



Northern Ireland
Assembly

Audit Committee

OFFICIAL REPORT (Hansard)

Budget 2021-22:
Northern Ireland Public Services Ombudsman

9 December 2020

NORTHERN IRELAND ASSEMBLY

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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 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 Chairperson (Mr McCrossan): I welcome back to the Committee Margaret Kelly, Paul McFadden and, via StarLeaf, John McGinnity. I invite you to make a short opening statement. Thank you. Sorry for the wait.

Ms Margaret Kelly (Northern Ireland Public Services Ombudsman): Not at all. I thank the Committee for giving us time to consider the budget again in the light of the Department of Finance's comments. We welcome the fact that the Department of Finance did not identify any particular issues with the budget. However, we recognise that this has been an unprecedented time. We have made our submissions in the light of the potential financial impact of the pandemic, and we recognise that that makes it difficult.

The budget, as outlined and discussed previously with the Committee, represents a consideration of the role and function of the office and how we can best serve the public interest by delivering that role as effectively as possible. It has asked for an overall increase of just over £300,000. I want to take a few moments to put that in context across a few key areas.

With regard to managing complaints and investigations within our budget, as the Committee is aware, our levels of complaint have more than doubled in the past number of years. We view that as a long-term, sustained increase. We have committed to delivering our investigations within this budget, continuing to provide an effective service to citizens who seek redress and to provide fair, impartial and proportionate investigations. We have had significant focus on both settlement and resolution, which is a really good outcome for both complainant and the public body. It also increases our cost-effectiveness, so we continue to aim to deliver within that, as we have said.

We have sought additional funding for improvement, learning and engagement. I want to say a little bit about why we feel that that is necessary. We really want to ensure that we have the resource to reach out to more disadvantaged citizens or groups who might not automatically find their way to us, to

people who find the complaints landscape very complex and confusing and to public bodies and their representative organisations to ensure a level of engagement and learning. We want to use the knowledge and insight from complaints in order to enable public services to improve. As I have said to the Committee, that is an integral aspect of the work of ombudsmen's offices across the UK, many of which have been delivering on it for some time.

As members will know, there is a wealth of learning from complainants' experiences of public services. We believe that that should be captured and shared. Although the office has begun to work on that, it has been done on an ad hoc basis. I do not believe that we can achieve the impact and learning that we want without some additional support. That is why I have included a proposal for two additional members of staff in order that we can begin to build that work proactively, really begin to engage with public services on a more regular basis, analyse complaints and trends, be able to provide annual sectoral responses that look at complaints and areas for improvement, share those analyses and reports with this Committee and other subject interest Committees, and allow the work that comes from complaints to feed into policy development. I can, when answering questions, give some examples in areas like social care but also possibly in schools.

The final area is the Complaints Standards Authority (CSA), and the introduction of the Complaints Standards Authority will come with associated costs. Those costs were already in the baseline budget, and last year's budget had the costs at 50%. The budget in front of the Committee has a full year of those costs. We are beginning a process with the Assembly Commission in relation to the CSA, and I hope to meet the Assembly Commission in late January or early February. There will be a process of scrutiny and consideration before any such commencement, but we think that it is appropriate for us to include this in our budget as it is a possibility that it will happen in the year ahead.

Overall, we hope that our NIPSO budget represents value for money and that the Committee will give consideration to those additional amounts. Taken together, we hope that they will have a significant impact across the public sector for, relatively speaking, a low cost. We are happy to answer Committee questions on that.

The Chairperson (Mr McCrossan): Thank you very much for that presentation. I will start with a few comments. I note that you said that the level of complaints has doubled, and that has been mentioned at a number of our sessions. What would be the implications of the NIPSO budget for 2021-22 being set aside at an opening baseline position? What would be the resultant reduction in service delivery and the impact on your work? How would NIPSO absorb identified pressures and mitigate the impact on service delivery? There are three questions there.

Ms Kelly: I will start and then maybe ask Paul and John to come in, if that is OK. That would present a real difficulty for us and put a real pressure on the office. I am relatively new in post — almost four months now — but I can see that there has been a significant effort to manage the increased number of complaints within that baseline budget, but that increase is sustained and ongoing. It has meant that some of the other work on long-term impact and change has not been able to take place, and it would present some very real difficulties for us in delivering that quality of service. Paul can maybe speak a bit about how we have done that and the possible impact, but we would be stretching our service, stretching the quality of service and, in many respects, stretching the opportunity for complainants to have proper redress and for public services to have proper learning.

