

22 September 2015

## Justice no.2 Bill

The Ombudsman Association welcomes the Committee for Justice's scrutiny of the Justice No.2 Bill, and in particular scrutiny of the proposal to put the Prison Ombudsman for Northern Ireland on a statutory footing, and is very grateful for the opportunity to submit evidence.

### Summary

1. The Ombudsman Association welcomes the intention in the Bill to ensure that the body responsible for investigating deaths in custody in Northern Ireland is one that has a statutory basis.
2. The Association is however concerned that the Prison Ombudsman for Northern Ireland, as currently proposed, would not meet the internationally recognised standards of independence for an ombudsman.

### Background

3. The Ombudsman Association (formerly the British and Irish Ombudsman Association) was established in 1993 and includes as members all major public and private sector Ombudsman schemes and complaint handling bodies in the United Kingdom, the Republic of Ireland, and the British Overseas Territories.
4. The Vision of the Association is that throughout the public and private sectors:
  - It is straightforward and simple for people to complain.
  - People making a complaint are listened to and treated fairly.
  - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
  - People have access to an ombudsman in all areas of consumer and public services.
  - The learning from a complaint is used to improve services.
5. The Association's objectives are to:
  - a) Support and promote an effective system of complaint handling and redress in the United Kingdom, Ireland, Britain's Crown Dependencies and Britain's Overseas Territories.
  - b) Encourage, develop and protect the role of ombudsmen in both the public and private sectors as the 'best practice' model for resolving complaints, according recognition through membership.
  - c) Provide an authoritative voice and promote best practice and policy for those involved in complaint handling and redress to ensure an effective service for the public.

- d) Support open and transparent accountability and endorse principles of good complaint handling.
6. Ombudsmen help to underpin public confidence in the institutions that they cover – by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.
  7. The Association has two membership levels: ‘Ombudsman Member’ - for those organisations that meet the five key criteria of independence, fairness, effectiveness, openness and transparency, and accountability – and ‘Complaint Handler Member’, for those organisations that operate in accordance with the Association’s Principles of Good Complaint Handling, but do not meet the criteria for that of an Ombudsman Member.
  8. The existing Prisoner Ombudsman for Northern Ireland was previously a ‘Complaint Handler Member’ of the Ombudsman Association for several years, as the office did not meet the criteria to hold Ombudsman Member status, but left the Association in 2013.

**Schedule 1, Part 2: The Prison Ombudsman for Northern Ireland - *Clause 29: Main functions of Ombudsman***

and

**Schedule 3: The Prison Ombudsman – Appointment, status and term of office**

9. The Association’s concern relates to the lack of independence of the proposed Prison Ombudsman for Northern Ireland. As currently drafted, the Prison Ombudsman would not meet the Ombudsman Association’s criteria for independence<sup>1</sup>, or the criteria of the International Ombudsman Institute<sup>2</sup>.
10. The ‘brand’ that the term ombudsman invokes is an important one. The title is in common usage throughout these islands and internationally, not least by ombudsman schemes who have jurisdiction in Northern Ireland, notably the Northern Ireland Ombudsman, the Parliamentary & Health Service Ombudsman (which has jurisdiction over matters reserved to Westminster) and the UK Financial Ombudsman Service.
11. Surveys carried out by our members and by consumer groups show that ‘ombudsman’ is becoming an increasingly recognised and trusted term. One of the key foundations for that public trust is the independence of an ombudsman, which is reflected in the Association’s criteria for Ombudsman Membership. Our members have cultivated the public’s awareness of these values to encourage the use of their services by citizens.
12. The Association is aware that the Northern Ireland Ombudsman has expressed its opinion on how the two different roles of (a) *‘dealing with complaints’* and (b) *‘investigating deaths in custody’* could best be delivered in Northern Ireland,

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<sup>1</sup> <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

<sup>2</sup> The International Ombudsman Institute (IOI), established in 1978, is the only global organisation for the cooperation of more than 170 independent Ombudsman institutions from more than 90 countries worldwide: <http://www.theioi.org/>

especially in the context of the current legislation being considered by the Assembly to create a Northern Ireland Public Services Ombudsman (NIPSO).

