



Northern Ireland
Assembly

Audit Committee

OFFICIAL REPORT (Hansard)

Business Plan and Strategic Plan:
Northern Ireland Public
Services Ombudsman

10 February 2021

NORTHERN IRELAND ASSEMBLY

Audit Committee

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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 Sean Martin	Office of the Northern Ireland Public Services Ombudsman
Mr John McGinnity	Office of the Northern Ireland Public Services Ombudsman

The Chairperson (Mr McCrossan): I invite Margaret Kelly to brief members on the strategic plan and business plan.

Ms Margaret Kelly (Northern Ireland Public Services Ombudsman): Thank you, Chairman. Our existing strategic plan runs from 2020 to 2023, and the Committee was given that in February. There is, of course, much in the plan that reflects our core role and purpose, and that will remain constant over the next three years. To that end, in planning for the three years ahead, it is my intention in the coming year, 2021-22, to produce a new three-year strategic plan. It is also my intention to develop that plan with key stakeholders and to have a level of engagement and consultation with key stakeholders on that. To ensure that the Committee is fully conversant with my focus for the year ahead, I have drawn out the additional key business objectives that I want to add to our ongoing work. I have put those in the context of the existing strategic plan and the NIPSO core values, which I put in the paper.

The additional strategic objectives that I would really like to draw the Committee's attention to are in that paper. Strategic objective 1 is:

"To provide a high quality, impartial and independent investigation service."

We have put in a couple of additional business objectives under that. We want to undertake a user satisfaction survey with people who have used the NIPSO service. That has not been done to date, so it will be the first one we have done, and we are in train to begin it in April this year.

Alongside that, we want to undertake a small public awareness survey, which we have not done before either, to look at what the public's awareness, understanding and knowledge of NIPSO is, whether they are having difficulty with a complaint and, having complained after being very dissatisfied with a public body, whether they knew how to find their way to us.

I want to use both those to inform the strategic plan for the forthcoming three years and to provide baseline data so that we can measure and develop the service in future years. That will be a key objective for me.

Under business objective 1d), I have put in publishing our own-initiative investigation into the personal independence payment (PIP) and ensuring that there is dissemination and learning from that. There is always a risk that you publish a report and do not do the follow-up bit, so I want to make sure that we have a very clear plan for the dissemination and learning from the report and identify other own-initiative investigations, both rapid and in-depth, to draw attention to other areas where there may need to be shared learning. I also want to perhaps reassure the Committee that one of our areas for an assurance audit by our external auditors this year is our own-initiative investigation and our procedures and processes for conducting that. That is ongoing.

Strategic objective 2 is:

"To build confidence in Local Government by regulating and promoting the Northern Ireland Local Government Code of Conduct."

Under that, I put in some specific business objectives on promoting awareness and learning of the code. I want to review our level of engagement with the key stakeholders who will use the code and to develop an engagement plan over this year to provide additional and ongoing opportunities for engagement and learning. I have, over the last five months, reached out to quite a number of the key stakeholders on that, including the National Association of Councillors (NAC), the Society of Local Authority Chief Executives (SOLACE) and the Northern Ireland Local Government Association (NILGA), and begun a process, as some of you know, of reaching out to all the political parties to not only listen to people and understand where they are with the code but to enable me to think about how we can put a plan in place to promote the code and to ensure that councillors are not breaking it inadvertently and are all working on the same side, which is the side of looking for really good standards in public life. I want to really make that engagement focused in order to enable us to bring that forward.

We talked about strategic objective 3, which is to improve complaints handling, and we talked about the complaints standards authority (CSA), so I will not go through those. I am happy to answer other questions on that objective and to bring forward, once we do the work with the Commission, a more detailed pack and briefing on that to the Audit Committee.

Strategic objective 4 is:

"To be an accountable, ethical public service organisation that pursues excellence and continuous improvement."

Under that, some additional business objectives have been about developing a digital strategy in order to support the continued expansion, improvement and efficiency in our service delivery and to develop an updated business continuity plan, taking account of what we have learned during the COVID-19 pandemic and being able to keep our service running.

Business objective 4c) is to look at:

"improvements in organisational performance and staff ... development".

As part of that, I want to develop the new strategic plan with an agreed strategic vision and priorities. I want that to include a process of external and internal stakeholder engagement. As part of that, we are undertaking a staff survey to get staff views and engagement. The process for that should kick off in early April in order to allow that to happen.

Strategic objective 5 is:

"To support learning from complaints and improved public service".

As I said, we are writing those job descriptions, are, hopefully, appointing those new staff and are putting in place a clear learning and improvement plan.

