

Ombudsman Northern Ireland



A PAPER PREPARED BY THE OFFICE OF THE
NORTHERN IRELAND OMBUDSMAN ON A
POWER TO COMMENCE AN OWN INITIATIVE
INVESTIGATION

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1. Introduction

- 1.1 The Northern Ireland Ombudsman (the Ombudsman) welcomes the proposal by the OFMDFM Committee of the Northern Ireland Assembly to create a new office of a Northern Ireland Public Services Ombudsman (NIPSO), with a power to commence an investigation on his own initiative. The purpose of this paper is for the current Ombudsman to provide detail and clarification of how the proposed power might be exercised and to provide examples of when, in his view, the own initiative power could have been applied in recent years and whether if the power had been available to him the likelihood it might have offered a more efficient and effective use of available resources. The Ombudsman's office in this paper provides some examples of cases where he considers an own initiative authority would have facilitated a more comprehensive and complete scrutiny of the matter being investigated. The examples included in this paper are only by way of illustration and the Ombudsman is mindful that the new NIPSO will be making such decisions on his/her own account in the context of new legislation and an expanded remit and powers.
- 1.2 It is noted that '*during the drafting of the NIPSO Bill, the Committee will take advice more generally on the options to require NIPSO to evidence the reasons for the own initiative inquiry*',¹ for example giving notice to the body or sector to be investigated. The Committee's proposals for this power include the need to address the issue of potential overlap with the role of other investigatory bodies. The Committee is proposing that the NIPSO will be accountable to a Committee of the Assembly in relation to the proposed budget for, and actual expenditure on, own initiative investigations. In this paper, the Ombudsman's office sets out a view on how this accountability might operate in practice. The issue of how an own initiative team within the office of the proposed NIPSO might be resourced has already been addressed by the Ombudsman and two

¹ Committee for the Office of the First Minister and deputy First Minister, Report to the Northern Ireland Assembly , 16 September 2013

distinct costing models provided². For ease of reference a copy of the costing model is attached at Appendix 1.

- 1.3 The Ombudsman welcomes the Committee’s continued work and support in development of the NIPSO Bill which, when enacted, he believes will provide the citizens of Northern Ireland with the most modern and effective redress mechanism for administrative failures in the United Kingdom. The Ombudsman and his staff for their part are committed to providing any further information or clarification on the issues in this paper, that Committee members consider would be helpful.

2. Background

2.1 The Ombudsman Concept³

‘Ombudsman’ is a Swedish word meaning trusted official, and it was in Sweden in 1809 that the first ombudsman was appointed by the then King of Sweden. The Danish Ombudsman’s office was established in 1955 and in 1962 the first ombudsman office in the Commonwealth was introduced in New Zealand. The first Ombudsman appointed in the United Kingdom was the Parliamentary Commissioner for Complaints, brought into being by the Parliamentary Commissioner Act 1967 and Northern Ireland was the first region in the UK to have an ombudsman, the office being created in 1969 by the Stormont Parliament. Since its inception, the role of the ombudsman has been to independently investigate citizen’s complaints about civil administration. The Committee may find the following descriptions of what the traditional or classical ombudsman schemes can provide a helpful context for their discussion on how an own initiative power might be applied, while always being mindful of the unique role that an ombudsman offers; an alternative to the courts in providing citizens with recourse and remedy through proportionate redress for administrative failures.

² Northern Ireland Ombudsman, Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints Legislative Reform Costing Model Supporting Documentation, June 2013

³ Mary Seneviratne – Ombudsman, Public Services and Administrative Justice 2002 Butterworths: Law in Context

‘An office provided for by the constitution or by action of the legislature or parliament headed by an independent, high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government departments, agencies and officials and employee or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports’⁴

An ombudsman has also been described as:

‘A reliable person who, for purposes of legal protection of individuals as well as parliamentary control, supervises almost all administrative bodies and civil servants. He cannot correct their decision but – based on submitted complaints or own initiatives – he may criticise them’.⁵

This second definition recognises the important dual role of the ombudsman as a protector of the rights of the citizen and also an officer of the legislature who examines the performance of public services provided by the Executive through its Departments, their agencies and public bodies.

