see that between 45% and 50% identified issues or failings that required some form of resolution.

Mr Allister: How does that relate to the percentage of complaints that you initially receive in a year?

Mr McFadden: For the 40% to 50% where there are issues that require some form of resolution, that would be as a percentage of the figure that was accepted into the two investigative stages.

Mr Allister: Does that mean that there is no issue found for over 50%?

Mr McFadden: Absolutely. That figure is consistent with many other ombudsmen.

Mr Allister: OK, thank you.

Ms Rogan: The majority of complaints that come into the Departments — 50% — go to the Department for Communities. A high level of complaints to the Department is around the personal independence payment (PIP). Can you clarify how many complaints, in total, related to the personal independence payment? Has the ombudsman made any recommendations about how the personal independence payment scheme should be changed in the way that it delivers, given the vast number of complaints about it?

Ms Kelly: Emma, I might have to come back to you with some of the detail on that. When you look at the Department for Communities, you see that the complaints are, primarily, around three benefits: PIP; universal credit, which, in the current year, is generating a number of complaints; and employment and support payments. If we have particular issues around those, we do an investigation and make recommendations. Over and above that, as I raised with the Committee, the previous ombudsman, Marie Anderson, decided that PIP should be the subject of our first own-initiative investigation. That was due to a number of issues, such as the quantity and nature of the complaints coming to the office and people's experience of what was happening externally, including the experiences of many MLAs in their constituency offices.

That report is now in its first draft stage and is with the Department for comment around factual accuracy. When it is complete, which, I hope, it will be by early in the new year, I am happy to bring that report back. The own-initiative investigation focused, specifically, on the role of further medical evidence in the process. It went from the initial assessment all the way through to lapsed appeal or appeal and looked at how further medical evidence was used. We used a case sample of 100 cases; we went into Capita and took those cases from their source and did an absolutely detailed investigation. Once we are at point of being able to publish that, I would really welcome the opportunity to come back and talk in more detail to the Committee about that element of the work. If you would like it, I can certainly get you a bit more on the PIP complaints to date and what we have said about them.

The Deputy Chairperson (Ms Bunting): I think that we would all welcome that.

Emma, do you have anything further?

Ms Rogan: No.

The Deputy Chairperson (Ms Bunting): You are satisfied? Lovely.

Thank you very much, Margaret, Paul and John. We do not have anything further for you. I would be grateful if you furnish us with those annual reports when, in due course, they are available. That is lovely, and we look forward to hearing from you.

Ms Kelly: Thank you very much for the opportunity.

Mr McFadden: Thank you.

The Deputy Chairperson (Ms Bunting): Thank you.