Mr Paul McFadden (Office of the Northern Ireland Public Services Ombudsman): I will build a bit on how we have dealt with this. I touched on this at recent Committee sessions, but that sustained increase — it has been a long-term sustained increase since the year before NIPSO came into play — has been challenging, particularly with that annual budget and in-year budget cycle, which restricts how you can recruit on a permanent basis, because you will obviously not recruit until a good portion into the year.

We have met that through increasing our focus on proportionality. We look at the proportionality, the practicality and the public interest element of complaints before we pursue them to the latter stages of further investigation. I have referenced a few times to the Committee the increased focus on settlement and early resolution. You refer complaints back for local resolution by a body when that is in the best interests not only of the complainant but of all parties, because it reaches a solution that is often achieved within 10 weeks of receipt by us and prevents the inevitable complexity and cost associated with full investigations.

If we continue to see sustained increases in complaints and we have to manage within that restricted budget, the obvious impact is that it will take more time, and there will potentially be backlogs, if we are hit by a surge of complaints around COVID, which, again, as we said previously, is a real prospect. It would bring real challenges. It feels that we have taken as many steps as possible over the last three to four years to build in the capacity to manage that increase.

The Chairperson (Mr McCrossan): In light of our previous discussions and what I have just touched on, do you honestly believe that your current budget is sufficient to meet the demand on your services, even if the £300,000 were granted?

Mr McFadden: The proposed increases are focused on areas that are trying to take a slightly different approach to managing complaints from the Northern Ireland plc perspective. You are looking at trying to invest some time and energy in learning, for example. We have a whole host of areas in which the same complaints come through year-on-year. If we had some limited resource and the right skills to devote to that, we could make some inroads into stopping some of those complaints coming through. You will be familiar with some of the areas, such as serious adverse incidents (SAIs), continuing healthcare and special educational needs (SEN) complaints. Those kinds of things come to us time and time again.

The Chairperson (Mr McCrossan): Sorry for cutting across you, but given that the level of complaints has doubled and that the demand on the service is much more significant, does £300,000 scratch the surface of meeting the demand on the resource? Will the service simply stay as it is, or will that money be used to improve service or efficiency? Will it resolve the issue — I know the answer — of the demand on your service and resources in addressing the backlog of complaints or whatever else?

Mr McFadden: It will not resolve the issue of sustained complaints, but it will allow us to continue to meet that demand. It will be challenging, but I think that £300,000 will allow us to do that on a standstill basis.

Mr John McGinnity (Office of the Northern Ireland Public Services Ombudsman): Since Margaret arrived in August, we have spent time looking intensively at that very question. We are in a position in which we view the additional £300,000 as being the absolute minimum necessary to enable us to continue to provide the quality of service to which we aspire, with a little allowance, as Margaret mentioned, for applying some dedicated resource to learning and engagement. Strategically, Margaret sees those aspects as being a very important part of managing the future demand on our services in terms of numbers of complaints. If we could bid for more, we would, but we are mindful of the wider climate, as exemplified in the advice that you received from the Department of Finance last Thursday.

The Chairperson (Mr McCrossan): I appreciate your honesty, John, because it is important to know where we are. I have noted on numerous occasions the demand on the service, and I thought that that was an appropriate question.

Ms Kelly: We have been very mindful of the current set of circumstances, and I am also mindful of being very new to the post. It is a standstill position for us.

The Chairperson (Mr McCrossan): OK. That is what I was getting at.

Jim, you have another Committee, so I will let you come in first.

Mr Allister: Thank you. Did you surrender any money this year in the monitoring rounds?

Ms Kelly: We will, and John will give an explanation.

Mr McGinnity: This was not a monitoring round, as such, but, early in the year, there was a general appeal for contributions from bodies towards the central government COVID countermeasures. In response, we surrendered £60,000. In the current monitoring round, we propose to surrender a further £100,000, which we attribute substantially to the fact that the half-year of CSA budget that we had for 2020-21 will not now be required in light of the further delay in the commencement of that part of our legislation. In revenue terms, we are on course to surrender a total of £160,000 this financial year.

