



Northern Ireland
Assembly

Audit Committee

OFFICIAL REPORT (Hansard)

Review of the Governance and
Accountability Arrangements for the NIAO
and the NIPSO: RAISE Briefing on
Ombudsman's Offices in other Legislatures

25 November 2020

NORTHERN IRELAND ASSEMBLY

Audit Committee

Review of the Governance and Accountability Arrangements for the NIAO and the NIPSO: RAISE Briefing on Ombudsman's Offices in other Legislatures

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Members present for all or part of the proceedings:

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

Witnesses:

Ms Georgina Ryan-White RAISE

The Chairperson (Mr McCrossan): I remind members that this session is being recorded by Hansard. I ask Assembly Broadcasting to bring Georgina Ryan-White into Spotlight. Hi Georgina, can you hear us OK?

Ms Georgina Ryan-White (RAISE): Yes, I can. Can you hear me?

The Chairperson (Mr McCrossan): Yes, I can hear you loud and clear. Thank you for agreeing to be with us. Will you give us a brief outline?

Ms Ryan-White: I will try to be brief, although I cannot guarantee it.

Thank you, Chair, and good afternoon, members. The research that I carried out looked at comparative accountability in governance arrangements in the offices of the ombudsman in other UK legislatures. To provide context and comparative information, the research looked at what arrangements there were, if any, and where they originated from.

As you know, Scotland and Wales each have a unified Public Services Ombudsman. In England, there are a number of ombudsmen covering those services. However, most relevant to the Committee's query were the Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman, which carry out similar roles.

I will briefly take you through the arrangements in each of the offices, but, to quickly summarise, all of the individual ombudsmen are independent of Government in the exercise of their functions and cannot be overruled by Parliament, Government Ministers or Committees. The offices are all accountable to their respective Governments through the laying and publishing of annual reports and accounts before Parliament, which are subject to scrutiny by individual government Committees.

Comparable features across the offices' governance arrangements include audit and risk committees, to advise on corporate governance and internal control, and the designation of the ombudsman as the accounting officer in most of the offices, making them responsible for financial probity and regularity. The Parliamentary and Health Service Ombudsman has sought to increase his financial probity further by delegating his accounting officer role to the office's chief executive. All of the offices are subject to annual internal and external auditing.

The Scottish Public Services Ombudsman's powers and duties derive from the Scottish Public Services Ombudsman Act 2002. They are nominated by the Scottish Parliament and appointed by the Queen for a period of no more than eight years. In relation to accountability, the ombudsman is, in the performance of her duties, regarded as a juristic person and is solely accountable for the conduct of the office. She is independent and is not, in the exercise of her functions, subject to the direction or control of the Scottish Government, Parliament or the Scottish Parliamentary Corporate Body. However, she is directly accountable to Parliament through the laying of an annual report and accounts. In addition, the 2002 Act requires the ombudsman to lay a strategic plan before the Parliament every four years.

It is the practice of the Local Government and Communities Committee to scrutinise the work of the office and to take evidence from the ombudsman each year on its annual report. You will see from my paper that the Committee previously challenged the qualitative analysis of information contained in the annual report.

Moving on to governance, the arrangements are based on a governance and risk overview and a scheme of control. The governance overview features the ombudsman, as the accounting officer for the office, designated by, and answerable to, the Scottish Parliamentary Corporate Body, and there is a process for internal and external audit.

The scheme of internal control is a series of protocols and policies through which the ombudsman aims to demonstrate that she is meeting her responsibilities as the ombudsman and as the accountable officer. The key features of the scheme are that the ombudsman, as accountable officer, sets the strategic direction and priorities for the office, supported by a leadership team, which she chairs. The leadership team consists of the ombudsman, the chair and the director head of information, standards and engagement, and it is responsible for supporting the ombudsman in setting the strategic direction of the office and holding the office to account for its performance.

The ombudsman has also established an advisory audit board to perform a function similar to that of an audit committee. Its main purpose is to advise the ombudsman and the leadership team on the office's standards of corporate governance and internal control. These governance arrangements can be amended only with the ombudsman's approval, and the ombudsman must inform the advisory audit board and external auditors of any changes. In addition, the ombudsman must review these governance arrangements annually and report the outcome to the advisory audit board.

I will move on to Wales. The Public Services Ombudsman for Wales was originally established in 2015 and is now under the direction of the Public Services Ombudsman (Wales) Act 2019, which sets out the terms of the ombudsman's appointment and statutory function. Apologies, the briefing paper should state that it was originally established in 2015, I believe. I will come back to that anyway.

