

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
NORTHERN IRELAND PUBLIC SERVICES OMBUDSMAN  
AND  
THE IRISH OMBUDSMAN  
IN RESPECT OF THE NORTH/SOUTH IMPLEMENTATION  
BODIES**



**Ombudsman**

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**1. Preamble**

The parties to this Memorandum of Understanding (MoU) are:

- The Northern Ireland Public Services Ombudsman (NIPSO), established under the Public Services Ombudsman Act (Northern Ireland) 2016 ('the 2016 Act') and
- The Irish Ombudsman established under the Ombudsman Act 1980 ('the 1980 Act') as amended.

The NIPSO operating under the 2016 Act investigates complaints about listed authorities. The Irish Ombudsman operating under the 1980 Act investigates complaints about certain public service providers.

The North/South Implementation Bodies ('NSIBs') are within the jurisdiction of the NIPSO and the Irish Ombudsman by virtue of, Paragraph 5 of Part 7 of Schedule 1 of the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 ('the 1999 Order') and Section 50 of the British-Irish Agreement Act, 1999 ('the 1999 Act') respectively.<sup>1</sup>

In order to ensure proper compliance with the relevant legislation and consistency of approach in the conduct of investigations of maladministration regarding the NSIBs, the Ombudsmen established arrangements in 2008 for the handling of complaints. These are now replaced by this MoU.

**2. New Arrangements**

Under the 2016 Act, the NIPSO may investigate a complaint, made by a member of the public who claims to have sustained an injustice (in the Act referred to as 'a person aggrieved'). The complaint must relate to alleged maladministration through action taken in the exercise of administrative functions by a listed authority. The listed authorities within the NIPSO's jurisdiction are listed in Schedule 3 of the 2016 Act. In relation to the NSIBs, Schedule 3 states:

*'An implementation body to which the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 applies.*

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<sup>1</sup> Schedule 3 of the Public Services Ombudsman Act (Northern Ireland) 2016. Section 50(2) of the 1999 Act.

Notes:

1. *An implementation body is a listed authority only to the extent that it exercises functions in or as regards Northern Ireland.'*

Section 50 (2) of the 1999 Act provided that the NSIBs should be subject to the Ombudsman Act 1980 in that they could be treated as being among those bodies subject to the jurisdiction of the Ombudsman as listed in Part 1 of the First Schedule of the Act of 1980.

This MoU facilitates mutual co-operation between the NIPSO and the Irish Ombudsman to ensure proper compliance with the relevant legislation and consistency of approach in the conduct of investigations into complaints against NSIBs. The NIPSO and the Irish Ombudsman have entered into this MoU in order to further their shared commitment to working together as effectively as possible in the public interest.

### **3. The Purpose of the MoU**

This MoU is intended to promote consistency between the two Ombudsman Offices in examining and investigating complaints in respect of the NSIBs. In order to prevent overlap between the respective Offices and provide for an efficient examination and investigation of complaints, under the MoU both Offices will:

- Investigate and report on complaints in their respective jurisdictions,
- Promote mutual communication and co-operation,
- Ensure the wishes and best interests of complainants are central to decisions on jurisdiction over complaints,
- Strengthen practical arrangements for NSIBs in their handling of complaints

### **4. The Scope of the MoU**

The MoU extends to the linked jurisdiction of the NIPSO and the Irish Ombudsman in relation to NSIBs and their respective complaints investigation functions. The Ombudsmen will be required to make a determination on whether the alleged action taken in the exercise of administrative functions on the part of NSIBs should be investigated under the 2016 Act or the 1980 Act. Although the 1999 Order and 1999 Act provide that the Ombudsmen will liaise and consult with each other, it is clearly understood that the determination of a complaint rests solely with the Ombudsman within whose remit it falls.

The factors that the NIPSO and the Irish Ombudsman will take into account in deciding which Office will investigate the complaint will include:

### **(i) The functions in or regards Northern Ireland**

As indicated above, Schedule 3 of the 2016 Act states:

*'An implementation body to which the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 applies.*

Notes:

1. *An implementation body is a listed authority only to the extent that it exercises functions in or as regards Northern Ireland.'*

### **(ii) The statutory remit of the respective Ombudsman**

The Ombudsman investigating the action complained about must have statutory authority to investigate that matter. The Ombudsman investigating must also act within the statutory remit set out in his/her legislative framework. In particular, the NIPSO has jurisdiction to investigate complaints of maladministration in relation to political and/or religious discrimination under section 78 of the Northern Ireland 1998 Act.<sup>2</sup>