2.2 The traditional model of Ombudsman, it is accepted, has always included an own initiative authority. In the Council of Europe, only the UK Ombudsman and half a dozen other countries⁶ do not have own initiative powers. Those ombudsmen who do have the power use it responsibly but with positive effect. For instance, the Swedish Ombudsman reported in 2009 that the use of own initiative investigations resulted in adverse findings against public bodies in 80% of cases investigated where there had been only 10% adverse findings in those cases where individual cases brought by complainants were investigated. The academic study of own initiative powers conducted by Buck et al⁷ in 2011 recommended that a *‘full own initiative power allied with better co-ordination*

⁴ W Haller ‘The place of the ombudsman in world community’ (1988) Fourth International Ombudsman Conference Papers p29

⁵ Hansen ‘Die Institution des Ombudsman’ (1972) Athenaum Verlag p2 Referred to and translated in K Heede ‘European Ombudsman: redress and control at Union level’ (2000) Kluwer Law International p8

⁶ Belgium, Israel, Luxembourg, Azerbaijan, Kyrgyzstan, and Liechtenstein (source Nick O’Brien’s unpublished paper on own initiative powers)

⁷ The Ombudsman Enterprise : Kirkham, Buck and Thompson (2011)

with auditors and other integrity bodies would assist ombudsman bodies further to play to their existing public service strengths’. It is noteworthy that the Deloitte Review of the Office of the Northern Ireland Ombudsman (2004) recommended that the office should have a power to conduct an investigation or systemic review on its own initiative caveated only by the condition that an own initiative investigation should be undertaken following consultation with the C&AG.

- 2.3 More recently, the Parliamentary and Health Service Ombudsman, Dame Julie Mellor, gave evidence to the Public Administration Select Committee (PASC) at Westminster, seeking own initiative powers, basing her case for such a power on the need to provide access to justice for the most vulnerable, who are least likely to find or gain access to the services of an ombudsman⁸. In Northern Ireland, the present Ombudsman supports Dame Julie’s view that the use of own initiative should be evidence based and that, for example, it could be used to provide a voice to those who are unable for reasons of being marginalised, disabled or vulnerable to bring a complaint. In making her case for an own initiative power Dame Julie emphasises that in areas such as incapacity benefit and child support, such a power: *‘Would mean we could intervene early and prevent expensive escalation of complaints by sorting something out for the whole group, but it also prevents mistakes being repeated by being able to give a systemic remedy...the own initiative power would enable us to be better value for money, because we would be able to apply remedies to much wider groups of people, and that builds confidence in the whole complaints process*’.
- 2.4 It is noteworthy that particular reference is made in the Committee’s deliberations on these issues on the need for an evidence base to inform a decision to initiate an own initiative investigation and this point has also been highlighted by the PHSO. Against the background of a heightened interest in the UK in own initiative powers, it may be helpful to the Committee if examples of the benefits to citizens arising from the use of such a power in other jurisdictions are identified (see section 3 below).

⁸ Hansard Oral Evidence: Parliament’s Ombudsman Service HC655 at Q216

3. The Use of Own Initiative Powers in Other Jurisdictions

3.1 Some limited research has been undertaken by the Ombudsman with the purpose of providing information on the types of evidence that has been used to support a decision to commence an own initiative investigation in other jurisdictions, in particular Ireland, Canada (Ontario) and Malta. Although in Malta where, media reports have been the prompt for these type of investigations, the research suggested a trend that warranted an own initiative inquiry was usually related to the receipt of one or a number of complaints to the ombudsman.

Ireland

3.2 The background to own initiative in Ireland is illustrated by the table below which sets out the prompts associated with a number of own initiative investigations undertaken by the Irish Ombudsman. On 15 June 2011, the Committee will recall it heard from the then Irish Ombudsman, Mrs Emily O'Reilly, as to the occasions in the Republic of Ireland where she or her predecessors have used the own initiative power under Section 4(3) (b) of the Ombudsman Act 1980. These provisions confer a broad discretion and there are no limitations on when that power may be used. Over the period 2001 to 2010, there have been a total of 5 own initiative investigations on issues ranging from subventions in nursing home care, the failure to provide full refunds of tax to widows in receipt of public service occupational pensions,⁹ to investigations into the right to nursing home care for older people¹⁰. The table below illustrates an outline of each of these own initiative investigations and highlights the triggers for the investigation and the impact or outcome of the investigation.

