

# **Review of Complaints Handling Practice**

In

The Office of the

**Prisoner Ombudsman for Northern Ireland**

October 2015

## **FOREWORD**

The Department of Justice is pleased to publish this review of Complaints Handling by the Prisoner Ombudsman for Northern Ireland. The Department commissioned the review in September 2015 and appointed Mr Alasdair MacLaughlin to undertake it. We are grateful for him doing so in a prompt and thorough manner.

Alasdair MacLaughlin has significant experience of complaints-handling and oversight in his roles as the Lay Observer for Northern Ireland and Independent Assessor for the Public Prosecution Service.

He has held several public appointments, including membership of the Probation Board for Northern Ireland, Northern Ireland Economic Council, Standing Advisory Commission on Human Rights and Northern Ireland Community Relations Council. He has served on European Union Monitoring Committees and the Council of the University of Ulster. An economist by education, his employment prior to retirement included extensive experience in the private, public and voluntary sectors in Northern Ireland, at national level and in Europe.

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## Background

The Review commenced on 1<sup>st</sup> September 2015.

The decision was taken early in the year to undertake an independent **Review of Complaints Handling Practice in the Office of the Prisoner Ombudsman for Northern Ireland**. This was in response to a request from the Prisoner Ombudsman himself. It was made clear that there were two main drivers which informed the request and decision. These main drivers were:-

1. 'A review would be timely as the Northern Ireland Assembly is currently considering placing the Office on a statutory footing, and there has never been any external evaluation of its practice since being established in 2005
2. The current process for people to wish to complain about how the Prisoner Ombudsman (PO) handles their complaint is not user-friendly and merits consideration'

The Review further would address both how the PO functions as a complaint handler AND how he handles complaints from those who are unhappy with how the Office fulfils its role.

## Review Plan

The Review was to be fundamentally a desk exercise involving accessing files and staff interviews and discussions. This activity would enable current and developing PO practice in complaints handling, demands on PO staff and interaction with the Northern Ireland Prison Service (NIPS), and anecdotal material to be revealed. It also would identify more about the current and future developmental paths of the PO's service. The *locus* for the majority of the work would be on the PO Office premises where the material is lodged.

The Timetable for the Review was as follows:-

Terms of Reference agreed	28 <sup>th</sup> August 2015
Fieldwork taking place	September 2015
Draft findings available	30 <sup>th</sup> September 2015
Feedback to Reviewer	16 <sup>th</sup> October 2015
Final Report on website	30 <sup>th</sup> October 2015

The Review would consider and analyse:-

The political and operational context within which the PO operates

- Independence and impartiality of the PO Office
- Investigation thoroughness, quality of reports and responses for factual accuracy feedback from prisoners and NIPS
- Extent to which the PO complies with current legislation
- Compliance with 'The Principles of Good Complaints Handling'
- The PO's internal administrative processes

In support of the work of the Reviewer, the PO undertook to provide access to material, staff, and facilities as required to complete and deliver the Review.

Finally, the Reviewer would confine his work to the business of complaints handling. The matter of deaths in custody, in which the PO has a major investigatory role, is therefore not within the remit of the Reviewer.

## Review Methodology

The Reviewer has assigned two weeks work to the Review spread over the month of September 2015. During this time he has had several discussions with the Prisoner Ombudsman and the Director of Operations, the Senior Complaints Investigator, and the Office Manager. He has also met with each of the Complaints Investigators both in a group and individually.

Further, he has had access to some 50 case files, and to various statistical records. In addition he has accessed annual reports, the PO Business Plan, Terms of Reference for investigation of complaints, the PO Manual, and the Rules for the PO in relation to complaints. He has also had sight of the draft bill aimed at putting the PO Office on a statutory footing.

The Reviewer wishes to place on record his thanks and appreciation for the ready co-operation he has enjoyed from everyone in the PO Office. He has been given access to everything he requested, without exception, and has been given every assistance.

## Historical Perspective

The Prisoner Ombudsman position and role was established in 2005, and the first Annual Report was issued in 2005/2006. **The establishment of the role was a response in part to the Steele Review, and was aimed at helping to ease tensions in prisons and to provide one appropriate way for prisoners to deal with difficulties.** In other words the PO Office was designed to fulfil a wider task than the conventional Ombudsman functions. However, the position was and remains that the PO Office is not established under the governance of statute, although there are clear rules for handling prisoner complaints at all stages contained within the NIPS Rules. This has resulted rightly I believe, in the development over the decade since, of what amounts to an organically evolving scheme which changed where appropriate. The successful development of such a scheme, not backed directly by statute, requires a strong degree of co-operation amongst those who have to operate it. The system that has developed is a notable achievement by successive POs and their staffs working in conjunction with the staffs of NIPS and the Department of Justice (DOJ) Northern Ireland.

The period since establishment of the PO Office has also coincided with a period of considerable, continuing change within the Justice System in Northern Ireland. New institutions have been launched, and were 'bedding down', devolution in general was moving forward, and in particular, the Department of Justice was being formed and brought into play. These developments give rise to many issues which reflect on the work of the PO and the staff of NIPS. On top of all this, there has been much change in the Province itself including political and economic issues. Allied to this and in part as a consequence, has been a change in the nature of the prisoner population itself, and consequentially in the NIPS.