13. That the third main function of the proposed Prison Ombudsman would be (c) *'carrying out other investigations at the request of the Department'* highlights that the office is not truly independent. This is underlined in Schedule 3, clause 1, where it makes clear that *'The Department shall appoint a person to be the Ombudsman'*.
14. The Association's position with regards to ombudsman schemes that cover public services is that they should be appointed by, and accountable to, a democratically elected body; not a Government Minister or Official.<sup>3</sup> This is mirrored in the International Ombudsman Institute's criteria.<sup>4</sup>
15. This in no way denigrates the important activities of organisations that do report to Ministers and operate as non-departmental public bodies, however it underlines that the title 'ombudsman' is not an appropriate one for such a body. It may be of interest to note that the UK Cabinet Office's *'Guidance on Ombudsman schemes'* for UK Government Departments addresses this point of when it is appropriate to use the title 'ombudsman'<sup>5</sup>. Although of course the guidance is aimed at UK Government Departments rather than those in the devolved administrations, it might be useful to note what it sets out as best practice considering the broad similarities between the two jurisdictions.
16. It might also be of interest to note the comparisons between the proposed Prison Ombudsman for Northern Ireland and the existing Prisons and Probation Ombudsman (PPO) that covers England and Wales. The latter body was also a 'Complaint Handler Member' of the Association for several years, as it did not meet the criteria of independence to be an Ombudsman Member, before it left the Association in 2014.
17. It may be of interest to note that attempts to put the PPO on a statutory footing, on an almost identical basis to that for the proposed Prison Ombudsman for Northern Ireland, failed in the Westminster Parliament because of opposition in both the House of Commons and the House of Lords. Parliamentarians noted that the proposed body was more 'departmental' than 'independent'. Professor Mary Seneviratne, Nottingham Trent University, has written extensively on the Prisons and Probation Ombudsman, why its governance structure means it is not truly independent, and the opposition to putting that model on a statutory basis with the title 'ombudsman'.<sup>6</sup> The lessons from that work can be applied to the proposed Prison Ombudsman for Northern Ireland
18. The Association supports the principle that the body investigating deaths in custody in Northern Ireland should be on a statutory basis, and also supports the strengthening of independent redress for prisoners. However, the body proposed in this Bill would not result in a body that those who currently use the Northern Ireland Ombudsman, or other ombudsman schemes, would recognise as an independent ombudsman.
19. There appear to be a number of solutions to address this, either by: subsuming the proposed activities into the soon to be established NIPSO and/or other existing bodies (as in Scotland, where the function of the Scottish Prisons' 'ombudsman' was

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<sup>3</sup> [http://www.ombudsmanassociation.org/docs/consult/Position\\_statement\\_\(final\)\\_16\\_May\\_13.pdf](http://www.ombudsmanassociation.org/docs/consult/Position_statement_(final)_16_May_13.pdf)

<sup>4</sup> [http://www.theioi.org/downloads/fnutr/IOI\\_Bylaws\\_Final%20Version\\_EN\\_20121113.pdf](http://www.theioi.org/downloads/fnutr/IOI_Bylaws_Final%20Version_EN_20121113.pdf)

<sup>5</sup> <https://www.gov.uk/government/publications/new-ombudsman-schemes-guidance>

<sup>6</sup> [https://www.ntu.ac.uk/nls/document\\_uploads/112697.pdf](https://www.ntu.ac.uk/nls/document_uploads/112697.pdf)

added to that of the Scottish Public Services Ombudsman); making the proposed Prisons Ombudsman for Northern Ireland a truly independent ombudsman along the lines of the NIPSO; or by renaming the proposed body, using a title such as 'commissioner' which better reflects its status and relationship with the Department.

We would be happy to provide any further information if the Committee would find that helpful.

Yours sincerely

**Lewis Shand Smith**  
**Chair, Ombudsman Association**