Mr Allister: Did that damage your service provision?

Mr McGinnity: In the sense that the majority relates to a function that has not yet commenced, the short answer is that, of itself, it does not damage our service provision in 2020-21.

Mr Allister: OK. The service that has not yet commenced will not be commenced by 1 April, will it?

Mr McGinnity: I will ask Margaret or Paul to give a view on when, realistically, that will be commenced.

Ms Kelly: We do not anticipate that it will be commenced on 1 April.

Mr Allister: What is your best guess?

Ms Kelly: We are meeting the Commission in January. We have some preparation work to do in advance of commencement. It is really difficult for me to guess.

Mr Allister: There will be some headroom there, will there not?

Ms Kelly: There will be some headroom there, yes.

Mr Allister: That is not factored in to your bid.

Ms Kelly: No. We needed to include that and budget for it so that there was recognition of it.

Mr Allister: If I recall correctly, your bid for the CSA is £214,000. Is that right?

Mr McFadden: Yes, that is the ongoing annual cost that we estimate.

Mr Allister: So, if there were a further six-month delay, there would be headroom of over £100,000.

Mr McFadden: Yes.

Mr McGinnity: The normal way in which this type of issue is factored in by looking at the in-year monitoring rounds. Where it is clear that a function is not commencing as early as originally planned, we surrender at the first available opportunity any estimated reduced requirement for any particular area, such as CSA.

Mr Allister: If it is self-evident that you will not need £214,000 because there will be some delay, what is the merit in including it in the first place?

Ms Kelly: At the point at which we included it —

Mr Allister: Yes, at that point.

Ms Kelly: — we were not clear that it would not commence. To be honest, we are now a little clearer on the process that we will need to have around that. To be fair, it is only relatively recently — probably in the last two weeks — that we have had some discussion and a little more clarity on that process.

Mr Allister: OK. Have you any ability to charge out for your services?

Ms Kelly: Funnily enough, Paul and I were discussing this, and he may say a little about Scotland. At the moment, we do not. There are only two possible ways to do that. One way is to charge public bodies on the basis of how many complaints are received. I have a tiny concern about balancing that with continuing to ensure independence and quality. The other way is what happens in Scotland, where the ombudsman provides training to public bodies and recoups the full charge of that training. Paul, you can probably speak to that better than me.

Mr McFadden: Sure. The first option that Margaret talked about would be a longer-term, more strategic change requiring change to legislation and so forth. That sort of "polluter pays" principle has not been put in place by any other ombudsman at this time. The second option is more realistic,

particularly if we have a Complaints Standards Authority function, whereby we would provide, on a cost-recovery basis, training services, either online or classroom-based, and re-charge public bodies. There are complications with that re-charge. You would not always receive that money because it would be part of the re-charge that you put back or take out of your budget, essentially. John may be able to clarify that from a technical, financial perspective.

Mr McGinnity: Yes, I am happy to come in on that. We need to be able to quantify in advance any income that we generate. We need to be able to build that into what are called our accruing resources within our estimates. To the extent that we get our estimates wrong, any excess over and above what we planned for would, in effect, be surrendered to the Consolidated Fund. The other point on generating income from elsewhere in the public sector is that it is circular, in the sense that anything that we charge would be a call on the budgets of the public organisations concerned. That is not to say that we should not do it. However, in one sense, it is not as pressing as if we were able to obtain external income from sources other than fellow central government bodies.

Mr Allister: Except, with respect, for this point, which we discussed in the past: the penalty on an errant public body against which you make a finding is almost non-existent. I have previously described it as a slap on the wrist. If, in fact, there was a charge for your services to a public body against which you made an adverse finding, that might be a greater incentive for it to improve its provision than are the current arrangements. We have just heard from the Audit Office that, in the current year, it has charged out £2 million for its services. It would need a change in the law, but I do not understand why the Ombudsman's Office could not charge out when there is an adverse finding against a council or public body.

Mr McFadden: The answer is within your question. We cannot do that under the current legislative framework. It is not even being considered in the Northern Ireland or the Public Services Ombudsman context. It has been mooted in general terms. That is a far more strategic discussion, and legislative change would have to happen.

Mr Allister: OK. That is all for now.