The mission statement of the Prisoner Ombudsman is:- **'To help ensure that prisons are safe purposeful places through the provision of independent, impartial and professional investigations of Complaints and Deaths in Custody.'**

It should be noted that the PO has a 'complaints constituency' which is tightly defined namely prisoners, former prisoners, and visitors to the prison. These elements in the constituency are by definition in their situation against their will – even if prisoners have made the major contribution to their own fate. The individuals who make up the constituency, and their visitors are continually and gradually in a state of flux, although there is a proportion of long term prisoners. Also 'separation' still exists but is confined to a small percentage (just over 2%) defined either by prisoner category (eg CSU) or by politics (eg republican and loyalist prisoners).

## **The Prisoners' Complaint System**

### **Perceptions**

As already noted, the system has developed organically over the decade since 2005 in which it has been in existence, albeit within the structure of the Rules. In this period there have been three holders of the Prisoner Ombudsman post. Each of these has brought his/her own characteristics, style and methods of operating to the post. These characteristics have impacted on the ways in which the Office has been run. They have also had consequences for the way in which the public, politicians, and complaints staff in other parts of the total system – NIPS and Department of Justice - perceive what the Prisoner Ombudsman does, as well as the nature of working relationships.

The current Prisoner Ombudsman is very much aware of the concept that there is ONE SCHEME for handling prisoner and visitor complaints, of which he handles the third independent and impartial stage. The other two stages are handled by NIPS – and this is right and proper in the context of a good complaints handling system. It needs to be pointed out that it would be very easy to give the impression that there are two systems, one operated by the NIPS and the other by the PO. Whatever, they are very much inter-connected.

The current Prisoner Ombudsman is also clearly of the view that while he must remain totally impartial, this does not prevent him advocating on behalf of prisoners. By the same token the parts of the System operated by the NIPS should not be seen as a 'champion' for its staff. In fact the single scheme should be promoted clearly as being a 'champion for truth' in the context of a situation where a prisoner or a visitor to a prison believes that they have cause to complain, and where it would be right to take action to rectify things both in the context of the particular complaint as well as over the range of complaints received.

## Definitions

It is important for complainants and everyone associated with the scheme to be clear what constitutes a complaint. There are in fact at least two definitions which help to define a complaint. The first is to be found in the NIPS Rule 79. This states:-

75 1. A prisoner, former prisoner, or visitor (*to the prison*) may complain about the following matters:

- a) his treatment by any person employed in the Northern Ireland Prison Service, including provision for his welfare while in prison, and treatment includes an omission
- b) the facilities available to him at the prison; and
- c) the cleanliness and adequacy of prison premises

The Rules then go on to state that if a prisoner's 'complaint' does not fit this definition, then he must be told by the Prison Service that it is not appropriate to be dealt with under the procedure to which the Rules refer. This is the same definition as that which is restated in the Rules relating to a former-prisoner's 'complaint' and a visitor's 'complaint' also. Equally, this definition is re-stated again in relation to complaints in the system at both the NIPS stages and the Prisoner Ombudsman stage in the process.

There are detailed Rules (75-79) which then go on to define clearly how the complaint is to be dealt with at each of the three stages in the Complaints Handling System

The matter of whether a complaint is **eligible** is then a separate matter. There are clear Rules as to timetable, which if not adhered to can render a complaint ineligible. The definition of an 'eligible complaint' is contained in the Prisoner Ombudsman Manual (June 2014) as follows:-

Prisoner complaint: Any prisoner who has gone through the Northern Ireland Prison Service internal complaints process (ICP) and remains unhappy can make a complaint to the Prisoner Ombudsman

These definitions in general terms seem to me to be reasonable as working definitions, but they must be applied firmly and consistently if they are to command respect and support a scheme which is to be in harmony with the principles of good complaints handling.

They further imply that the PO is required to assess the complaints that reach him against the definitions; so he assesses on the one hand if he has received what is a complaint according to Rule 75 (and according to the Rules 75-79) AND on the other hand is the complaint eligible in relation to the PO's Manual (June 2014).

## **Processes**

Once again the way the system should work is clearly laid down in the Rules and in the PO Manual. Fundamentally this describes the processes through which a complaint should travel, and defines the criteria that if not met can render the complaint ineligible. Thus, there are timetables for each stage of the system which must be met by the complainant, and to which the NIPS & PO should adhere.

The **first stage** is where the NIPS receives, logs, investigates and answers the complaint. It is at this stage that if the system works well and effectively, the majority of complaints will most likely be concluded. In fact this has indeed been the case heretofore; so, for example in 2014/2015, 9,456 complaints were logged at stage one, and 5,340 of these were closed at that stage (in 2013/2014 the equivalent figures were 6,428 complaints logged with 4,947 being closed at that stage).

The **second stage** is where the complainant remains unsatisfied with the result from stage 1. If the complainant now decides to **resubmit** his complaint on the grounds of being dissatisfied with the outcome, it should now be investigated again by a higher level of management, usually the line manager of the person who concluded stage 1. At this stage, the complaint could be deemed to be ineligible for a variety of reasons, and if so the complainant will be informed. The complaint will be received, and should be investigated again, and answered. Many more of the complaints received at stage 1 will likely be dealt with at this stage 2. So in 2014/2015, 1,637 were closed at stage 2; and in 2013/2014, 1,161 were closed at stage 2.

