



Northern Ireland  
Assembly

Audit Committee

# OFFICIAL REPORT (Hansard)

Governance and Accountability Arrangements for  
the Northern Ireland Audit Office and the  
Northern Ireland Public Services Ombudsman:  
Mr Brian Thompson, University of Liverpool

14 April 2021

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and the Northern Ireland Public Services Ombudsman:  
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**Members present for all or part of the proceedings:**

Mr Daniel McCrossan (Chairperson)  
Mr Jim Allister  
Mr Alan Chambers

**Witnesses:**

Mr Brian Thompson                      University of Liverpool

**The Chairperson (Mr McCrossan):** I welcome Mr Brian Thompson and thank him for being with us. Mr Thompson is an honorary senior research fellow at the University of Liverpool. We are delighted to have you here today, Mr Thompson. The session is being reported by Hansard, and the transcript will be published on the Committee's web page. I invite you to make some brief opening remarks, after which we will move to some questions.

**Mr Brian Thompson (University of Liverpool):** Thank you very much, Chair. I reiterate the point that I made in my written submission that the Northern Ireland Audit Office (NIAO) and the ombudsman are very important institutions and have the status of officers of the Assembly. Whilst they are similar, there are some differences, and that might mean that the arrangements will not always be the same for both of them in all circumstances.

One of the difficulties is that the ombudsman is not fully understood. The ombudsman, in a sense, acts a bit like a court in that it is independent and impartial. Sometimes people think that the ombudsman acts as the champion of people who have had an unsatisfactory service from a public body. The ombudsman will find against the public body if there is the evidence to do that, but, if there is not the evidence to do that, they will not. They will be a champion of good administration, so it may well be that, as I say, whilst it is useful to think of them together and is important that the Assembly supports them in that way, they are a part of the work that the Assembly does in holding the Executive to account. They have an important role, and the Assembly's role is terribly important. Your review is an opportunity to remind everybody about that relationship and, indeed, about your own leading role in that regard.

**The Chairperson (Mr McCrossan):** Thank you very much, Mr Thompson. I appreciate those remarks and again thank you for your time with us. You encourage consideration of a public administration committee to look at performance. Would there be any danger of fettering the ombudsman's independence in that regard?

**Mr Thompson:** No. The idea is that you have the Public Accounts Committee (PAC), which works closely with the Comptroller and Auditor General (C&AG). The Committee can often follow up an audit by the Audit Office or an investigation report that the ombudsman has carried out. Of course, you should bear it in mind that the Assembly is also there to help to hold the ombudsman to account, but there is a delicate balance to be achieved between making sure that there is independence and accountability.

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

**Mr Chambers:** Mr Thompson said that the ombudsman was the champion of good administration rather than of individual cases. Does he agree that maybe the very existence of that office and the fact that it can intervene ensures that there is a continuing high level of administration in public life?

**Mr Thompson:** I think that that is the case. However, one thing that will help that is the power that was put into the 2016 legislation. That is coming on stream later this year, I think, and is a role called of complaints standards. One thing that that will do is encourage and assist public bodies to develop their own capacity to deal with complaints, because, of course, the ombudsman comes in to deal with a complaint only after an organisation has the first opportunity to resolve it. That is terribly important.

**Mr Chambers:** Thank you.

**Mr Allister:** Mr Thompson, there are a couple of things that I want to pursue with you.

Your evidence very much looks at the Audit Office and the public services ombudsman. The general international practice in audit offices appears to tend towards there being a corporate board to oversee their work. Why should an audit office have an independent board, which, I think, is a good thing, and an ombudsman not?

**Mr Thompson:** In New Zealand, there is no statutory board. In the Republic of Ireland, there is no statutory board for the audit office. To that extent, Westminster, Scotland and Wales are a little bit different. So far as I know, in the common law world, I do not think that there is a statutory board for any of the ombudsmen.

As I said in my opening remarks, there could be the possibility for differences between the two. There are reasons why you would want to have the difference for an ombudsman. I just mentioned the complaints standards work. There is also the power that has just been exercised to consider, and we are waiting for the report of the own-initiative investigation. This is the first time that a UK ombudsman has got such a power, and the office of the Public Services Ombudsman for Wales followed in the wake of the example that the Northern Ireland legislation set. Westminster has had the opportunity to create that power but has not done it. It is important that that kind of investigation could be critical of the Departments that it looks at. The departmental response might be to take it on the chin or it might not. In those circumstances, the ombudsman has to have as much independence as possible in order to carry out that job and to do it properly.

I will give you an example. The Audit Office has a power that is slightly similar to an own-initiative. It is called a value-for-money audit. It is clear that the auditor, as corporation sole, has the final decision on whether they will do something about that. It is interesting that the legislation that governs the relationship between the statutory board for the Audit Office at Westminster and the Comptroller and Auditor General states that they have to agree things. It is not just that the board will have the final say on the Estimates that it puts forward to Westminster or its plans; it is done jointly. In my evidence, I stated that, if there was to be a statutory board of the ombudsman, I would want to see it on that basis. Actually, if pushed, I would prefer not to have a statutory board but to retain the current arrangements and perhaps augment them with what Mr Tyndall said about his experience of the advisory panel, which supplements the audit and risk committee in the governance and accountability arrangements of the Public Services Ombudsman for Wales.

