

Peter May
Permanent Secretary
Department of Justice
Room B5. 10, Castle Buildings
Stormont Estate
Belfast, BT4 3SG

30 September 2019

Dear Peter,

PRISON OMBUDSMAN FOR NORTHERN IRELAND – STATUTORY FOOTING

Thank you for the opportunity to comment on the draft statutory rules in relation to the Prison Ombudsman for Northern Ireland.

Summary

1. The Ombudsman Association welcomes the increased oversight and routes for redress that the office of Prison Ombudsman for Northern Ireland will provide. The Association is however disappointed that the opportunity has not been taken to ensure that the office meets the internationally recognised standards of independence for an ombudsman.

Background

2. The 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, the British Crown Dependencies and the British Overseas Territories.
3. 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.
4. An Ombudsman helps 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.
5. The Association's membership criteria are recognised internationally and by the UK Government as representing best practice. This is reflected in the criteria used by Companies House on when a company can use the protected term 'ombudsman'¹, and in the UK Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*², which addresses the point of when it is appropriate for a public body established by the UK Government to use the title 'ombudsman'.

¹ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

² www.gov.uk/government/publications/new-ombudsman-schemes-guidance

Independence

6. As we highlighted in our response to the consultation on the Justice Bill in 2015, our concern relates to the lack of independence of the Prison Ombudsman for Northern Ireland. As drafted, the Prison Ombudsman would not meet the Ombudsman Association's criteria for independence³, the criteria of the International Ombudsman Institute⁴, or the Venice Principles⁵.
7. The 'brand' that the term ombudsman invokes is an important one. The title is in common usage throughout these islands and internationally, most notably in Northern Ireland by the Northern Ireland Public Services Ombudsman (NIPSO) and the Police Ombudsman for Northern Ireland, both of whom meet the Association's criteria.
8. Surveys carried out by our members and by consumer groups show that 'ombudsman' is 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. Our members have cultivated the public's awareness of these values to encourage the use of their services by citizens.
9. An ombudsman should be demonstrably independent of the bodies they investigate, to avoid both the perception and reality of bias. However, the Department of Justice has responsibility for the Northern Ireland Prison Service. It is troubling therefore that the Department both appoints the Prison Ombudsman and that one of the main functions of the Prison Ombudsman is that it should carry out investigations requested by the Department.
10. The Association's position with regards to ombudsman schemes that cover public services is aligned with international best practice; that they should be appointed by, and accountable to, a democratically elected body, not a Government Minister or Official.⁶ 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.
11. 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, as it stands, there is a danger that this perception of a lack of independence could undermine the good work undertaken by the Prison Ombudsman.
12. As we previously highlighted in our response to the Justice Bill, there would appear to be at least three options to address this and to ensure that the activities are undertaken by a truly independent ombudsman:
 - 1) Make the Prison Ombudsman for Northern Ireland a truly independent ombudsman along the lines of NIPSO, removing the clauses that allow the Department of Justice to 'request' they carry out an investigation and making the Ombudsman appointed by the Assembly rather than the Department;
 - 2) Subsume the current activities into NIPSO and/or other existing bodies (as in Scotland, where the function of the Scottish Prisons' 'ombudsman' was added to that of the Scottish Public Services Ombudsman); or
 - 3) Rename the Prisoner Ombudsman, using a title which better reflects its status and relationship with the Department, and keep it within NIPSO's jurisdiction.

³ www.ombudsmanassociation.org/docs/OA-TermsandRulesJuly2019.pdf

⁴ www.theioi.org/downloads/fnutr/IOI_Bylaws_Final%20Version_EN_20121113.pdf

⁵ [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e)

⁶ [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)

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

Yours sincerely

Donal Galligan
Director, Ombudsman Association