The Chairperson (Mr McCrossan): It is an interesting suggestion and could prove —.

Ms Kelly: Yes. If we were to think about that, we would need to do some research and work on it and have a really proper look at it.

The Chairperson (Mr McCrossan): Yes.

Ms Bunting: May I explore with you something that you raised, namely the two potential ways to charge out for your services? Margaret, you said that you would have some concern about charging people according to the number of complaints because that would impact on independence and quality. Scotland provides training. Is there not a danger that training also has an impact on independence and quality and, actually, the potential to turn the Ombudsman's Office into a training organisation, many of which already exist? I am interested to hear what you think about that.

Jim asked previously about your performance on key performance indicator (KPI) 3. The figures are not great. Margaret, I appreciate that you have just taken up your post. Presumably, you will say, somewhat naturally, that your budget has an impact on your ability to report. There are three options as far as the budget is concerned. We can say yes, we can say no, or we can say no with caveats, leaving the potential for you to bid. What will be the impact on your reporting mechanism and your ability to hit KPI 3 if you do not receive the budget or in circumstances where you have to bid? You are in a difficult position because your baseline did not include your new function. Say, for instance, that your baseline is adjusted accordingly to include the commencement of the new function, how will you prioritise work? What will be the deciding factors? What will be cut? What is your priority? Do you see what I am trying to get at?

Ms Kelly: I do. KPI 3 is quite complicated, and, over the last number of months, I have spent some time unearthing it. KPI 3 is further complicated by some longer-running cases. Since coming into the role, I have looked at some of those long-running cases. I drew a circle around them and said, "OK. We need to focus on clearing these cases". However, in fact, that almost has a detrimental effect on the KPI. I will have to ask Paul to explain exactly how that happens. KPI 3 tends to be the one, because of those longer investigations, that is more challenging for the office. There can be a number

of reasons for that. It is partly about resource, but it is also partly about complexity and partly about when we seek independent professional advice and the length of time that it takes us to get that. It is also about analysis. Sometimes, it takes only four or five of those cases to be very complex and difficult. We are balancing getting people a response with ensuring that we have done the level and quality of diligence that we need to do, and that is difficult. If our budget stays the same or retracts, in some ways, no matter how hard we work upstream to try to get those cases through, getting resolution and, where appropriate, settlement, there will be a lag. The team has been working very hard on that, but, inevitably, there will be a lag.

To be really honest, for me, there are two things about the ombudsman's office. One is the absolutely core investigative response, which has to be a priority when people come through to the office and, in some respects, the absolute priority in responding to complainants. The bit that sits alongside that is the bigger lessons. We have, for example, 10 cases on continuing healthcare that have been sitting over a period. The distinctive issue in those cases relates to the guidance from the Department and what trusts are doing. When I looked at those reports, the same issued is repeated again and again.

It seems to me that there needs to be some space for us to go. The same issue is across those 10 very long and very detailed cases of people having had really difficult experiences, and we need to address that. I find it hard to totally separate those two things. Inevitably, the complainant coming through the door will have the highest priority for us, as is right and proper, but that sits alongside taking that broader approach. If I could solve that problem, there are 10 very complex cases that would not be taking up as much of our resource. Paul, is there anything that you want to add?

Mr McFadden: A further increase in complaints and not having additional resource would lead to a further impact on KPI 3. We continue to seek ways to improve that, and, to be honest, some of the context of that is that we have delivered significantly more of those investigative decisions at KPI 3 in each of those years.

At the earlier stage, we also continue to do more decisions within the 10 weeks and meet those KPIs to a very high standard. So, the push to try to achieve those early resolutions has had a really positive outcome, which paints a fuller picture. If we have ongoing increases, as we have for the past four or five years, and if we have, for example, a COVID surge, the target that will be difficult to keep meeting is the long KPI 3 investigations target. We would have to look at that.

I come back to your first question on training. It is a good question and one that is asked a lot in the context of a Complaints Standards Authority, which has, essentially, two cores and a dual role. Independence would not be affected because you separate the relationship that you have with the bodies undertaking that role from providing advice on good practice in complaints handling. You are not talking about the context of the individual complaints or decisions made on planning or diagnosis, for example. You are advising them on how to manage, progress investigate complaints effectively and to a high standard. The two are separate and do not impact on your independence when it comes to the facts and context of an individual case that later arrives at the office. The two aspects are separate.