⁹ 'Redress for Taxpayers (published 2002)

¹⁰ 'Who Cares' (published 2010)

Date	Subject Matter	Linked to a complaint or complaints	Outcome
2001	Payment by health bodies of nursing home subventions	> 150 complaints	Government refund of €1.5 billion to families affected.
2002	Refund of tax to widows in receipt of occupational pensions	2 complaints	Refunds of €3.8 million
2006	Overcharging of in-patient nursing home services	1 complaint	Refund of €1,126 to complainant. Refund of €131,000 to 51 other families similarly affected
2008	Local authority waiver scheme for refuse collection charges	3 complaints	National review by department of waste management policies
2010	Right to long term nursing care for elderly	1200 complaints over 25 years	Report Not accepted by bodies

It has not been possible to ascertain if there were costs savings or efficiencies achieved in the Irish Ombudsman's budget as a result of these inquiries. However, there is clearly a significant impact or benefit to citizens. With the exception of the Who Cares report (2010), the impact of these investigations is much wider than the individuals who brought the issue to the Ombudsman. The Oireachtas has now established an Oversight Committee dedicated, among other things, to considering Ombudsman reports but it was not in place when the Who Cares Report was issued. Ms O'Reilly referred to the report, as follows, when she appeared before the Oversight Committee for the first time on 20 July 2011:

'Some other reports may deal with matters of significant public interest which I choose to bring to the attention of the Oireachtas and-or the public generally - for example, the Who Cares? report which I published in late 2010, just some months before the dissolution of the previous Dáil. This investigation looked at

*the actions of the former Department of Health and Children and of the Health Service Executive. It was based on 1,200 complaints received by my office over 25 years relating to the failure of the health boards and later the HSE to provide for older people in public nursing homes with the result that many had to avail of expensive private nursing home care. The report attracted considerable media attention but again I was disappointed that it was not considered by an Oireachtas committee.*¹¹

- 3.2 The Irish Ombudsman has a protocol which commits the Office to notify the relevant Minister/Department or the Chief Executive of the body that will be the subject of an own initiative investigation. The notification letter specifies the legal basis for the investigation, the prompt or reason for the investigation and its scope or terms of reference. The notification also includes a request for access to records and information relating to the issues which are to be the subject of the investigation. This is a practice which, as outlined later in this paper, the NIPSO may seek to replicate if the own initiative power is included in the legislation enacted by the Assembly to bring the new office of the NIPSO into being.

Canada (Ontario)

- 3.3 Section 14(2) of the Ombudsman Act 1990 provides the Ontario Ombudsman with a discretionary power to investigate a complaint from any person or to investigate on 'his own motion'. There are no limitations on that discretionary power. Since 2005 the Ontario Ombudsman has reported on 30 systemic investigations led by the Special Ombudsman Response Team (SORT). This team was created in 2005 to conduct systemic investigations on high-profile issues affecting large numbers of people. These investigations are conducted only where the Ombudsman is satisfied that there is sufficient evidence to warrant an investigation. There are clear criteria for these systemic investigations:

- there is a serious and sensitive issue with a high public interest dimension;

¹¹ Oireachtas - Orders of Reference of the Joint Committee – Discussion with Ombudsman 20 July 2011

- there are broad systemic implications;
- the facts of the complaint are complex and/or not agreed upon and;
- there is no likelihood of an informal resolution to the complaint.¹²

3.4 Like the Irish Ombudsman, the Ontario Ombudsman's investigation is usually triggered by one or multiple complaints to his office. It is his practice to publicly announce his intention to conduct a SORT investigation and to call for other complaints or cases to be brought to his office. The investigation findings and recommendations are reported on publicly and the report is presented to Ontario's Legislative Assembly. These reports can focus on a wide range of issues. For instance the Ontario Ombudsman has completed investigations and reported on a diverse range of issues including services available for adults with developmental difficulties (2012), the use of force in jails (2013), the monitoring of unlicensed day care (2013), and the limited funding available for the drug herceptin for patients with breast cancer (2011).