I am aware of the Committee's current review of governance, so under my section on governance and accountability, I reiterate my commitment to fully engage with the Committee on that. It is an important issue that I take seriously, and I welcome the opportunity to discuss it with the Committee. Once that is complete, I will work with the Committee to review and update the memorandum of understanding that, again, is important to have in place.

I will not go through resource requirements, but I know that John will be happy to take us through them.

In providing the Committee with the existing strategic plan and my key priorities for the year ahead, it is my aim to ensure that it is fully conversant with my focus and is clear on where we are going with not only our core statutory obligations and functions but our focus on access to justice, better complaints handling and sharing lessons from those. Those are conversations that I will welcome having with the Committee. I am more than happy to answer any other questions.

The Chairperson (Mr McCrossan): Thank you very much for that very detailed presentation.

Margaret, we know your resource requirements for 2021-22. Are there any areas where you might see NIPSO declaring easements or identifying pressures in-year, and what are the likely reasons for that? John will probably answer that question.

Ms Kelly: John, would you like to answer?

Mr John McGinnity (Office of the Northern Ireland Public Services Ombudsman): I am happy to come in on that. We have already mentioned the possibility in one area of having a timescale for the commencement of our complaints standards authority function. There is a possibility that we will not require the full-year equivalent of the resources to undertake that function. That is principally and simply a timing issue that we have been aware of from the outset. We felt it prudent to build into our budgetary plans for next year the provision for the full year while knowing that there would be an opportunity to identify any reduced requirements as the year progresses.

There might be additional calls on our services in some areas and an unknown in the bounceback effect, if one could describe it as that, of the additional complaints that could arise in the aftermath of the pandemic. Those could arise not only from the pandemic itself but from the lag that will have built up with people not wishing to bring forward complaints to the office in the times that we have been in. So, there is the possibility of a residue of complaints that have built up. In that event, we foresee the possibility that, in the in-year monitoring rounds during 2021-22, we will approach the Committee and the Department of Finance to seek some additional in-year resource to support that.

Those are the two key areas where we see the potential for some variation. Margaret or Sean may have others in mind, but those are the key areas from a planning perspective at the moment.

The Chairperson (Mr McCrossan): Thank you, John. I will invite members in. I am conscious that Joanne and Emma asked questions relevant to this. I will go through the same order. Joanne, have you any further questions for Margaret or John?

Ms Bunting: I do. Thanks, Chairman. I appreciate it, and I am sorry that I jumped ahead.

There are a couple of things that I want to ask, but the first is about risk. Do you folks consider that there is a potential weakness in the system in circumstances where we are *[Inaudible]* the budget and your budget allocation but we do not know anything about your risks and the potential for further financial implications arising out of those risks? Is that a flaw in the current system? I appreciate that you have your risk register and so on and that you will have recommendations from your internal and external auditors. What mechanisms are in place to ensure that you address matters that have been brought to your attention via those routes?

I will come in on another issue, Chair, but that is my first question.

Ms Kelly: I will ask John to come in after me on some of that, if that is OK, John.

Mr McGinnity: Yes.

Ms Kelly: Do I consider there to be a weakness in the system? That is an interesting question. One of the things that discussion with the Committee has prompted me to do is to look at the other ombudsmen and how they are constituted. That ability for me is as an officer of the Assembly. I have looked at all the review and academic literature on ombudsmen, and I saw that that accountability to the legislature, whichever one it may be, is a key element.

I am happy to share our risk register with the Committee. We have a very thorough risk register. We talk about it and review it at each senior management team (SMT) meeting. We review it at our audit and risk committee (ARC), and there are particular risks that will be reviewed by internal or external audit. We also have in place an update to that risk register so that if any actions arise from it, we are required to fulfil them, and ARC and our auditors will look at them. A process that says, "Here is risk. It has been reviewed. Here are some things that we think you need to do. You need to have these done by here. Have you those done?" is very firmly in place. It might be that the Committee is not familiar with that, so it might want to see that risk register.

John, do you have anything that you would like to add, or have I done a good job?

Mr McGinnity: I would absolutely not wish anything that I say to pre-empt the review of governance that is under way or, indeed, the Committee's intention to revisit the memorandum of understanding that is in place to govern the accountability relationships. In our existing memorandum of understanding, there is a clear commitment on our side to have transparency when making available any material, including risk registers, that may help to provide assurance that we are monitoring the key risks to the achievement of our objectives and taking appropriate action. In fact, the very existence of our corporate risk register helped to inform us when we first came to the Committee back in October with our budgetary proposals for next year. We took account of issues arising in our risk register in framing our approach to presenting the budgetary figures to the Committee.

