



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: Northern Ireland Public
Services Ombudsman

2 June 2021

NORTHERN IRELAND ASSEMBLY

Audit Committee

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

Ms Joanne Bunting (Deputy Chairperson)
Mr Jim Allister
Mr Alan Chambers

Witnesses:

Ms Margaret Kelly	Northern Ireland Public Services Ombudsman
Mr Dónall Curtin	Office of the 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 Deputy Chairperson (Ms Bunting): Joining us in person are Margaret Kelly, the Northern Ireland Public Services Ombudsman (NIPSO); Sean Martin; and Dónall Curtin. John McGinnity will join us via StarLeaf. They are here to give evidence on the Committee's review of the governance and accountability arrangements for their organisation. You are very welcome, folks. It is lovely to have you with us in person.

Ms Margaret Kelly (Northern Ireland Public Services Ombudsman): It is lovely to be here in person.

The Deputy Chairperson (Ms Bunting): Some day we will see you in person, John.

Sorry there was a slight delay getting started. We had a few technical issues at the start, as we always do, but we have sorted that out now. I invite you to make your opening statement, once you are settled, Margaret.

Ms Kelly: Good afternoon. Thank you for the opportunity to say a few words. As I outlined in my paper, I welcome this very timely review of governance and accountability. As a still relatively newly appointed ombudsman, I have thought about these issues since taking up my office. As someone who was previously involved in service delivery and advocacy, I hope that my experience brings a fresh perspective to how, as the office of the ombudsman, we make decisions and how we make people feel when we make those decisions. I am committed to openness and engagement in delivering the function of my office.

I have drawn your attention to the importance of the independence of the office of the ombudsman. I did so because I believe that the value and the integrity of the office lies in its independence. That is

not only because that independence is enshrined in the Venice principles and internationally recognised, or, indeed, that the Public Services Ombudsman Act (Northern Ireland) 2016 is seen as best practice, but because the trust of the average citizen of Northern Ireland who brings their case to my office for a resolution lies in the value of our independence. If that independence were to be compromised, the basic contract that the office has with citizens would be undermined.

The fact that, first, issues that need to be resolved or require redress get independently, impartially and fairly investigated without any other consideration and, secondly, it is demonstrable that that is the case are what uphold the contract between the ombudsman, the citizens of Northern Ireland and my independence. The key accountability for me, as ombudsman, comes in my role as an officer of the Assembly. The establishment of a statutory board would compromise that accountability and could create a barrier. I have said to the Committee previously that I see this Committee as one of my key mechanisms for accountability.

In my paper, I suggested a number of proposals that the Committee may want to think about in its review of governance and accountability. It would be good to carry out the review of our memorandum of understanding (MOU) while I am still relatively new to the role. The development of a closer working relationship with the Audit Committee would also be good, particularly if I were to bring a wider range of reports to the Committee and if the Committee had some role in the dissemination of those reports to the Assembly. I want to explore a possible peer-review exercise for the office with the Ombudsman Association. There are some other things to consider, like possibly undertaking a review of the recruitment operation, the membership and the skills of our audit and risk committee. We are happy to publish summaries of our audit reports on our website and to review some of our current service standards processes, benchmarking them against other jurisdictions. We have just completed a public awareness survey and are in the process of carrying out a customer satisfaction survey. I think that I said to the Committee that it was the first. A commitment to doing those every three years, and making the results public, is part of our transparency and openness. It has been helpful that, by the review, the Committee has got me engaged in thinking about those issues. I am happy to take questions and discuss any element.

The Deputy Chairperson (Ms Bunting): Thank you very much, Margaret. Gents, before I open the floor to members for questions, would any of you like to add anything?

Ms Kelly: I think that Dónall was going to make a statement.

Mr Dónall Curtin (Office of the Northern Ireland Public Services Ombudsman): With your permission, Deputy Chairperson, I would like to introduce myself and tell you about my background. It will take a couple of minutes. It will give you a greater insight.

The Deputy Chairperson (Ms Bunting): That would be lovely. Thank you.

Mr Curtin: I am chair of NIPSO's audit and risk committee. I was appointed two years ago. My background is as a practising auditor and accountant of over 32 years. In addition, I have accumulated more than 60 years as an independent non-executive director on a number of boards of directors, including the Office of Government Procurement, National Treatment Purchase Fund, the Arts Council, Early Childhood Ireland, the Irish College in Louvain, and Green Effects Investment plc. Previously, I held similar posts with the Dublin Docklands Development Authority, Health Insurance Authority, and Chambers Ireland.