### **(iii) The Principles of Good Administration**

The Principles of Good Administration were developed by the Parliamentary and Health Services Ombudsman ('PHSO'). They are intended to promote a shared understanding of what is meant by good administration and to help public bodies in the jurisdiction of ombudsmen to provide a first-class public service to their customers. The Principles are the general standard against which the actions of public authorities are assessed when a complaint of maladministration is received by an Ombudsman and the NIPSO and the Irish Ombudsman will take account of these principles in their examination and investigation of complaints about the actions of the NSIBs.<sup>3</sup>

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<sup>2</sup> Section 78 of the Northern Ireland Act 1998:

*'(1)The provisions mentioned in subsection (2) (which preclude an investigation when the person aggrieved has or had a remedy by way of proceedings in a court of law) shall not apply to an investigation of a complaint alleging maladministration involving—*  
*(a)discrimination, or aiding or inciting any person to discriminate, on the ground of religious belief or political opinion; or*  
*(b)a requirement in contravention of section 77 to take an oath or make a declaration (within the meaning of that section).*

*(2)The provisions are—*

*(a)section 5(2)(b) of the Parliamentary Commissioner Act 1967;*

*(b)section 21(1)(b) of the Public Services Ombudsman Act (Northern Ireland) 2016.'*

<sup>3</sup> <https://www.ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Administration-bookletweb.pdf>

#### **(iv) Human Rights**

In carrying out their respective statutory functions, the NIPSO and the Irish Ombudsman are committed to ensuring a fair and efficient public service for everyone in Northern Ireland and the Republic of Ireland respectively. The NIPSO is a public authority for the purposes of the Human Rights Act 1998 and has particular duties under that Act in respect of the obligations of the European Convention on Human Rights (ECHR).

The Office of the Irish Ombudsman is a public body for the purposes of the Irish Human Rights and Equality Act 2014. Section 42 of that Act imposes a positive duty on public bodies to have due regard to human rights and equality issues.

The NIPSO and the Irish Ombudsman adopt a human rights based approach to investigation in their respective functions. This approach ensures that their work is rooted in protecting individuals and in assisting public bodies to effectively apply human rights principles. While the principles of good administration are the general standard which the NIPSO and the Irish Ombudsman will apply in any complaint, that standard is informed by a specific set of human rights values known as FRED A – Fairness, Respect, Equality, Dignity and Autonomy. These values are fundamentally important to human rights as they help identify the more specific standards relevant to a complaint and inform decisions on an appropriate remedy for those who have suffered injustice.

#### **5. Signposting**

Where a complaint has been made to an Ombudsman ('the first Ombudsman') relating to an action of a NSIB (or an action on its behalf) that has taken place, the first Ombudsman will inform the aggrieved person that the complaint will be passed, with his/her consent, to the other Ombudsman, together with any relevant information or documentation. Alternatively, if the aggrieved person agrees, the first Ombudsman will furnish that person with the contact details of the other Ombudsman.

The Ombudsman with jurisdiction in relation to a complaint against a NSIB shall furnish the other Ombudsman with relevant details (including the name and address of the complainant and brief details of the complaint).

#### **6. Consultation and Co-operation**

Section 51(4) of the 2016 Act provides for the consultation and co-operation between the NIPSO and the Irish Ombudsman in respect of complaints about or investigations into an implementation body to which the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 applies. Section 51 states that:

*'51. This section applies if, at any stage in the course of considering a complaint or conducting an investigation, the Ombudsman forms the opinion that the matter could be the subject of an investigation by a person mentioned in subsection (4).*

- (2) *The Ombudsman must consult that person about the matter.*
- (3) *The Ombudsman may co-operate with that person, including co-operation—*
- (a) by way of disclosure of information relating to the complaint or investigation,*
  - (b) in the conduct of the investigation,*
  - (c) in the form, content and publication of a report.'*

Normally, communication between the two Offices in relation to complaints will be dealt with, by:

- the Deputy Ombudsman of the NIPSO's Office and
- the Director General of the Irish Ombudsman.

Designated liaison officers may also be appointed, from time to time.

## **7. Operative Date and Review**

This MoU is operative from 1st April 2019. The NIPSO and the Irish Ombudsman will keep these procedures under review in the light of working experience.



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**MARIE ANDERSON**  
Northern Ireland Public Services Ombudsman

Date: 9<sup>th</sup> April 2019



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**PETER TYNDALL**  
Irish Ombudsman and Information Commissioner

Date: 9<sup>th</sup> April 2019