The **independent stage** is where the complainant can refer to the PO Office, according to Rule 79, if he remains dissatisfied with the outcome. It is possible for him at this stage to determine that the complaint is, or has become, ineligible, and if so the complainant will be so informed. In turn then the PO logs an eligible complaint, investigates it and concludes. In 2014/2015 the PO received 1,429 eligible complaints, while in 2013/2014, he received 450 eligible complaints at stage 3.

There is scope for **Requests** under Rule 74 for prisoners, former prisoners and visitors to a prison, so a request should not be treated as a complaint in the system. There are also provisions (under Rule 79B for the NIPS and Rule 79N for the PO) to deal with any complaint that is deemed to be vexatious, repetitive, frivolous, raising no substantive issue, or intended to seriously hamper the complaints system.

Accordingly, there is the basis in the Rules and the PO Manual for an excellent complaints handling system for prisoners, former prisoners and visitors to those in prison. The most important feature of this system is the fact that there is supposed to be an investigatory process at each of the three stages if invoked. Also, there is a written-response/conclusion at the end of each stage which should reflect how the complaint was investigated, as well as what the conclusion actually was.

It is well worth noting that in the **third** stage, which is the responsibility of the PO, somewhere in the region of 29% of the complaints received at the third stage were NOT UPHELD in 2013/2014. Thus, 71% of those remaining at the third stage were dealt with in some tangible way, and had some substance; 46% were upheld, a further 6% were partially upheld, 12% were locally resolved, and 7% were withdrawn. The corresponding figures for 2014/2015 were that 21% complaints received at the third stage were NOT UPHELD. Thus, 79% were dealt with in some tangible way, and had some substance. 44% were upheld, 16% were partially upheld, 14% were locally resolved, and 5% were withdrawn. **Important questions to ask are: Why such a large proportion had to be resolved by the PO; and Why in particular so many could therefore not have been resolved at a local level much earlier in the process.**

These are somewhat raw and unrefined observations about the Prison Complaints System which provide a general overview of the nature of the task for the NIPS and the PO in resolving complaints. However, the full picture points towards a much more sophisticated operation which is aimed at helping the NIPS work better in looking after the prisoners who are in their care. This is not the place to comment further on the detail of the role and operation of NIPS, but a deeper analysis of the operation of the PO part of the complaints system affords a closer look at what the entire complaints handling system achieves.

This is perhaps an appropriate place in which to record the need to use action that is **proportional** and **reasonable** in the context of handling complaints. These two qualities act both ways. So there is as much a need for complainants to be expected to apply the principles of reasonableness and proportionality, as there is for the NIPS and the PO. It is evident from time to time that complainants do not always apply this thinking to their complaints; nonetheless, the NIPs and the PO must always strive to apply these principles.

## **Review**

The terms of reference (see above page 2) identified SIX elements which the Reviewer was required to examine and analyse. Accordingly this section of my Review will identify and comment on each of these six elements in turn.

### **Political and operational context within which the PO operates**

The PO Complaints Handling Scheme, as described above should be seen as part of the overall prisoner complaint system, and not as a stand-alone scheme. However, it must be seen as the third - independent and impartial - stage of the system. Either way, there is a need for close co-operation between the NIPS and the PO Office for the complaints scheme to operate effectively. On the face of it this does indeed take place; the PO has access to the NIPS complaints database and prisoners' safer custody profiles. There are regular monthly meetings with the Director General and less frequent meetings with Governors at Ombudsman and Director of Operations levels. Additionally, the PO is asked to contribute to induction and in-service training sessions for prison officers. On top of this there is daily contact both electronically and face to face with NIPS staff by complaint investigators in the PO Office in the course of doing their job.

At operational levels, however, there are practical difficulties which impinge on the work of the PO Office which arise from the challenges that face the NIPS in ensuring a regular operation of the service. There are staff shortages, there are 'emergency' situations within the prisons which require immediate handling and redeployment of staff, and there are other priorities. The importance of effective complaints handling can so often be lost in the immediacy of balancing these priorities.

Because of these complex demands on the management of the prisons, there is evidence that suggests variable application of complaints handling processes, which give rise to difficulties. Of course, it has to be recognised that the PO is in existence to deal with complaints, while the NIPS is in existence to run an effective prison system – and these roles are not the same thing.

There is much to suggest that the complaints system runs well. But there is another dimension which arises from a small group of prisoners who live in separated conditions on Roe 4 landing at Maghaberry Prison. In the past two years or so, this group of prisoners has worked with the complaints system in their own way presenting multiple identical complaints relating to the same issue. Occasionally what is presented is an observation about how things are done without specific reference and evidence; and occasionally they are presented as revolving around another prisoner or prisoners. Both of these formats ought to render a complaint ineligible under the NIPS Rules.

In 2014/2015, this group of prisoners lodged 81% of all eligible complaints to the PO. The situation in the current year is indicating this group of prisoners will again present a high proportion of the cases to the PO Office; at the time of writing, there are some 600 complaints in the system awaiting allocation. Yet this group comprises only around 2% of the prisoner population. This inevitably presents difficulties in applying processes in a standard way, including the complaints procedures. An additional element is that this group of prisoners prefers to deal with the PO only in complaints and has never accepted the NIPS response to any of their complaints. It is clear that these prisoners pose logistical challenges for the NIPS, as well as for the PO Office.