3.5 The issue of providing those who may be unable to make a formal complaint due to their perception of the potentially adverse consequences for their relative or friend in the care setting is highlighted by the Ontario Ombudsman's report 'Between a rock and a hard place'. In the concluding paragraph of Andre Marin's report into the plight of parents who were forced to place their severely disabled children into the care of Children's Aid Societies in order to secure the essential support their children needed, he reports on the palpable fear of the parents of the potential consequences of coming forward to his office to complain.¹³ This can sometimes be the case in institutional care settings and thus this is the sort of circumstance where an own initiative investigation can provide a 'voice' to those who either are frightened or due to vulnerability or disability are unable to complain.

Malta

¹² www.ombudsman.on.ca

¹³ www.ombudsman.on.ca/Investigations /SORT-investigations (May 2005 at paragraph 164, page 42)

- 3.6 The Ombudsman Act 1995 provides the Maltese Ombudsman with a broad discretionary power to investigate the administrative functions of a body in his remit on his own initiative¹⁴ or where he receives a complaint from a person aggrieved by such actions. There is no statutory limitation on this power but it is noteworthy that he will exercise this power where there is a 'substantial public interest and importance are concerned'.¹⁵ In addition, any Committee of the House of Representatives may refer any matter that is under consideration by it to the Ombudsman for investigation. The Prime Minister may also at anytime refer a matter for investigation by the Ombudsman which the Prime Minister considers should be investigated.
- 3.7 A limited examination of the own motion investigations of the Maltese Ombudsman (whose jurisdiction includes the University Ombudsman for Malta) has disclosed that own initiative investigations can be prompted by a complaint from an individual who has experienced maladministration, public debates on current public interest issues, a media report or from the Ombudsman's experience of investigating other issues in a particular sector. For example, in 2012 the Ombudsman's annual report makes reference to the commencement of an own initiative investigation into waiting lists for outpatient appointments in two Maltese hospitals and government health centres. This was prompted by ongoing public debate. An article in The Maltese Times on 6 November 2012 was the trigger for an own initiative investigation into the delay in obtaining appointments for babies and children with hearing difficulties¹⁶. In 2007 the Ombudsman published a report of an own motion investigation relating to the legislation and policies regulating requests for revision of papers and/or verification of exam scripts. This investigation was commenced as a result of the Ombudsman's experience of complaints regarding the outcome of selection procedures for posts in the public sector. In that investigation a number of institutions in the public sector were asked to provide details of legislation, policies and practices in this area which included the University of Malta, the Malta College of Arts, Science and Technology, the Education Division, the

¹⁴ Section 13(2) of the Ombudsman Act 1995

¹⁵ www.ombudsman.org.mt/index.asp?

¹⁶ Office of the Ombudsman Annual Report 2012 at page 80

Ombudsman, Dr Pullicino, in another case, recommended a review of policies by those organisations that did not have in place any or adequate access policies, through which the criteria against which examinations scripts are to be marked are properly established by regulation and where examiners do not put their comments on the actual scripts and ensures that the documents on which these are recorded are accessible to candidates. This example again highlights the value that broad based own initiative investigations can bring to a greater number of citizens.

3.8 The Maltese Ombudsman has also a responsibility to oversee that the conditions and circumstances in which refugees from Africa are accommodated on the island meet Human Rights, European Council and UN standards. Following an inspection visit to a holding centre he decided to invoke his own initiative authority to review the total management system and facilities allocated to meet this sensitive statutory responsibility in Malta.

3.9 It is hoped that this brief overview of three separate jurisdictions is useful in highlighting the range of potential prompts for own initiative investigations as well as the diverse range of issues that may be covered by such inquiries. What is clear from this limited research is that in each instance there is some evidence base for the investigation although that evidence may derive from a number of sources including complaints received by the Ombudsman, wider societal debate and/or media articles. The value to a greater number of citizens has been demonstrated, in particular the financial benefits to members of the public are evident in the cases from Ireland. However, it has not been possible to obtain data on the extent to which in each jurisdiction these investigations have resulted in efficiencies or cost savings.