There is a link there already. As Margaret explained, there is a pretty robust set of arrangements in place for our risk register to be challenged and interrogated by our audit and risk committee and by our internal audit function. My assessment is that the risks in our risk register are modest.

Ms Bunting: Folks, I appreciate your candour on that. It is useful to understand that, because it is odd to see an audit committee that does not have a risk element to it. Obviously, budgetary factors may come in to play, so it is useful to understand the process.

My next issue is about the complaints handling that you are about to set up; it is not resource-based but on the general principles of it. You mentioned something that drew my interest. There may be circumstances where you, Margaret, receive a complaint about an issue that you have initiated your own investigation of. Let us use an example. Muckamore is difficult because of the current criminal case, so let us use the O'Hara report. Obviously, there was a series of findings and recommendations from that, few of which seem to have been implemented despite the passing of several years. Does the additional funding afford you the opportunity to go back and revisit issues? Do you have the authority to hold public bodies to account if they have not implemented the recommendations that you made? Does the new function afford families an opportunity to complain to you in circumstances where you initiated an investigation? Will you tell me how that works, please?

Ms Kelly: I am going to try to answer a bit of that, Joanne, but I am also going to ask Sean to come in.

I agree that quite often there are investigations and reports and you get lots of findings, but getting those put into practice can be really difficult. Both the complaints standards authority role and the own-initiative investigations provide an opportunity to do that. I do not think that any ombudsman can achieve that on their own. For me, there is a real bit about working with Assembly Committees like this Committee, Health and Communities and bringing to their attention the kinds of recommendations that we make and using that support to ensure that they are put in place.

There are a number of powers, including general powers, and I will ask Sean to come in to make sure that I get this right. If public authorities refuse to accept our findings or to put recommendations in place, we can bring that to the attention of the Assembly. The new complaints standards authority has a compliance element to it, if that makes sense, so we will be able to assess the level of compliance that public bodies have with complaints handling. There is an opportunity for us to initially support public bodies to achieve compliance, but if they do not become compliant, we can bring that to the Assembly's attention. Sean, can you come in on that? I am not sure how good a job I did on that.

Mr Sean Martin (Office of the Northern Ireland Public Services Ombudsman): *[Inaudible.]* Joanne, we follow up on our recommendations. We have a system that we call compliance *[Inaudible.]* We have no powers of compulsion. As Margaret alluded to, our powers bring a matter before the Assembly for its attention if we have made recommendations that have not been implemented. As part of our case-handling system, we record all the recommendations that we make and give them bring-forward dates, so we can check for evidence that they have been implemented.

We also work with other regulatory and oversight bodies to make them aware of some of the recommendations that we make. Sometimes we might ask them to follow up or do an audit to show that our recommendations have been put in place, as they may be better placed to do that. For example, I think about Health and Social Care (HSC) in particular and the role of the Regulation and Quality Improvement Authority (RQIA) there. We frequently engage with RQIA on some of the recommendations that we have made.

We have a very good system in place. Why did we put it in place? In the past, when we had cause to go back and look, we found evidence that some of our recommendations that had been accepted had not been implemented. A number of years ago, we realised that there was a need to put a more robust system in place in order to check and verify implementation.

Complainants really want us to do that. They bring their complaint to us, and they do not want other people to experience the nature and type of service that they did. It is really important to give the assurance that the recommendations that we made have been implemented. We generally get good cooperation on that from most public bodies. However, when we identify an issue, the Assembly is the ultimate recourse, and it can be aware of and put a spotlight on an issue.

The Chairperson (Mr McCrossan): Thank you. Joanne, we are well beyond time. Can I bring in Emma Rogan? Emma, you touched on that. Have you any further questions, or are you content?

Ms Rogan: Can you hear me?

The Chairperson (Mr McCrossan): Yes, we can.

Ms Rogan: I have no further questions, Chair. Thank you.

The Chairperson (Mr McCrossan): Alan Chambers is next.

Mr Chambers: Sorry, can you hear me?

The Chairperson (Mr McCrossan): Yes, Alan.

Mr Chambers: Thank you. I have a quick question. I welcome the plans to have a user and awareness survey in the business plan. That should produce some useful information. In your experience, do you have any sense of whether the public find you through their own efforts, or are they usually directed to you by a third party?