Quality is the second part. You said that independence and quality would be affected. Training is, in fact, a way of driving quality up. One of the major issues that we have, aside from the underlying issue of poor service, is that we are finding huge issues with how a lot of the complaints that come to us had been handled by a public body. So, if you can try to raise the standards of the public bodies in how they handle those complaints, you should have an impact on what is coming to you and on your ability to investigate complaints without having to go back multiple times to them for additional information.

Ms Bunting: The only type of training that the CSA in Scotland provides is to organisations on how they handle complaints better.

Mr McFadden: Yes. Training is across the full range of complaints handling but focused on that area. Staff also go into areas that are more about the learning and impact, where they will go out and provide outreach around particular subject areas. Earlier, we mentioned SEN and serious adverse incidents. There is learning to be had from our investigations, and that kind of outreach work is what would be proposed for the two learning and improvement officers, rather than any specific training. The training would be very specific to good complaints handling across that field.

The Chairperson (Mr McCrossan): I have to move on. OK?

Ms Bunting: Yes.

Ms Rogan: You mentioned the impact on dealing with the complaints that you receive. How many staff do you have to progress and deal with those complaints? How does that number compare with the number five years ago?

Mr McFadden: The organisation has 41 full-time equivalent (FTE) staff in total. I do not have the split of those who are directly involved in complaints investigations. I would have to come back to you on that. All that I can say is that they make up the vast majority of those who are employed in the organisation across the different functions that we investigate. I am afraid that I do not have the figure for the number of staff five years ago. Unless John McGinnity has those to hand, we will have to come back to you in writing on that.

Mr McGinnity: Paul, if I may contribute, the number of full-time equivalent staff that we had five years ago was 28.

Ms Rogan: Will an extra member of staff be added to the own-initiative team? Will that increase the speed at which reports are published? Keep me right here. Two extra members of staff are proposed to work on better learning and improvement from complaints, which is, I agree, a must. What is the point in not taking the learning from trends and things that are being repeated? It does not make sense not to learn from those in order to improve the outcomes for people and complainants. Does that mean that a total of three extra staff are required?

Ms Kelly: Yes, Emma. That own-initiative team is a bespoke team that the ombudsman can use when there is reasonable suspicion of systemic maladministration.

You will know — I spoke a little about it — that we have been doing the personal independence payment (PIP) investigation, which has taken quite a long time. I am hopeful that that report will be published at the end of January or the start of February next year. Undertaking something like that is an enormous piece of work.

Part of the reason why we wanted to look for an extra member of staff for a while was to allow us to have a long investigation and, potentially, one or two shorter own-initiative investigations running across the year so that we were speeding up the process. Some things come to the office where there is a reasonable suspicion of systemic maladministration. When the office did the preparatory work for this, there were quite a number of potential own-initiative investigations. Paul, I am not sure whether you want to add to that.

Mr McFadden: In summary, the aim is to do more and, ideally, shorter investigations, although I caveat that with the following point: sometimes, the procedural steps that we have to go through, irrespective of the scale of the investigation, mean that the length would certainly still be in the territory of one year. From June until now for an own-initiative investigation is on the long side. You would hope to bring that down, but you would not be able to get it down significantly beyond that because you have to provide an opportunity for comment, and you must provide the various procedural safeguard checks.

The Chairperson (Mr McCrossan): OK. Thank you.

Mr McGinnity: If I may come in momentarily, Emma, to answer your question about staff. You are correct that those two areas, own-initiative investigations and learning and improvement, represent three additional staff members. To be clear, I should add that any additional staff members to support the hoped-for commencement of the Complaints Standards Authority would be additional to them.

Ms Rogan: OK. Thank you.

The Chairperson (Mr McCrossan): Will broadcasting bring in Alan Chambers, please?

Mr Chambers: I have no questions at this time, Chair.

The Chairperson (Mr McCrossan): You are happy enough, Alan. OK. No problem.

That is everything. Thanks very much again. We appreciate your time and your answers to our questions.

Ms Kelly: Thank you for taking the time to look at this properly with us. I appreciate it.

The Chairperson (Mr McCrossan): Thank you. No problem.