4. Conducting Own Initiative Investigations – Some Considerations

4.1 The Committee seeks clarification as to how the NIPSO might approach the conduct of own initiative investigations. The Committee has already indicated

its expectation that a decision to commence an own initiative investigation should be evidence based. The Ombudsman agrees with this approach and in this section will explain his views on an appropriate and proportionate approach to this power. The Ombudsman considers that in approaching the decision to commence an own initiative investigation, the NIPSO should be guided by to the Principles of Good Administration¹⁷ :

- **Getting it right**
- **Being customer focused**
- **Being open and accountable**
- **Acting fairly and proportionately**
- **Putting things right**
- **Seeking continuous improvement.**

In this regard it will be important for NIPSO to have a clear, publicly available statement on his or her approach to own initiative that reflects these principles. Further, the Ombudsman currently has a policy which he has developed to allow him to make decisions on which complaints, given the ever increasing number of cases brought to him, he will investigate. A copy of the Validation and Investigation Criteria policy is attached at Appendix 2 and it is worthwhile considering the application of the principles of public interest, proportionality and practical outcome when addressing the issue about which the NIPSO might investigate if an own initiative power were available.

4.2 The Committee's policy proposal is that the NIPSO have an own initiative power where he or she believes there is systemic maladministration. There has been a tendency to use the phrase 'systemic' and 'own initiative' investigation interchangeably, despite there being some subtle yet important differences between these two 'types' of investigation.

The fundamental difference lies in what prompts the investigation, and thereafter who will be the subject of the investigation. Systemic investigations

¹⁷ www.phso.gov.uk

are usually initiated as a result of a complaint having been received. This can be one complaint or a number of complaints about the same issue which may point to a trend or pattern that is worthy of investigation. Ultimately, therefore, a systemic investigation is one that goes beyond the immediate issue raised by a particular complaint to identify if it is symptomatic of a much bigger problem. Thereafter, the focus is on addressing the underlying cause and recommending changes that will offer both remedy for the individuals affected and address the causes of the problem.

4.3 A broadly based power to commence an ‘own initiative’ investigation (as is provided for in Ireland, Malta and Ontario) is more encompassing than a power to simply investigate systemic failure and can be used effectively in a variety of circumstances including the investigation of an individual high profile case; the investigation of issues which were the subject of a complaint or a number of complaints; the investigation of a sector or across sectors on a theme such as dealing with homelessness issues, delivering care in a non-health related environment such as prisons or sheltered accommodation, the experience of adults with learning difficulties in institutional care. There are a wide range of circumstances which could prompt an ‘own initiative’ investigation by the Ombudsman. These include, as has already been indicated, evidence gathered through the NIPSO casework/research, evidence gathered by another agency or regulator, by the legislature or a committee of the legislature, or prompted by a specific public debate or concern. Despite the wide level of discretion implied by the term ‘Own Initiative’ in reality the decision to initiate an investigation, on this basis, would as the Committee has concluded require to be **evidence based, reasoned, proportionate** and represent a **prudent use of public funds**.

4.4 In summary there could be a number of triggers for an own initiative investigation which the NIPSO could consider, these include:

(1) A complaint or series of complaints about a particular or similar issue;

- (2) The Ombudsman’s perception of significant public concern about an issue;
- (3) The outcome of the Ombudsman’s research on the issue;
- (4) A media report;
- (5) An organisation’s own internal governance arrangements and external audit, having highlighted an issue;
- (6) Report or reference from another oversight or integrity body;
- (7) Identified as a result of scrutiny by a Committee of the Legislature.

4.5 In light of the experience of other jurisdictions the Ombudsman believes that NIPSO should *initially* focus its own initiative investigations on issues which are evidenced from existing or previous complaints to the office, so as to establish a track record of experience and expertise in undertaking such inquiries.