**Mr Allister:** Are you really signalling to us that you think that a statutory board might be seen to better the necessary independence of the ombudsman?

**Mr Thompson:** Ordinarily, when you have a statutory board, the non-executive members are in the majority. That was the position in the legislation that looks as though it will not happen, a draft Public Services Ombudsman Bill. I would not be in favour of that. It possibly works for the auditor, because

the legislation specifically states that there is joint responsibility between the auditor, as a corporation sole, and the statutory board.

**Mr Allister:** Yes. There is something of a halfway house in that there is a non-statutory board in the health service ombudsman in GB. Is that correct?

**Mr Thompson:** There are two separate offices in the Parliamentary and Health Service Ombudsman, but the two are held by one person.

**Mr Allister:** Yes.

**Mr Thompson:** They operate together, although they are not formally merged in the way that they were in Northern Ireland by the 2016 Act. They have a unitary board, but the ombudsman is still a corporation sole, and therefore, in a sense, it is a bit like the advisory situation in Wales. It is not a statutory board, and the ombudsman is still a corporation sole.

**Mr Allister:** So, it does not really have any powers of note.

**Mr Thompson:** I guess that it may not have power, but it perhaps has influence.

**Mr Allister:** Do you think that the Welsh model or that health service model would be beneficial to us, or would it just be an unnecessary adjunct?

**Mr Thompson:** It could be done in that way, but, given that the Welsh office is a little bigger and the population is larger in Wales, it is perhaps a better model for Northern Ireland.

**Mr Allister:** What we have is a better model?

**Mr Thompson:** No, the Welsh example. It is a similar size, and the jurisdictions are similar. That would not be a bad model to follow.

**Mr Allister:** I will maybe take you slightly outside your terms of reference. Can the powers of the ombudsman when it finds a public authority to have been guilty of maladministration not be a bit limp?

**Mr Thompson:** It can look that way because it is only a power of recommendation. A colleague came up with the phrase that the ombudsman has "a mandate of persuasion, not coercion". What we are dealing with in maladministration is something that could be a breach of the law but might not be. That is the great thing about the office and the term "maladministration": it covers a wide range of things. Indeed, that was one of the reasons why the ombudsman was created in the United Kingdom in the first place. It was designed to supplement political and legal action, and it sort of overlaps a little.

**Mr Allister:** What do you think of the idea of following an example that exists in the Audit Office of enabling the ombudsman to charge out where there is an adverse finding for their services? Would that bring a little concentration to the mind of a council or someone else who was found guilty of maladministration?

**Mr Thompson:** It tends to be the case that it is a role for you, as an MLA, and the Assembly more generally. Political pressure helps to bring about compliance with a finding of maladministration causing injustice.

**Mr Allister:** If a public authority in a council, for example, that had a charge of maladministration found against it had to pay the ombudsman's investigative charges, do you not think that that would bring it home to it that, as a body sustained by ratepayers, it needs to clean up its act?

**Mr Thompson:** That is an interesting sanction. It has tended to be the case that you do not need to get to that position. Some years ago, in the 1980s, I did some work with the Department of the Environment, which was looking at the former Commissioner for Complaints in Northern Ireland, because, at that stage, under the legislation, that was the only ombudsman who could permit someone whose complaint was upheld to go to court. The 2016 Act merged the Commissioner for Complaints with the Assembly Ombudsman and made the ability to go to court available to the jurisdiction of the Assembly Ombudsman and beyond councils. I am not in favour of that, because you

do not want to go to court if you can avoid it. The Assembly has the opportunity to bring somebody in and have an evidence session with them. The parliamentary ombudsman, for example, has the power to do that. If the ombudsman feels that the maladministration is not going to be remedied, they can lay a special report before Parliament, and, usually, a Committee — these days, it is the Public Administration and Constitutional Affairs Committee — will have the session with them. When that was done, it always led to a change of mind, and the ombudsman was eventually satisfied with what the public body was prepared to do.

**Mr Allister:** Do we have that power?

**Mr Thompson:** Yes, absolutely. Use it, because, on the whole, the public bodies have decided that they want to go along with the situation.

**Mr Allister:** The experience of some constituents of mine is that, when they have made a complaint and the complaint has been upheld, they have felt aggrieved, because all they have got at the end of it is a letter of apology.

**Mr Thompson:** Sometimes a letter of apology is not enough for some people, but it may be felt to be appropriate in the circumstances. If a public body was resisting complying with the recommendation, a report could be made and the Assembly could make its views known on the matter.

**Mr Allister:** Thank you.

**The Chairperson (Mr McCrossan):** Thank you, Mr Thompson, for taking our questions and giving your evidence. Your time is very much appreciated by the Committee.

**Mr Thompson:** You are welcome. I am glad to have been of help.