In general terms, the NIPS has also to operate in a context where politicians and the press take a special interest for a variety of reasons, despite the possibility that the populace at large takes a very much lesser interest in prisoners except to feel safe in the belief that they are adequately protected. But it will be clear that there are times when the NIPS and the PO Office must place the practical methodology of the complaint handling system on hold to ensure that situations do not become inflamed. This can result in some more specific way of dealing, without any delay, with an issue – an example would be where there is thought to be potential for a prisoner to self-harm on the basis of a Free-phone call. In this respect, it seems to me that the PO Office must operate promptly, and it does, to defuse sensitive situations beyond its complaint handling remit.

Thus, the context of prisoner complaints handling becomes on occasion pragmatic, deliberately and rightly to meet the needs of particular situations. However, it is also understood that such pragmatic action should be reserved for a particular situation where there is the danger of upsetting the delicate balance that is needed to maintain order in the prison.

### **Independence and impartiality of the PO Office**

The Reviewer has been struck with the skills required and demonstrated by the staff in the PO Office. Investigators need to have very good diplomatic and political skills, as well as person to person, research and investigation, writing and communication skills; on top of this they need to have an open mind, and strategic skills. It is these qualities and abilities that enable them to be professional in their approach, and combined with the ethos of the PO Office, in which the approach and policies of the Ombudsman himself are crucial, is to present as being impartial and independent.

These skills, and the reputation that the PO Office is recognised as impartial and independent, appear to be well understood and accepted by the NIPS, judging by the quality and tone of communications between the staff of each organisation.

One important measure of whether the prisoner population sees the PO Office as being independent and impartial is their willingness to take advantage of the services that are offered. That they do so is confirmed by the figures presented each year in successive reports relating to prisoner complaints. Currently in 2015, the PO Office is receiving complaints at a high rate of what seems likely to be around 2000 complaints in the twelve months ending December 2015. If the pattern for previous years holds good in 2015, it can be expected that more than 40% of these will be upheld. (Figures for 2014/2015 were 44% and in 2013/2014, 46% of complaints were upheld). The propensity to use the complaints system by the constituent body is an indication of how the service is seen by those constituents. Given that there are some 1,700 prisoners in Northern Ireland Prisons, the complaints rate is indeed very high, but it would not be so if complainants believed that the effectiveness, impartiality and independence of the PO Office in question.

It should be noted here that there are groups who seldom use the PO stage of the complaints system. These are foreign national prisoners and also the group of young male prisoners in Hyde-bank Wood; it is however well known that younger age groups tend not to take advantage of **any** Ombudsman Scheme throughout these Islands. The women prisoners in Ash House are low users, though roughly proportionate to their numbers in custody. Also visitors to the prison only occasionally use the formal complaint system; it may well be that this group may feel that to take a complaint might somehow adversely affect the person whom they are visiting – frankly this is supposition as it is not known why they do not lodge complaints, and there is some evidence that they complain verbally to NGOs who assist prisoners and their visitors.

The PO Office maintains a FREEPHONE and FREEPOST service. The former is used extensively by complainants. Often it is used to seek and impart information in relation to their complaints, and also as a way to check if a complaint is eligible for investigation by the PO. Investigators – any one of whom may answer this phone – report that prisoners value the direct access and opportunity to share their concerns with an independent body, and thereby, the PO Office believes, the service helps reduce individual tensions for individual prisoners. The rate of calls is in the region of 20 calls per week. Freepost is also used but to a lesser extent.

It should be noted that the Roe 4 prisoners issue a very high percentage of the total complaints; in 2014/2015 their complaints constituted 80% of the total prisoner complaints, despite their constituting only 2% of the prison population. It is important to ask why this is the case. It has already been noted that many of these complaints are actually multiples of the same complaint – that is to say that when one complainant issues a complaint, it is often the case that this same complaint, worded identically, is issued by several others and sometimes all these prisoners will each issue an identical complaint. One consequence of this has been to clog up the system. However, it also needs to be said that the ‘upheld’ rate in 2013-14 applied to complaints from this group of prisoners so their complaints are often not without merit.

It is noted that a number of the complaint types represented in this category should never have been accepted into the system, as they are ineligible in not being specific to an individual complainant, or take the form of a general observation or query. Also, there is provision for dealing with **requests** in Rule 74, and the processes described there should be used by the NIPS and the PO Office rather than sending such complaints into the complaints handling system. It has therefore been expedient for the NIPS and the PO Office sometimes to treat all these as if they were complaints. Many of these complaints could be addressed via a prisoner forum but it has not convened due to disagreement about appointment of the chairperson and the proposed agenda.

It is also noteworthy in this context that more generally, complainants regularly seek to contact the PO Office to discuss their complaint before and after conclusion, and to bring additional information to the complaints investigator. Again, they would not do so if they thought that the PO Office was not impartial and independent.

One issue which is worthy of mention is the accepted proposal, which is now all but established in law, that the Prisoner Ombudsman is to be backed up by statute for the first time. The Rules by which the PO role is currently governed are as laid out within NIPS Rules. The proposed legislation may well also set up specific PO rules separately. This will help further underline and emphasise the independence and impartiality of the PO Office.