5. Deciding whether to conduct a Systemic/Own Initiative Investigation¹⁸

5.1 As indicated above, central to the effective use of any power that may be given to conduct an own initiative investigation is the evidence base that will inform the decision on what area of public service will be examined and what issues will be focused on. These decisions when taken must be demonstrably open, transparent and consistent. A decision framework template has been developed by the current Ombudsman (Appendix 3) which should assist the NIPSO in documenting in a systematic way the detailed reasoning that informed his/her decision to undertake an own initiative investigation. The template may also be helpful in explaining what has and what has not been considered and decided on before an investigation is commenced. The key matters covered are:

1. A summary of the issues to be investigated;
2. The source(s) of evidence identified in specifying that issue;
3. Jurisdictional issues that need to be understood and worked through in the investigation;

¹⁸ Jones, G. (2009) Conducting Administrative, oversight and Ombudsman Investigations Pg 55

4. Interface(s) with other agencies or integrity bodies;
 5. A summary of any evidence, readily available, of outcomes/decisions reached by other complaints mechanisms in relation to the area/issue proposed for investigation; and
 6. A summary of any evidence the Office has already gathered on the issue including any evidence which suggests the level of, or potential for, recurrence of the issue.
 7. Clarification of any action taken by the office or another body or Agency on the issue.
 8. Assessment of each of the issues using the criteria outlined in the validation and investigation policy.
- 5.2 The Committee is concerned that any use of resources should be efficient and not detract from the core focus of the office which is the investigation of individual complaints. There will be a need to use NIPSO resources initially to establish whether or not an investigation should be undertaken. Consideration should be given to other alternatives to undertaking an own initiative investigation such as informal resolution. As part of the process of building an evidence base to inform whether an own initiative inquiry is appropriate, the NIPSO will need to liaise with other investigative agencies to ensure there is no potential duplication or overlap of inquiries with the proposed inquiry. Indeed, there could well be opportunities to use the expertise of other bodies in support of a NIPSO own initiative investigation. For instance if the issues concerned elderly or children's care homes, resources and expertise from the Older Persons, Children and Young Persons Commissioner and the Human Rights Commission could be requested, depending on the issue to be examined. The decision whether an own initiative investigation is warranted, may also involve informal contact with the relevant bodies and complainants to obtain the necessary detail and information on the issues of complaint.
- 5.3 Undoubtedly experience elsewhere suggests that launching an Own Initiative investigation can give rise to an increase in the number of individual complaints about the subject matter being examined. These individual complaints might

also be proactively sought by the NIPSO as an agreed part of the strategy developed to investigate the issue being examined. A question around whether an Own Initiative report could also address more specific and particular individual complaints will also require to be considered. The custom and practice in other Ombudsman Offices undertaking work of this nature is that any individual cases of complaint received, regardless of whether they have been received in response to a systemic investigation being launched, are not investigated separately. There may still be a resource implication however limited, in directing individuals to the systemic report where their specific issues of complaint are adequately covered and, thereafter, pursuing any outstanding issues as necessary such as individual redress. Thus it is difficult to project the extent of any saving in the NIPSO budget arising from these inquiries. A key element of own initiative investigations is the follow up to ensure recommendations have been met and while this has resource implications it does help in the evaluation by NIPSO of the impact of the use of the power. This is a matter NIPSO should be reporting on publicly and could form part of any scrutiny.

6. Reports of an Own Initiative Investigation

- 6.1 Own initiative investigation reports should be publicly available documents given the significant public interest issues they are intended to address. There is currently a proposal for a statutory provision within in the NIPSO legislation for a power to publish any report of an investigation that is considered by the NIPSO to be in the public interest. The current Ombudsman considers that this power should extend to own initiative investigations.
- 6.2 At section 1 of this paper, the important role of the Ombudsman acting on behalf of the legislature to examine the experience of individual citizens of services provided by Government Departments and public bodies is referred to. Consideration should therefore also be given to the laying of the own motion report before the relevant statutory Committee of the Assembly where adverse findings are made. For example, a health related report should go to the health

committee, environment report to the Environment Committee etc. Further awareness raising by NIPSO of the areas being scrutinised and recommendations in reports in addition to the detailed scrutiny of the issues by the Assembly or the relevant Assembly Committee, to ensure that matters of public interest are properly and effectively addressed by the bodies who are the subject of such scrutiny would also be important. The Committee may wish to consider developing a procedure to signpost the submission of completed reports to Assembly Committees under Standing Orders.

- 6.3 The Ombudsman considers that complainant's identities should not be published to protect the privacy of those individuals. However, there may be occasions where the public interest requires that officials who have been engaged with the investigation should be identified. Any decision to disclose the names or identities of such officials should be considered on a case by case basis, having regard to the views of those individuals, the public interest and the implications for the principles of openness and accountability. Where practicable a privacy impact assessment¹⁹ should be undertaken by NIPSO, which would take into account the competing interests of personal privacy and accountability as well as the context and sensitivity of the issues being reported on.