The ombudsman is appointed by the Queen, following a nomination from the Welsh Parliament, for a term of seven years and can be removed from office only if they become incapable of performing their duties for medical reasons or on grounds of misbehaviour. Interestingly enough, funding for the office is received from the Welsh Parliament. The ombudsman is required to produce Estimates for each financial year for the resources required to carry out his statutory functions. These are scrutinised and consulted on by the Welsh Parliament's Finance Committee, which then issues a report with its findings.

I will turn to accountability. The ombudsman is a corporation sole, so a legal entity in its own right. Although independent of government, the ombudsman has statutory responsibilities to report directly to the Welsh Parliament by publishing and laying an annual report and accounts. The Equality, Local Government and Communities Committee scrutinises the ombudsman's work, including the annual report and accounts. The Public Accounts Committee also periodically scrutinises the office's use of resources. My paper notes that the Committee's scrutiny of the 2017-18 accounts contained some robust recommendations that opened up some frank dialogue with the ombudsman.

The office's main governance arrangements centre on an advisory board and an audit and risk assurance committee, supported by a governance framework and internal and external audit arrangements. Again, the ombudsman is the accounting officer for the office, which requires him to ensure that the office is operating to a high standard of probity.

The ombudsman has established an advisory panel to advise him on matters of policy and good governance. It consists of six independent members and the ombudsman. The advisory panel is a non-statutory forum and its main role is to provide support and advice in providing leadership and setting the strategic objectives of the office. It is an advisory-only body, and, therefore, responsibility and accountability for the activities of the office remain with the ombudsman.

Prior to the introduction of the 2005 Act, which originally created the ombudsman, the Welsh Government consultation asked whether there should be some formal mechanisms for advising the ombudsman and whether the ombudsman should have a statutory advisory board. The Act did not provide for that because the general view among ombudsmen was that any such board should be set up on a voluntary and non-statutory basis and that any such advisory board could compromise the independence of the office.

The audit and risk assurance committee provides independent advice in relation to the ombudsman's responsibilities as accounting officer and the integrity of financial statements and the annual report. Membership consists of six independent members. Following a review of the governance arrangements in 2018, the terms of reference of the committee were amended so that it is now a stand-alone committee rather than a subcommittee of the advisory board. Internal and external auditors have the right to raise issues through an open access policy to the chair and therefore to bring any matters of concern to the attention of the committee.

I will move on to England now and, first, the Parliamentary and Health Service Ombudsman. The two statutory roles of Parliamentary Commissioner for Administration and Health Service Commissioner for England are vested in one individual post as the Parliamentary and Health Service Ombudsman. They are appointed by the Queen for a maximum term of seven years. The chief executive and the director of legal and professional services are authorised by the ombudsman to act as deputy ombudsman. Again, the ombudsman has a personal jurisdiction and is solely accountable for the work that is carried out by the office. He is independent and cannot be overruled by Government Ministers or Committees in the exercise of his functions. However, again, the ombudsman has statutory responsibilities to report directly to Parliament through the presentation of its annual report and accounts to the House of Commons. The House of Commons's Public Administration and Constitutional Affairs Committee is the principal liaison mechanism with the ombudsman. It scrutinises the work of the offices, in particular the annual report, and it does so by launching an annual scrutiny inquiry, and you can find that on its website.

The ombudsman also appears before the Committee to give evidence, and that is usually following the publication of its annual report and accounts. In 2018, following a recommendation from the Committee, the office commissioned an independent peer review to examine its ability to secure value for money in the course of its work. You will note, from the excerpt in my paper, that the peer review mechanism is a relatively new process in the ombudsman sector as several countries are considering how best to evaluate ombudsmen's offices effectively.

A number of written submissions to the peer review criticise the membership of the panel:

"as being insufficiently independent as it contained two ombudsmen and an academic expert ... who was formerly employed by the Scottish Public Sector Ombudsman."

However, the Committee had no concerns about the panel's independence or integrity, and it recommended that the office repeat the process every three to four years. It suggested that future reviews should also consider how best:

"to reach outside the Ombudsman sector to obtain informed perspectives from professional peers with relevant experience in related sectors."