As you will imagine, I have always had a very strong engagement with audit and risk committees, as a practising auditor and accountant. When I was a practitioner, that was often in servicing those committees or giving advice. In more recent times, I have been a member of approximately 10 audit and risk committees. I chaired five of those, including the Royal Pharmaceutical Society in London, the Arts Council and Early Childhood Ireland. I am a member of the Chartered Institute of Arbitrators audit and risk committee in London, the Institute and Faculty of Actuaries in London, Cardiff University audit committee, the Health Insurance Authority, and the National Treatment Purchase Fund. I have been a member of three accounting bodies, including the audit committee the Institute of Directors and the Chartered Institute of Arbitrators.

My role as a chair is twofold. First, it is to play a role as a member and provide healthy challenge and encouragement to other committee members on professional scepticism. Secondly, as you will have seen in my paper, is the role to support. That is in mentoring a situation, sharing knowledge, and, sometimes, listening and diving deeper into a situation. The independence of the audit and risk

committee, and how it exercises that, is different from Margaret's independence. It comes from being attuned to the strategic objectives of the organisation and the transparency of what it is trying to do, but being fearless in its challenge. That is something that we do without fear or favour. It comes down to having the right composition of skill sets on the committee, in the right mix, so that, God forbid, none of us gets stale or goes native, to use a colloquialism.

When I did the interview for the role, I used a term that I still use in audit and risk committee work: the healthy way is always having a certain level of discomfort. What has not been looked at? What risk management aspects have not been picked up on in cybersecurity, for example? It does not matter how strong your polices or your investment in technology, there will always be new or different ways. How did the organisation look towards the recent events of COVID? It was extraordinary how quickly NIPSO responded and continued to deliver services despite the pandemic landing on all of us, even though no risk register could ever have foreseen such a pandemic coming down the tracks.

Equally important, apart from the normal side of things, such as internal controls and strategy, are the culture and values of an organisation. It is a bit like the old-fashioned cars where you check the oil levels with a dipstick. From time to time, from challenges or reports, you get a sense of the culture and values of an organisation, and, no matter what it is, there is always more that can be done. In my view, that can improve governance more than anything else.

The Deputy Chairperson (Ms Bunting): Thank you very much, Dónall. Margaret, you are going to be kept on your toes —

Ms Kelly: I know. *[Laughter.]*

The Deputy Chairperson (Ms Bunting): — but we appreciate having this kind of conversation with regard to proper and better accountability mechanisms. I will now hand over to members.

Mr Allister: Who appoints the audit and risk committee?

Mr Curtin: The committee is appointed in a number of ways and not all at once. I was appointed to my role by an interview panel made up of the then Ombudsman, and, if my memory is correct, another two individuals sat in on that panel and interviewed me and others. The panel then made the decision.

Mr Allister: So, a panel chaired by the Ombudsman makes the appointment of the audit and risk committee?

Mr Curtin: That is correct.

Mr Allister: Do you think that there is sufficient transparency and oversight, such as one might expect?

Mr Curtin: Your question is a valid one. From a transparency point of view, I have no difficulty at all. It is very transparent; it is publicly advertised. There is a process for how shortlisting is done and how those who were invited to interview were scored, and the role was then offered to me or whoever else. So, it is totally transparent in that way.

On the wider question about whether it is good corporate governance, in my view, you always have a difficulty that if you disassociate the appointment or the selection, you remove the sense of ownership. Take a hypothetical situation: if you were to take somebody who is very highly respected and you get them to populate an interview panel to decide who should be the chair of the audit and risk committee, there is not the same sense of ownership as there would be with Margaret, or whoever is the officer holder, having an input into that selection. They should not be able to have the sole decision.

Mr Allister: Is there a danger of a sense of cosiness?

Mr Curtin: There is always a danger of cosiness in any relationship. One of the reasons for term limits — I am appointed for three years and can be reappointed for a further two years but no more — is to stop —.

Mr Allister: So, you are appointed by a panel chaired by the ombudsman to examine risk in respect of the conduct of the office, and the other part of the message that I am hearing from the ombudsman herself is, "All is good here. We do not need any change. We certainly do not want a statutory board".

Mr Curtin: With your permission, I will deal with those in reverse order. I would never say that everything is OK and that nothing requires change. In my introduction, I say that I would have been in a permanent level of discomfort not only in my role in the NIPSO office but in every other audit and risk meeting because we are living in a changing, dynamic world, and there is always better practice.