### **Investigation thoroughness, quality of reports and responses to factual accuracy feedback from prisoners and the NI Prison Service**

The skills required in the PO Office amongst investigators and management, and the PO himself, have already been alluded to above. It is evident that the quality of investigation is detailed and thorough. Each case is taken on its merits (with the exception of the separated complainants, where multiple complaints are lodged on one issue; these are usually, and rightly answered through one communication channel, by agreement), and each complainant receives an individual response from the PO or the Director of Operations.

The response is received in draft/provisional form, so that the complainant can assess the accuracy of the response, and can comment, before he/she receives the final concluding letter. The draft will have already gone to the NIPS for an accuracy check, and their comments are included in the version that the prisoner receives. These are usually in letter form, and use clear and everyday English, but can occasionally be in the form of a report. If a complainant is unclear or unhappy about anything, he can if he so wishes, use the free-phone to speak with the PO Office. There is evidence to show that complainants do indeed use this service frequently.

The PO Office uses a target guidance system in investigating a complaint – twelve weeks in which to prepare the draft and eighteen weeks in which to conclude the complaint. **It will be noted that such targets are not entirely in the control of the PO Office.** In fact, the PO Office is reliant on the NIPS at various stages in the investigation for timely responses – at the time of initial investigation to access the NIPS material, during the investigation for access to the complainant, and at the draft response stage. Accordingly, there is scope for delay, and so 70% of complaints have a draft response issued within 12 weeks, thus leaving 30% not achieving the target. There is also a structural problem relating to time running out. There are time limits for a complaint to be dealt with in the NIPS Rules which, if allowed to lapse, thus render a complaint ineligible or incapable of being supported by evidence (eg NIPS CCTV footage which is lost as a matter of course after one month). This does indeed happen from time to time.

Communication by the investigator throughout an investigation in relation to both the complainant and the NIPS is generally efficient and effective. The nature of an investigation requires regular contact throughout the process with both the NIPS and the complainant. In any event if a complainant feels himself to be ‘in the dark’, he may telephone using the free-phone to the PO Office at the given times; these are 8.30 am to noon, and 4.00pm to 5.00 pm. It is also the case that there is, in each investigation, e-mail traffic between the complaints investigator and appropriate contact persons in the NIPS in the course of the investigation.

When a conclusion is reached and a complaint report is ready to be issued, it is always seen by the Prisoner Ombudsman and /or the Director of Operations in the PO Office, and signed by one or other before being sent out in final form.

Other potential methodologies are used by the PO Office where appropriate. There are cases where the PO Office believes that a complaint should have been resolved at an earlier stage. In these cases, attempts will be made to refer the complaint back via a *triage* system from the PO to the appropriate stage in the NIPS system. This can often lead to the resolution of the complaint at local level without having to go through the PO stage, with obvious advantages. There might be thought to be too many of these cases; in 2013/2014, 12% of complaints recorded at the PO Office were resolved in this way, while the responding proportion in 2014/2015 was 14%. The unnecessary extension of a complaint to a stage beyond where it should have been dealt with only compounds the frustrations felt by the complainant who is kept waiting longer than is advisable and right. The three parties concerned in the *triage* process are the NIPS HQ, local management of the NIPS and the PO Office. The aim is to resolve those complaints received by the PO which he adjudges to be more amenable to be dealt with at local level in the NIPS. **It should now be the aim of both NIPS and the PO to make what seems to be a reasonable and satisfactory triage system work properly.**

In every complaint concluded there can be one or more recommendations to the NIPS. It is important to note that a high proportion of these recommendations are accepted by the NIPS – in 2014/2015 the acceptance rate was around 80%. This should also be seen as a measure of the quality of work produced by the PO Office. It must be noted that the PO does not at this stage have any formal mechanism for following up to determine if a recommendation has been implemented. However, feedback can be obtained through complaints patterns emanating from other prisoners subsequently, and from any other patterns and trends that can be detected.

Another relevant measure of the effectiveness of the PO Office is obtained from the day by day informal information the PO receives when investigators visit the prisons and by telephone conversations with prisoners. This is where the PO learns of difficulties experienced by prisoners but which do not necessarily result in a formal complaint. The PO is not averse to reporting such issues to the NIPS for resolution and action often results from this informal activity.

### **The extent to which the PO complies with current legislation**

The PO has to comply with all relevant legislation and regulations applying to an 'Independent Statutory Office Holder' under the Prison Act (Northern Ireland) 1953, as extended in the Treatment of Offenders Act (Northern Ireland) 1968. In addition there is information and data legislation, as well as employment law to which the PO Office must comply just as any other employer needs to do; such matters are handled by the Civil Service authorities for the most part.

The PO is not yet subject to his own specific legislation; however, there is currently draft legislation being considered by the Northern Ireland Assembly for early enactment. This is largely uncontroversial, and it is hoped to be introduced by May 2016. The PO would find it very helpful to have legislation which recognises his role in the complaints handling system and in relation to deaths in custody. In fact, this will make it much more difficult for the PO to be ignored. It is also the case that the ability to require the NIPS and where relevant the DOJ, to respond to recommendations should be provided by statute; this would enhance the standing of the PO in obtaining consideration for improvements in the service delivered by the NIPS and the PO Office.