I will turn to the current governance arrangements for the office. The office relies on challenge and assurance from the accounting officer, the non-statutory unitary board and an audit and risk assurance committee. Instead of retaining the role of accountable officer, this ombudsman has delegated that responsibility to the chief executive, and he has described this change and this new delegation as a contractual responsibility that allows him to have a separate accountable person in his office. The

office is governed by the non-statutory unitary decision-making board. It contains three executives and nine non-executives, but it is chaired by the ombudsman. Again, in describing the arrangements in the 2019 annual report, the ombudsman said that being a corporation sole with a personal jurisdiction:

"is not consistent with modern requirements of good governance. Therefore I am the Chair of a unitary Board which is in place to improve the governance of"

the office. He reserves the right, given his statutory role and independence, to depart from the board's decision, but that is only in exceptional circumstances and when he puts his reasons in writing.

There is also an audit and risk assurance committee, which oversees the corporate governance and control systems. It scrutinises the quarterly governance reports. The committee can seek additional assurances about the governance and risk arrangements, including by requesting internal audit reports and assurance reviews of specific areas of risk.

Finally, I will move to the Local Government and Social Care Ombudsman. The Commission for Local Administration in England is the independent statutory body to operate the Local Government and Social Care Ombudsman scheme. The functions of the commission are set out in the Local Government Act 1974 and are elaborated in a framework document that was agreed with its sponsor Department, which is Ministry of Housing, Communities and Local Government. The ombudsman is appointed by the Queen for a period that does not exceed seven years. They may be removed from office at their request or on the grounds of incapacity or misbehaviour.

Interestingly — it is a bit more complicated here — the ombudsman simultaneously holds the role as the chair of the commission. The ombudsman is independent of the Government and Parliament in all matters that relate to the exercise of his functions. However, as with the others, he has a statutory obligation to present his annual report and accounts before Parliament. In his role as chair of the commission, the ombudsman is responsible for ensuring that the commission fulfils its statutory purpose and that its affairs are conducted with probity. In this respect, therefore, the chair is accountable to the Secretary of State in his role as chair of the commission but not in his exercise of his personal authority as the local government ombudsman. The Ministry of Housing, Communities and Local Government plays a specific sponsorship role for the office, the details of which are set out in the framework document.

The commission is required to review the operation of its legislative framework every three years. In its most recent report in 2018, it recommended that the current accountability framework and sponsorship arrangements should be reviewed so that the ombudsman becomes more directly accountable to Parliament for the exercise of its statutory functions.

The Commission for Local Administration operates as the board of the ombudsman scheme. It sets the annual business plan and annual budget, and it consists of a chairman, three independent advisory members and one ex-officio member, who is the Parliamentary and Health Service Ombudsman. In turn, the board's work is scrutinised by the audit and risk assurance committee and the remuneration and appointments committee of the commission. The audit and risk assurance committee adheres to the model and guidance that is set out in the audit committee handbook that is published by the Treasury. There are three independent members, one of whom is appointed as the chair. The permanent secretary has appointed the chief executive as accounting officer for the commission, and, again, the governance arrangements are set out in the framework document agreed between the ombudsman and the Ministry. However, this document does not convey any legal powers or responsibilities onto either, and any amendments to the framework document must be agreed by the Secretary of State and the Treasury following a process of consultation with the commission.

In 2013, the commission's governance arrangements were the subject of an independent review. It found that the 1974 Act required reviewing and modernising at the earliest opportunity. As a result, the Government published the draft Public Service Ombudsman Bill in 2016, setting out the details of a new public service ombudsman by consolidating the responsibilities of the Parliamentary and Health Service Ombudsman and the local government ombudsman. However, this Bill has never been introduced. The response from the Government is that it will be introduced when parliamentary time allows. In the meantime, the ombudsman has taken his own approach to addressing the anomalies in the current legislative parameters and has embedded a greater split of responsibilities between the role of the ombudsman and that of the chief executive and the accounting officer. He has also appointed independent members to the board.

Essentially, that is a whistle-stop tour through, and I am happy to take any questions and to see whether I can elaborate any further.

The Chairperson (Mr McCrossan): Georgina, thank you very much for that presentation. Obviously, you have done a huge amount of research into other areas and this one. It is very informative and very helpful for the review that this Committee is carrying out. If you are agreed, we will take questions from members.

Ms Bunting: Thank you very much, Georgina. There is a lot in that. As far as I understand it, in a couple of the regions, the ombudsman has, essentially, delegated responsibility for screening, for want of a better word, to the chief executive of the organisation, which has the potential to bring it into conflict [*Inaudible.*] The chief executives hold permanent posts, and the ombudsman posts are time-limited. Is that all good so far?

