



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:
Dr Richard Kirkham, University of Sheffield

14 April 2021

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Members present for all or part of the proceedings:

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

Witnesses:

Dr Richard Kirkham University of Sheffield

The Chairperson (Mr McCrossan): I welcome to the Committee Dr Richard Kirkham, who is a senior lecturer at the University of Sheffield. You are welcome to the Committee. We appreciate your time to take our questions. The session is being recorded by Hansard, and the transcript will be published on the Committee web page in due course.

I invite you to make some brief remarks before taking questions from members.

Dr Richard Kirkham (University of Sheffield): Thank you for inviting me to give evidence to the Committee. The main points that I want to make are probably becoming quite familiar to you, given that I am the fourth witness today. First, the legislation for the office of Northern Ireland Public Service Ombudsman was, as Peter Tyndall described, upgraded in 2016. Over time, we may become aware of minor imperfections in the Act, but, at this stage, I do not propose any further amendments to it. As Peter Tyndall said, it is generally regarded as setting a high benchmark in the ombudsman sector, and I certainly agree with that comment.

Secondly, as far as I am aware, the office does a pretty good job in Northern Ireland and plays an important role in the overall arrangements for the scrutiny of public-sector activity here. For me, the main question here and elsewhere in the UK is whether enough is being made of the work of the ombudsman and, indeed, whether legislative bodies such as the Assembly engage sufficiently with the institution.

Thirdly, on accountability and oversight of the ombudsman's office, in my written submission I raised a few areas that the Committee might want to look at. I noted that, ideally, the Assembly as a whole will have more capacity to work with the ombudsman. I reread my submission this morning, by the way, and I think that I underestimated the role of the Assembly Commission. Nevertheless, my suggestion was that the memorandum of understanding could be expanded a little to expect more reporting duties from the ombudsman and that the Committee could perhaps expect more of itself in the areas in which it should be interested. I also suggested that the Committee might want to explore with the

ombudsman whether there would be value in introducing an advisory board. I know that you have been looking at that.

Fourthly, I listened to Professor Heald's evidence last month, and I echo his sentiments that, if there is a balance of risk to be had between too much independence and too much accountability, in the context of a relatively small office in Northern Ireland, I would err every time on the side of too much independence. Lest you, as a Committee, be worried about granting the ombudsman too much of a free rein, I echo the comments that you have just heard from Chris Gill that, in practice, the ombudsman sector itself is developing a toolkit of options to add layers of scrutiny, insight and engagement. Chris Gill's evidence ended with a discussion about the courts. The comments that the courts are rarely used as a mode of redress were right, but they offer an important channel for scrutinising the procedural fairness of ombudsman decision-making. I note that, in Northern Ireland, the role of the ombudsman in looking at conduct cases has already gone to court on a few occasions. It may not happen frequently, but it is an important opportunity to drive home a few messages that the courts get every now and then. I would not underestimate that. Several ombudsman schemes have moved to being ever more transparent in their decision-making processes by, for example, publishing all their decisions. There is a range of things going on in the sector from which you can take some confidence.

The Chairperson (Mr McCrossan): Thank you very much, Dr Kirkham. I appreciate your evidence to us today.

Mr Allister: Thank you for your evidence. As you identified, you are the fourth in the routine, so we have probably covered most of the ground.

I am interested in the subject of whether you can successfully marry the eminent independence of an ombudsman to enhanced oversight without one prejudicing the other. In your written submission, you talked about the Welsh advisory board. I asked the previous witness whether it was anything more than window dressing. I would like to get your take on that. Is there real value in it, or is it something that you do just so that you are seen to do something about supervision?

Dr Kirkham: Chris Gill suggested that it might not add much to the public perception. I guess that he must be right on that, but it potentially has two big values. One of those is value for you, as a Committee. You might get some reassurance from knowing that there is a body of other people out there, and I suspect that they will be eminent and experienced people. You will hopefully get a diverse bunch of talents in the room who will ask some difficult questions, just as the Committee would. You are right that it is not fully independent and is not transparent — we do not get to witness the discussions — but you can have some confidence that something important is going on and that those people will, more often than not, ask difficult questions of the ombudsman.

Internally, this is a good opportunity for office holders to road-test some of their ideas. If they have to make difficult decisions or face difficult challenges, they can get critical input from critical friends. That could have value, and bad ideas or bad arguments could be weeded out earlier in the process. It is certainly not a guarantee of full accountability, and my claim would not be that, but it is another opportunity to help improve the governance of ombudsman schemes.

Mr Allister: Does the Welsh advisory board meet in private or in public?

Dr Kirkham: As far as I am aware, it meets in private. You can see the minutes of meetings, but, of course, the minutes will be *[Inaudible]*—.

Mr Allister: Are the minutes published?

Dr Kirkham: Yes.

Mr Allister: You started your summary by praising the Northern Ireland legislation. Does that include the provisions that allow the ombudsman, when acting as the Local Government Commissioner for Standards, to be both judge and prosecutor?

Dr Kirkham: I noticed your discussion about that with Peter Tyndall. I have not looked at that in detail. It is still relatively new. I echo Peter Tyndall's comments that it is unusual. I do not know what the thought process was when the legislation was passed, because, as you were suggesting, a stronger

model would be to separate the two roles. That is what they did in the *[Inaudible.]* Having said that, I would not lose complete faith in it without further enquiry, insofar as there is that route to get to court to test the elements of the process. I have no insight, but I presume that there is a cost issue, because what is the alternative? Would you set up a new tribunal to do that work? I suspect that that might be my favoured solution.

Mr Allister: OK. Thank you for now.

The Chairperson (Mr McCrossan): Following on from Mr Allister's point about the advisory board in Wales, do you believe that the Welsh Audit and Risk Assurance Committee's remit is not wide enough or that it could be widened?

Dr Kirkham: My sense is that there is an overlap between the two roles, but there is something different going on there that is broader. The Committee looks at wider strategy and perhaps more at wider performance issues. I would like to think that it is also a forum in which to have a genuine, challenging conversation. I note that the Parliamentary and Health Service Ombudsman's site makes it clear that he is the final decision maker in all of this. I would like to think that, when you get a body of good people of experience and talent together, they ask challenging questions. From looking at its remit, I think that it covers a wider range of issues than a classic Audit Committee would.

The Chairperson (Mr McCrossan): OK. Thank you very much, Dr Kirkham.

Mr Chambers: I have no questions, Chair. I just want to thank Dr Kirkham for his evidence.

The Chairperson (Mr McCrossan): Thank you very much for your time with us, Dr Kirkham. We are two members down today, so the questioning was very brief. We appreciate your evidence and your being so open with us.

Dr Kirkham: Thanks a lot.