The PO is subject to the Rules of the Department of Justice as applied to the NIPS, and specifically in relation to complaints handling – Rules 75-79. There is no suggestion that there are any difficulties for the PO in adhering to any of these Rules or indeed to any legislation. However, under proposals to legislate for the PO Office for the first time, these Rules may well be assigned specifically to the PO within that legislation; this will help underline the independence and impartiality of the PO Office.

### **Compliance with ‘The Principles of Good Complaints Handling’**

The principles of good complaints handling which the PO has adopted derive from the Ombudsman Association (OA). These are:-

Clarity of purpose	Accessibility	Flexibility	Openness
Transparency	Proportionality	Efficiency	Quality Outcomes

However, others have also published criteria which are of relevance to any complaints handler. **The most important of these are published by the Cabinet Office for organisations which are within Government purview.** The listed criteria are:-

Easy to access & well publicised	Speedy	Confidential
Informative	Simple	Fair
Effective	Regularly monitored and audited	

I have commented that in my opinion the complaints handling system for prisoners should be seen as **one single scheme** involving the elements implemented by the NIPS and the PO Office, albeit one with an impartial and independent third stage operated by the PO Office.

My exposure to the workings of the PO Office has necessarily been limited, and confined to what was fundamentally a desk exercise. Within these limitations, it is evident that the adherence to the criteria that the PO publicises – namely those emanating from the Ombudsman Association – is of a satisfactory nature. Those provided by the Cabinet Office bring slightly different criteria into focus, which again are being well met by the PO in my opinion. One criterion which should be examined more closely however is that relating to the complaints handling scheme being **‘Regularly Monitored and Audited’**.

A high quality complaint handling system should meet all those criteria listed above. The PO system makes itself open and available to complainants in a number of ways which relate to the access of prisoners, former prisoners and visitors to prison. The service is publicised to prisoners and visitors via posters, a bi-annual newsletter, the published rules of the NIPS and word of mouth. From the point of view of the complainant the scheme is surely simple to use. A straightforward form with minimal content when completed can be left in an obviously placed box. At the end of the two NIPS stages, the complaint can be taken to the PO Office using a very basic form which asks only for the name, prison number, location and landing, and seeks the NIPS complaint reference number; and a complainant is also asked to state what he thinks would put things right for him. Complaints can then be escalated to the PO by the Free-phone or Free-post if the prisoner remains unhappy with the NIPS response.

Once the NIPS form is lodged in the box located on the landings, at stage 1, the complainant should be quickly contacted within 24 hours by the relevant NIPS manager to discuss the complaint. Those steps through which the complaint now passes are laid down in the NIPS rules. The initial task is to assess the eligibility of the complaint according to the rules. **There is evidence to suggest that a proportion of the complaints that should be excluded at this stage are actually accepted at stage 1.** Acceptance signals the investigation of the complaint, and this will have an outcome – again there are rules governing the timetable involved. There is evidence that some cases can extend beyond this timetable which can have consequential potential problems for an eventual PO Office investigation.

If the complainant remains dissatisfied with the response to his complaint, it can be taken to the second stage. Once again there is a timetable outlined in the rules. **The complaint should now be subject to a second investigation.**

In his Annual Report for 2014/2015, the PO reported that ‘during the year we found that a large number of complaints were either not answered at stage 2 at all, or that the stage 2 response simply re-iterated the response that was given at stage 1’. Neither approach appears to be within the bounds of the rules, and certainly does not instil confidence in prisoners that their complaints are being treated seriously. Nor indeed would I contend that this is fair, effective, or informative. So this is where the complaints system can breakdown, causing possible unnecessary action for the PO Office as well as the NIPS, and additional lost time and missed evidential opportunities for having a complaint concluded effectively. Stage 2 is therefore a crucial stage at which the question arises of whether the complaint needs to go to the PO. It might be the aim of the NIPS to ensure that only the most exceptional complaints need to go through to the third stage, which is operated by the PO Office. **Whatever, it is evident that many complaints that should have been settled at an earlier stage still manage to reach the PO Office.** This may need to be verified and quantified.

The PO believes - rightly in my view - that he must ‘deal with’ all those cases. Thus, every complaint requires action which can involve a variety of decisions. **Firstly**, there is the question of whether there is an eligible case to investigate; if there is not, then the complainant must be informed. **Secondly**, there is the matter of whether or not the complaint can be concluded better by being referred back to the NIPS processes – thus providing resolution at local level – which is what should have happened in the first place in such cases. This is where the *triage* approach should be brought into play. **Thirdly**, then there is the matter of whether or not a full blown investigation is warranted.

Thus, when a complaint is concluded, the complainant is informed of the outcome. In the case of a third stage conclusion by the PO Office, a draft conclusion (in letter or report form) is issued to both the NIPS and the complainant; at this stage, there is an opportunity for an accuracy check by both parties. Then the final conclusion is issued, often, as noted above with one or more recommendations for the NIPS. This is then the end of the individual matter as far as the PO is concerned.

There is the matter of what has become to be known as the **Virtuous Circle of Complaints Handling**. This is a kind of spiral and dynamic concept. **First**, there is the need to resolve the complaint. **Secondly**, it is right to examine what the complaint signifies about improving the service in general. **Thirdly**, it is right to take the necessary action, and to aggregate the complaint with other complaints to provide feed-back for more general improvements in the organisation. This feed-back can assist in reducing the incidence of complaints arising.