Ms Kelly: I will try to answer briefly, but I will ask Sean for help, because he is better equipped than I to answer. Often, people are referred to us by public bodies. In fact, public bodies should include in their final complaint letter that people can come to us. I have a concern that some of those more vulnerable groups do not get to us. For example, it is concerning that people like the Dunmurry Manor families did not find their way to us. It is a piece of work that we still need to do, Alan. Part of my focus, on both that user survey and public awareness, is about trying to shift that.

Sean, is there anything that you want to say?

Mr Martin: If people get into the complaints process, Margaret, they will be signposted to us. Our experience is that that works well. The issue is that people who struggle to engage in a complaints process may raise concerns, but those are not treated as complaints. Such people will find it more difficult to get to us.

We have a piece of work to do that is part of that complaints standards piece on how easy and accessible it is for people to engage with a public body. Clearly, where people express dissatisfaction,

it should be regarded as a complaint and they should be supported by that organisation to bring forward their complaint. Ultimately, if the complaint is to the ombudsman, that is the mechanism.

There is a need for advocacy and support to help people navigate their way through the complaints process, and, while we will try to simplify that and make it easier through complaints standards, there is still a role for advocacy and support, particularly for people who find it difficult to engage through complaints processes.

Mr Allister: I want to go to the second strategic objective, relating to local government, where you say that it is:

"To build confidence in Local Government by regulating and promoting the Northern Ireland Local Government Code of Conduct and delivering a high quality, independent investigation and adjudication function."

I made the point before — I will not labour it today, but I will make it again — that you are in the pretty invidious position of being both the prosecutor under the code and the judge. That is an unsustainable position.

What I really want to ask you is this: as MLAs, we have a code of conduct and councillors have a code of conduct, but it seems that there is a much more stringent approach taken in the councillors' code of conduct to freedom of expression than in the MLAs' code of conduct, so is there any correlation between the standards commissioner in the Assembly and the local government side of things on what standards are acceptable on expressions of opinion?

Ms Kelly: Thank you. I met the Assembly's standards commissioner, although she is still relatively new in post. I know that, as part of the review by the Department for Communities, Jim — I am sure that you already know this — that issue with the councillors' code of conduct and the MLAs' code of conduct came up.

I take on board the position of the other jurisdictions, and I have looked at how they are constituted for both investigation and adjudication. I reassure you that the Chinese wall that we have in the office is very strictly enforced. However, I accept that that is how it was put in place by the Assembly, and it is for the Assembly to consider where that might need to go in the future.

I know that the Department for Communities, in its review of the code of conduct for councillors, considered the Assembly's code of conduct for MLAs as well. Freedom of expression is something that has come up. I was speaking to the team this morning, so I know that we have had training on the European Convention on Human Rights (ECHR) on freedom of expression and how we interpret and implement that. I know that you are familiar with Heesom, but that has come up for the office, and we have worked to address it.

For me, the bigger decisions about what is in the codes of conduct for MLAs and councillors is a decision that rightly sits with the Assembly. My role is to investigate under the current code of conduct and then to properly and appropriately adjudicate, taking on board all that you said about that. I could not say to you right now, "There is a differential there", or, "I think that needs to be changed". That belongs with the Assembly. My focus has been on going out and engaging.

Mr Allister: Let me illustrate the point. Recently, the standards commissioner in the Assembly ruled on whether a matter in which what was quite robust language used by an MLA was a breach of the code. Ironically, she quoted a case against the Welsh public services ombudsman as justification for not taking any action. She quoted the judgment of the judge in that case:

"Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated."

That is the Assembly standards commissioner saying, in other words, that politicians have a higher threshold in relation to freedom of expression. In any decisions that I have read from the local government commissioner, I have not found any parallel. There seems to be an overbearing, restrictive approach to freedom of expression for councillors that the standards commissioner in the Assembly is taking a very different view of. Councillors are no different from MLAs, or are they?

Ms Kelly: We do training with councillors, and one of the things we ask them is, "Do you think that you are held more accountable for what you say and how you say it, or is there a higher threshold for you?". Most councillors say that they think they are held more accountable, and we say, "No, there is a higher threshold", because there is. I cannot go back over what has happened previously, but, if there is an issue with that, I am happy to write to you about it. When we train councillors and provide information to them on the code — it is a question that I have asked — we alert them to the fact that there is a higher threshold for them in the expression of opinion.

Mr Allister: I respectfully say that I do not think that some of the rulings reflect that.

That is all right. Thanks.

The Chairperson (Mr McCrossan): Thank you, Margaret.

That is all for today. We appreciate your time. Thank you, John and Sean, as well. Thank you for taking our questions.

Ms Kelly: Thank you, Committee. Thank you, Chair.