Ms Ryan-White: Would you be able to repeat that? You broke up there.

Ms Bunting: Sorry. In a number of the regions, the ombudsman has delegated responsibility for some level of scrutiny to the chief executive, who, presumably, holds a permanent post. Yes?

Ms Ryan-White: That has happened more in England with the Parliamentary and Health Service Ombudsman. He has delegated his role as accounting officer, which looks at the financial scrutiny and ensuring that the office's financial affairs are appropriate and meet the standards. For the Local Government and Social Care Ombudsman for England, the appointment was made by the Secretary of State, and that is an accessible mechanism. The Parliamentary and Health Service Ombudsman has, himself, taken the step to delegate. There are delegation powers within the ombudsmen's legal frameworks that allow them to delegate certain roles [*Inaudible.*]

Ms Bunting: There are two types of quality assurance: quality assurance for its work and quality assurance for its governance structures and arrangements. In these circumstances, it seems that, by and large, that is scrutinised by an audit and risk committee. There are independent members on the audit and risk committees. Do the independent members form part of a board? What is their tenure? Are there criteria for their appointment?

Ms Ryan-White: I will have to get back to you on the exact mechanisms. You will note in my paper that the committee for the Welsh ombudsman made some recommendations [*Inaudible.*] They should appoint an external member. The ombudsman did go on to make that appointment.

Ms Bunting: For example, in Wales, they spotted a weakness and decided to close the gap. However, that is one independent member out of how many members? Can you refresh my memory?

Ms Ryan-White: I will have to come back to you with that information. It is six independent external members.

Ms Bunting: Is there somebody from outside the audit and risk committee?

Ms Ryan-White: Yes.

Ms Bunting: Finally, during your research and when comparing and contrasting, did you note anything that appeared to be a stark difference or did anything stand out as a stark weakness in the accountability mechanisms?

Ms Ryan-White: The legislatures are trying to achieve a balance between ensuring the independence of the ombudsmen and accountability. What I found most interesting was the idea of the peer review in England. In that specific case, it looked at whether the ombudsman was securing value for money. I did a bit of background research to look at peer review. It is a learning mechanism for the ombudsman and encourages growth through learning. It can also be used if the ombudsman feels that it has encountered external stimulus such as a political or public call for an assessment of the value of what it does. I find that quite interesting as another way of looking at the committee and encouraging its growth and learning through peer review. Does that make sense?

Ms Bunting: Yes, it does. Thank you.

Ms Rogan: I have one question, Georgina. The Public Services Ombudsman for Wales and the Parliamentary and Health Service Ombudsman in England both have non-statutory advisory boards. The health service one has an additional scrutiny role. Would a similar set-up with our public services ombudsman provide an additional level of scrutiny?

Ms Ryan-White: Sorry, in what sense?

Ms Rogan: The health service board, in particular, seems to have an additional scrutiny role that can depart from the rest of the board's decisions.

Ms Ryan-White: That is the Parliamentary and Health Service Ombudsman. He has that board, but he can decide not to go with the decision of the board. That is him retaining his independence. The Welsh ombudsman and the parliamentary and health service boards are non-statutory and advice-giving, but the responsibility, ultimately, remains with the exercise of the functions and with the ombudsman himself. They are there to provide additional scrutiny assurance advice, but it is not a statutory obligation on him to go with the advice. It has been described as a means to encourage collective decision-making.

Ms Rogan: It is about practising good governance [*Inaudible.*]

Ms Ryan-White: No man can be an island. It is about finding the balance of collective decision-making and ensuring that the ombudsman retains his independence in his ultimate exercise of functions.

Mr Chambers: I thank the officer for her presentation. It has been very informative and contained a lot of detail. The report will require careful reflection. I have no questions at this time, but thank you very much for the presentation.

Mr Allister: The paper is very good in setting out the arrangements in the other jurisdictions. Can you provide a table or an analysis comparing and contrasting what exists for governance supervision in Northern Ireland with elsewhere?

Ms Ryan-White: That is no problem. The remit of the paper was just the other legislatures, but I am happy to prepare that for the Committee.

Mr Allister: It would be useful for us to see, at a glance, where the differences are around governance.

Ms Ryan-White: I can do that, surely.

The Chairperson (Mr McCrossan): Georgina, thank you very much on behalf of the Committee for the work that you have carried out, the presentation and answering the questions. No doubt we will be in touch again.

Ms Ryan-White: Thank you.