Mr Allister: Without breaking any confidences, give us an example of something that you have corrected in your role with the Ombudsman's Office.

Mr Curtin: OK. One example that comes to mind is that we have successfully introduced an electronic portal for committee meetings. I had concerns about that for a number of reasons. One was the danger of confidential papers being leaked accidentally into the wider arena. There were also issues with what happens when people's term of office is over and they still have papers that have accumulated through the years, and that sort of thing. One of the internal controls that I explored with the committee was taken up by the executive: they went to market to find the best providers, a particular portal was given a trial run, and it is now fully implemented.

Mr Allister: Who appoints the rest of your committee?

Mr Curtin: The rest of the committee members are appointed through a process that we are going through at the moment to recruit a member. The panel comprises me as chair of the audit and risk committee, Margaret as ombudsman, and another independent person so that we get three different perspectives.

Mr Allister: Two insiders, therefore, appoint the rest of the committee.

Mr Curtin: I do not regard myself as an insider — I am non-executive — but I hear what you are saying.

Mr Allister: Can you see how it looks?

Mr Curtin: Yes, I see how it looks, but that is in line with best corporate governance practice. I am not being defensive, because your challenge is healthy, and I welcome the debate to rethink it, but I put the question to you in another way: as chair of the audit and risk committee in NIPSO, or anywhere, would I feel comfortable having a person appointed for whom I and the ombudsman, in this case, or the CEO of another organisation, were not on the panel? No, I would not. Do I believe that the appointment should be down to just the two of us? No.

Mr Allister: It effectively is.

Mr Curtin: No, it is not. Believe me, we went through a very rigorous process recently, and we made —

Mr Allister: Let me take you back. Are you really saying that you do not want to chair a committee, the members of which you cannot hand-pick or have a hand in picking? That does sound a little bit too cosy.

Mr Curtin: OK. It is regarded as dangerous practice, from a corporate governance point of view, that a member of an audit and risk committee be appointed without the involvement of the chair of that committee. That is from the Financial Reporting Council in London.

Mr Allister: Why is that?

Mr Curtin: In my role as chair of the audit and risk committee, I do no more than steer the ship, if you like; I am not the decision maker. The committee is the sum of its parts. One of my responsibilities, as chair of an audit and risk committee, is to make sure, first, that we do not have, as you say, that sense of cosiness but that we have a proper sense of challenge and openness and avoid groupthink. I do not want to treat people who look, sound and act like me more favourably, because that will just produce

the worst stereotype and will not add value. You want the curveballs and the different ways of thinking, so I will always look at composition and skill sets.

Mr Allister: You do not want to take the risk of having someone else appointed.

Mr Curtin: I do not see that as a risk. If someone else appoints, that person is not in the chair's shoes and does not have the same knowledge to draw on. I do not believe, however, that the decision should be mine or mine and the ombudsman's alone.

Mr Allister: That is very interesting. Thank you.

Mr Curtin: Thank you.

Ms Kelly: May I clarify that Dónall was in post when I took up my post, so I did not appoint him.

Ms Bunting: Thanks, Margaret. Alan, do you have anything?

Mr Chambers: I am content, Deputy Chair. Thank you.

The Deputy Chairperson (Ms Bunting): Dónall, obviously you are highly skilled in this area, and you cited the numerous bodies in which you have been involved. Whilst I joked, you are highly qualified for this. As you will appreciate, our inquiry seeks to find a balance between allowing the ombudsman's office to be independent and having a degree of accountability that we think may be missing at this stage. All we are accountable for is your budget, and there is an MOU that we are not sure is sufficiently robust to provide assurances to the public.

To follow up on some of the points, you mentioned that, in circumstances where the ombudsman — we will remove Margaret from this — is appointing the chair of his or her audit and risk committee, that is important because of ownership. On the opposite side of that, where is the sense of accountability? That is my first question. How do you balance ownership against accountability? The other side of it is: can the ombudsman remove a member of the audit and risk committee? If the ombudsman appoints, can the ombudsman remove?

Mr Curtin: Your second question is a valid one, although I have to plead the fifth on it. From the letter of appointment, I do not remember, but, as a professional in that space, everybody has to be removable from any role or position, particularly for bad behaviour, for example. However, it cannot be for something frivolous — "I don't like you" or, "I find you difficult to deal with" — it would have to fall into the bad behaviour category. However, I will definitely think it over and come back to you. Your question is exceptionally valid.