So in the case of prisoner complaints, it is important to high-light what the patterns and trends of types of complaints are, and what the necessary service improvements that can then be applied may be. The formalisation of this approach might be considered in relation to the prisoner complaints system. There is strong evidence that on an informal basis, these matters are considered at NIPS DG meetings, at Governors meetings and other meetings attended by the PO and by staff in the PO Office; there is no formal obligation for this to happen or for consideration to be given to implement any changes.

Thus, there is a need to consolidate the strategic view of the number and type of complaint cases received in the scheme, which is a view of importance in the context of understanding what the system has to deal with on an on-going basis. But that is not an end in itself. There is the need to use the processes of the complaints system to improve the service that is provided. This is a matter where in my view the PO Office has not been tasked or resourced to provide follow through in any formal manner. However the PO and his staff do provide feedback in Annual Reports and in the regular meetings with the Director General of the NIPS and her managerial colleagues.

Under the principles listed above in the Cabinet Office Guidance on Good Complaints Handling, the criterion of 'Regular Monitoring and Audit' is listed. This process ought to include PO auditing of what did take place in a given period to ascertain where improvements need to be made, and where developing trends need to be understood by the PO Office as well as the NIPS. Included in such an audit ought to be an assessment of complaints which appear to **have been handled well** at earlier stages in the system, and so do not reach the PO Office; this can show up where there is evidence of very good practice as well as instances of where a complaint or type of complaint for whatever reason has been driven underground. The PO himself does this in relation to the PO Office, by carrying out occasional 'dip samples' of complaint files; he uses this for training and to satisfy himself on standards. **Ultimately, in Good Complaints Handling, a complaint ought to be seen as an opportunity to learn about and apply better practice, and so provide a better service by any organisation.**

### **The POs internal administrative processes**

The PO Office has a generally light administrative role as such organisations go. The reasons for this are that this type of publicly funded organisation can take advantage of a number of centralised services to do with premises, staffing and remuneration, procurement, security, industrial relations and general resourcing. Of course, that does not mean that the administrative function is not important in the PO Office. For the most part the administration operates well, and it should be noted that it is consistent with the **ethos** of the PO Office that the administration is managed and operated in a developmental way.

However there are opportunities in relation to the matter of management information, about which the PO is well aware and he has embarked with the administration manager on a development process to achieve a more effective system. The scope of the system for recording and analysing information is at least in part a function of the degree, style, and nature of management which the Ombudsman wishes to apply.

It is my understanding that there is within the PO Office a database for individual case management; and a spreadsheet which provides an overview of current cases and statistical analysis.

The task of allocating complaint cases to investigators lies with the senior complaints investigator. Until recently there was a complaints officer in post to assist with the administration burden. That position is now vacant though there is temporary help at present.

The question of whether it is advisable to consider whether an electronic record of the work in progress within the PO Office is adequate needs to be considered; at present every complaint is recorded in both electronic files format, and in hard files. On the other hand some records cannot physically be stored electronically, and there would be little resilience if the PO were to rely on just one set of records, in the case of an IT system loss.

There are also links with the general information PRISM system operated by the NIPS, but only as is necessary for handling complaints information. In addition, the PO Office has access to the DOJ information systems, as is appropriate for handling complaints.

## **Making a Complaint about the Prisoner Ombudsman**

One of the drivers for this Review was stated to be that **‘The current process for people to wish to complain about how the Prisoner Ombudsman (PO) handles their complaint is not user friendly and merits consideration’**.

No complaints about the PO Office have ever been escalated via MLA sponsorship to the Northern Ireland Ombudsman. However, the Office has treated some correspondence as complaints because of the issues raised. Informal resolution has been attempted in all these cases, with varying degrees of success.

The current process for dealing with such a complaint is mapped out as follows:

The **first stage** is for the PO Director of Operations to investigate and comment on the complaint.

If the complainant remains dissatisfied he can take the matter further to:-

The **second stage** is for the complainant to take the matter to the NI Ombudsman – it is noted however, that this would require the facilitation of an MLA, who might be inhibited by the source of the complaint.

The NI Ombudsman would make his conclusion.

That then would be the end of the matter.

This to me does not seem to be an unduly non-user-friendly approach, but it is only a two stage process.

This seems to me to be a sensible approach to take in the current setting where the PO is not governed by statute. It has been suggested to me that it would be improper to permit the PO to investigate and respond to a complaint against him or his Office. This is of course nonsense – any proper complaint system should commence with the organisation investigating quickly and expeditiously a complaint made against itself. This gives an immediate opportunity to put anything right or to explain things better to the complainant; this is after all what a good complaints handling system should be all about. There is advantage to be gained by the organisation, and satisfaction for the complainant at least of knowing that his complaint has been carefully and thoroughly examined, and that there are other destinations to visit should the outcome be less than satisfactory.

There is an argument that the stature of the PO will be enhanced when the PO Office becomes established under a statutory footing. The PO will then be operating more directly under the delegation of the Assembly as a stand-alone operation. Accordingly, the PO as a champion for truth and a resolver of complaints taken against the NIPS should perhaps directly settle complaints against his Office. Thus, an alternative two tier approach might be implemented, where stage one would be to the Director of Operations, PO Office, and the second and final stage would be to the PO himself.