7. Accountability

- 7.1 It is clearly essential for the NIPSO to account for the use of resources on all investigations including those that are commenced on 'an own motion authority'. However it is also important that NIPSO is independent and there is a clear need for objectivity to be demonstrated in any decision on whether or not to raise an own motion investigation. The decision ultimately must be that of the NIPSO and must not be subject to political interference or influence. The proposal that the Audit Committee is an appropriate committee for the NIPSO to report to on performance and use of resources is welcomed. As part of that reporting cycle, NIPSO should also be asked to explain the application of

¹⁹ See ICO guidance on Privacy Impact Assessments (2013) at www.ico.gov.uk

resources on any own initiative investigation taken during the financial year being accounted for. Clearly it is for the Committee to decide whether the NIPSO has demonstrated the effectiveness and value of the investigations he/she has undertaken.

8. Possible Areas for Own Initiative – Examples from Completed AOCC Investigations

- 8.1 As indicated in 7.1, it is important that the NIPSO should have significant discretion in making the decision on whether or not to commence an own initiative investigation. By way of illustration the current Ombudsman highlights below a number of cases where an own initiative authority would have been in the public interest and allowed the Ombudsman to provide redress or assurance to a greater number of citizens.
- 8.2 In 2011, the Ombudsman concluded an investigation into ‘charging’ by North Down Borough Council for the disposal of household waste where there was no authority to levy a charge. The Ombudsman investigated the individual complaint and the complainant received a refund and redress for the injustice experienced by him. If the office had at that time the benefit of an own initiative authority, the Ombudsman could have commenced an own initiative enquiry to examine the charging policy of all other Councils in Northern Ireland. The local government auditor has subsequently referred to this case in her annual report. The benefit of such scrutiny would be to ascertain if the charging policy complained of represented a more widespread practice that was impacting adversely on ratepayers across Northern Ireland.
- 8.3 Planning is an issue that has been in the top three areas of complaint to the Ombudsman for several years and the wide range of issues that complaints about the planning service have been highlighted in successive annual reports. They include poor record keeping, failure to give adequate reasons for decisions and inconsistency in decision making. In 2012, the Ombudsman

concluded an investigation into a complaint about the failures by the DOE Planning Service to take enforcement action against the breach of a planning condition by a licensed quarry company in Co Tyrone. The complaint highlighted deficiencies in planning enforcement policy and the absence of a proactive approach to enforcement by the Planning Service. A further issue identified was the inconsistency in the approach to enforcement policy across the province which has been highlighted by a number of other complaints to my office. Again, an own initiative investigation into the failings as identified in previous Ombudsman investigations could benefit the citizen and the planning sector in particular as it is now proposed that the planning function be devolved to local government.

- 8.4 In 2010 the Ombudsman investigated a complaint about Coleraine Borough Council and their actions in respect of a tender and award of a contract for a Town centre Partnership scheme. The Ombudsman found maladministration but no injustice to the complainant. More recently in 2013 he found maladministration on the part of a health trust in relation to the financial assessment made by the trust of an unsuccessful tenderer. The complainant would have been successful but for the unfair application of a particular financial tool to assess liquidity. These complaints have demonstrated the need for a consistent approach across the public sector to procurement decisions. This issue was further highlighted to the Ombudsman at a meeting of DFP Committee in 2011, a member of the Committee highlighted the issue of the problems faced by small businesses when faced with challenging the decisions of major government departments and public bodies with whom they seek to engage in business contracts. The fact that the Committee intend to extend the NIPSO jurisdiction to procurement is to be welcomed. Currently small businesses fear that their prospects of securing future business may be adversely affected if they complain about a public procurement decision compounded by the fact that a legal challenge against a procurement decision is inhibited by the cost of judicial review.

9. Conclusion

9.1 The themes explored in this paper are the opinions and views of the Ombudsman and his senior staff. It is open for the Committee to consider these and other views in making their decisions around the own initiative authority. To that extent this is a thought starter paper and the Ombudsman commends the paper to the Committee for its consideration and further discussion.