The Deputy Chairperson (Ms Bunting): You can understand that, if the audit and risk committee is there as a challenge function, circumstances where a person can challenge and be removed as a result of that challenge is a weakness in the system. Therefore, it would be useful to understand the circumstances around that and the categories through which someone may be removed.

I have one other question, if I may. Margaret, I take you to paragraph 5.6 of your paper. I appreciate that I need to be careful for time, but I want to get your thoughts on this. In fairness, you outlined a number of options that may strengthen accountability with the Committee, but, in paragraph 5.6, you indicate that you do not think that a statutory board:

"would be consistent with the Venice Principles and could interfere with the enhanced accountability arrangement".

Can you give a bit more detail on that?

Ms Kelly: Obviously, I have been learning as I go, so, in preparing this paper, I spoke to all the other ombudsman's offices in all the other jurisdictions and to Peter Tyndall, who gave evidence, and my understanding is that none of the other ombudsman's offices has a statutory board. The Parliamentary and Health Service Ombudsman has a voluntary board, but the ombudsman is chair of that board. To be honest, that rather defeats the purpose and is a confusion of roles, whereas I think that Dónall's role is very clear. The ombudsman makes decisions on cases, so we are the decision of last resort other than the court, and it goes to the court for judicial review if someone is very unhappy with my

decision or feels that it was unfair or inappropriate. My understanding, Joanne, is that, to put a statutory board in place, you would have to take the ombudsman out and keep them as a corporation sole and incorporate NIPSO as an organisation. You would then have to come up with a mechanism by which to appoint a statutory board. The strategic plan or the accounts would go through that process, and the ombudsman would sit separately as a corporation sole.

I think that the Committee does quite a robust job of looking at my accounts, my strategic plan and my reports. So, who would the Committee have? I could come and give evidence, but I would not be accountable for it in that respect, so the Committee would have to have the chair of the statutory board give evidence, because that would be the decision-making body, if you like. It actually makes it quite confusing, and I think that the reason that the Venice principles say that the ombudsman should be accountable to the legislature, in this case, through the Committee, is that that is a straight line of accountability and a straight line for the independence for the role. I have been appointed by the Assembly through an open appointments process. That is where accountability belongs. I would almost have to bring a chair of a statutory board with me to answer, as I understand it, the statutory questions. Does that make sense?

The Deputy Chairperson (Ms Bunting): Yes, I understand. Part of the difficulty is that, ultimately, the only scrutiny that the Committee has is of your budget, not your effectiveness and so on. In a public body that seems like a flaw to me.

Ms Kelly: I have scrutiny via the courts, but I think that for the Committee to look at the breadth of its scrutiny of the office is certainly something that I think would be —.

The Deputy Chairperson (Ms Bunting): What we are trying to establish at this point, Margaret, is whether —.

Ms Kelly: The breadth and depth of scrutiny of my office rightly sits with the Committee.

The Deputy Chairperson (Ms Bunting): I understand.

Ms Kelly: Yes. When I considered it, I concluded that the breadth and depth of scrutiny of the ombudsman's office rightly sits with the Committee. It might be that, as it is currently organised, that breadth and depth is missing. My personal view is that the breadth and depth should sit here.

The Deputy Chairperson (Ms Bunting): That is part of our concern, because, at this stage, a memorandum of understanding is not, essentially, effective scrutiny, and that is what we are looking at.

I had another question about whistle-blowing, but time has run out, I am afraid. Bearing in mind that you ask questions of public bodies on the public's behalf, I presume that you will concur that it would be useful for you to have a robust whistle-blowing policy and to consider that a key tenet of accountability.

Ms Kelly: I reviewed that when I came into the role, and Dónall has just done additional training on it. I am happy to provide that.

The Deputy Chairperson (Ms Bunting): It would be useful to have sight of it and to have some understanding of the statistics on it and what is involved.

Mr Curtin: Sorry, Chair, I know that we are out of time, but one of the reasons that I wanted, as chair, to do a training course on it was because I wanted to make sure that, from a cultures and values point of view, it was transparent in the organisation rather than hidden away in a bottom drawer somewhere.

The Deputy Chairperson (Ms Bunting): That is lovely.

Ms Kelly: I will provide that.

The Deputy Chairperson (Ms Bunting): Folks, thank you very much for your time and your evidence. It is lovely to see you all and to meet those of you whom we have not met previously. Thank you very much.