## **Suggestions and Recommendations for Development**

Given the short compass of the Review - two weeks spread over one month - it will be appreciated that this Review has of necessity had to be more in the nature of impressions than of deep research. Nevertheless, I have taken pains to ensure that I have checked facts with the PO and his staff.

Thus, my Suggestions and Recommendations for Development have to be tentative to a degree, but I believe that they may highlight some areas for concern and potential for change and further development. I have been struck by the willingness of the PO Office Staff to raise suggestions for improvement as part of their approach to their work. This has resulted in a continuously changing and developing a practical Complaints Handling Scheme for the PO Office, and in dialogue with the NIPS Staff. I would have to say further that I was much impressed by the way in which the PO Office staff have strived to develop their approach to contribute to **‘ensuring that Prisons are safe and purposeful places through the provision of independent, impartial and professional investigations of complaints’**---. All staff members were aware of this objective, and had a clear awareness of the wider dimensions when dealing with a complaint.

I have distinguished in the following as between Suggestions and Recommendations. Some of the areas where I feel action could be taken to improve the operations require action elsewhere than solely the PO Office. These topics I have listed under the heading of Suggestions. Those labelled Recommendations are directed solely or mainly at the PO Office.

## Suggestions:-

It is suggested that:-

- the concept of a single complaints handling system with contributions by the NIPS and the PO Office might be the right one to be considered by the PO and the NIPS, and consolidated in the guidelines to all staff and public literature. The concept might be reinforced wherever possible
- the concept that the complaints system of the PO and the NIPS is a ‘champion for truth’ is considered by the PO and the NIPS, and consolidated in guidelines to all staff and public literature
- the Rules relating to Requests and Complaints (Rules 74-79) from prisoners, former prisoners and visitors to prisons are rigorously applied, and that where a ‘complaint’ does not match the criteria in the Rules or is ineligible, it is dealt with by other means
- a more rigorous approach might be taken to stage 2 in the complaints handling process – while this is a matter entirely for the NIPS, the PO should use every opportunity to influence the NIPS in this regard. The same comment is made about the treatment within the Rules of a **request** from a prisoner. In this context the concept of the *triage* approach to dealing with complaints should be re-examined with the NIPS to determine how to make the concept workable
- all groups of potential complainants might be made aware of the existence of the complaints system in general and where they have particular complaints they find an open and accessible system. This particularly might be considered in the context of visitors to the prisons where it is known through voluntary groups, that they do have complaints but do not generally use the complaints handling system. The same could be extended to other groups which do not seek to complain
- continuing strenuous efforts might be made to find ways of better dealing with the complaints activity of the prisoners on Roe 4 landing at Maghaberry. It is not satisfactory for them, or the NIPS, or the PO Office to have the very substantial flow of multiple complaints continuing to be presented through the system. In so doing, the fact that many are upheld, needs to be kept carefully in mind. The system however was not designed to have to deal with a throughput of this high volume and nature
- consideration might be given as to whether and how best to apply the concept of the **Virtuous Circle of Complaints** whereby a constant feed-back is cognitively applied to the Complaints Handling System with a view to taking specific and collective action to reduce the incidence of amenable complaints; this would include a more formal approach to feed-back through the NIPS and a rigorous audit of how complaints are handled, including those that do not reach the PO
- consideration might be given as to what is **proportional and reasonable** in relation to particularly multiple complaints and duplicated complaints in the NIPS and the PO Office.

## **Recommendations**

It is recommended that:-

- the PO gives consideration to the collection of additional data about the complaints being received. In particular it may be important to know and report on the proportion of complaints which should never have reached the PO Office on grounds of definition and/or eligibility. It might also be important to know and report on the volume and nature of contact via free-phone and free-post. And it might be important to know and report on the volume and nature of feedback to the NIPS about those issues which the PO office learns but which do not become complaints.
- the PO takes particular action to attempt to influence the NIPS in relation to the high proportion of complaints which should have been resolved prior to arrival at the PO Office
- the PO continues to do all he can to ensure that the NIPS is encouraged to apply a standard approach to the application of the Rules, and in particular as pertaining to complaints; the PO should also take action to ensure that the PO Office does likewise
- the PO considers a regular workshop amongst the PO Office Staff to share common challenges in dealing with complaints and to keep the PO Complaints Manual and its application up to date and to discuss the results from 'dip samples' of files in the PO Office
- the PO continues to take steps to refine management information within the PO Office to provide a full history of cases as well as a current 'work in progress' record. As in the past, the design of the database merits involvement from all the PO Office Staff
- the PO considers the suggestions for amending the two tier complaints system should complainants who have been dealt with by the PO wish to complain about how his/her complaint was dealt with by the PO Office following the placing of the PO office under statutory footing.

## **Concluding Comment**

The Reviewer recognises that the outcome of this Review will require further discussion, thought and reflection for the Prisoner Ombudsman and his staff if suggestions and recommendations are to be taken forward. The Reviewer hopes that his Review will be of value to the Prisoner Ombudsman. Meantime, he stands ready to clarify and/or discuss any aspects of the Review.

Alasdair MacLaughlin

October 2015