



Northern Ireland
Assembly

**COMMITTEE
FOR THE OFFICE OF THE
FIRST MINISTER AND DEPUTY
FIRST MINISTER**

**OFFICIAL REPORT
(Hansard)**

**Assembly Ombudsman for Northern
Ireland and Northern Ireland
Commissioner for Complaints**

21 April 2010

NORTHERN IRELAND ASSEMBLY

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Assembly Ombudsman for Northern Ireland and Northern Ireland
Commissioner for Complaints

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Members present for all or part of the proceedings:

Mr Danny Kennedy (Chairperson)

Mr Tom Elliott

Mr Barry McElduff

Mr Francie Molloy

Mr George Robinson

Mr Jim Shannon

Mr Jimmy Spratt

Witnesses:

Mr Tom Frawley) Assembly Ombudsman for Northern Ireland and Northern
Ireland Commissioner for Complaints

Mrs Marie Anderson) Office of the Assembly Ombudsman for Northern Ireland and
Northern Ireland Commissioner for Complaints

The Chairperson (Mr Kennedy):

I am pleased to welcome Mr Tom Frawley CBE, who is accompanied by Marie Anderson. He is here to provide the Committee with an overview of his role, to talk about engagement with the Assembly, and the possible development of his office. A briefing paper from the ombudsman is in members' information packs.

Mr Tom Frawley (Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints):

Thank you for the opportunity to meet you. As reflected in the briefing paper that was provided in advance of the meeting, I wish to bring three key matters to the Committee's attention, and additionally, of course, deal with any questions that members may wish to raise.

First, I will speak for a moment about the role of the ombudsman. The Northern Ireland Ombudsman is an impartial and independent official who considers the complaints of individual citizens about how public authorities have interacted with them. A complaint could be about being refused a service, or the quality of a service. The ombudsman neither advocates for the individual nor defends the public body complained of. Since the inception of the office, he or she has impartially and independently judged whether a case has been handled fairly and in accordance with the rules that should inform the provision of a service.

However, there is an increasing complexity that affects the delivery of public services and, sometimes, intensely bureaucratic arrangements have evolved in some areas of provision that have become synonymous with modern public services. As a result, I have increasingly had to look at the reasonableness or fairness of a case against a wider perspective. That, in turn, has led to my recommendations addressing a broader perspective in seeking to resolve an individual case by recommending a systemic review of all related procedures. In fairness, I have found that Departments and public bodies generally respond positively to such recommendations and seem genuinely committed to continuous improvement.

In those changed circumstances, I draw the Committee's attention to the review of my office, which was completed by consultants Deloitte in 2004 on behalf of the Office of the First Minister and deputy First Minister. That review involved an in-depth external review of the office, and the legislation that currently informs its work. The concerns that were expressed and the recommendations that were made are valid today.

I have to be frank and say that I have reached a point of total frustration owing to the fact that, six years after the completion of the review, no action has been taken to move on any of its main recommendations. I recognise that OFMDFM has faced a range of pressing issues in the intervening period, and, in those circumstances, the reform of my office would, understandably,

not have been afforded significant priority against those competing matters. Nevertheless, from an operational and a citizen's perspective, I find it unsatisfactory that an office that is charged with looking at the concerns and grievances of citizens across all Government Departments and the public sector has, effectively, been left to secure redress and remedy for citizens in the completely changed circumstances of 2010 with powers that were legislated for in a very different era more than 40 years ago — in 1969, to be exact. I would welcome any initiative that the Committee could take to move that matter forward — for example, a Committee Bill, separate from the Department, which one could argue is appropriate, given that the Northern Ireland Ombudsman is an officer of the Assembly; not the creature of any Department.

That brings me to the second matter. The relationship of my office with the Assembly is a central issue. The Northern Ireland Ombudsman's status as an officer of the Assembly emphasises the independence of the office from the Executive. In fact, a key role of the ombudsman is to test the performance of Departments, their agencies and public bodies through the lens of the experiences of the individual citizen. That relationship opens up the possibility of regular and direct interaction between the Assembly and the ombudsman, which, to date, has not been developed.

Reports on citizens' complaints are laid annually in the Assembly. However, I believe that there is significant scope to enhance and develop opportunities for Members to scrutinise the operation of Departments and public bodies through my reports into complaints. Arrangements could be put in place whereby, drawing on facts that I have found across a range of cases, I could better inform Members of the performance of areas of public administration or specific Departments or bodies.

I envisage a situation in which the Comptroller and Auditor General informs the Assembly of a body's overall performance in respect of probity, finance and efficiency; and the ombudsman informs the Assembly of the experiences of the individual citizen in receipt of particular services. To that end, I intend to start producing regular digests of cases and the lessons that can be learned from them, and distribute them across the Assembly Committees, matching them to the area of public service that a particular Committee has the responsibility to scrutinise. I hope that Members will find that information helpful in providing advice to constituents, and in reviewing the performing of Departments and public sector bodies.

As with all public service organisations, the office is facing challenging times. I wish to refer to three aspects of that third and final challenge. First, I believe that there will be an impact on the office if the need for significant financial retrenchment across the public sector leads to what the public perceive, rightly or wrongly, as a reduction of service — in media speak: cuts. That will create complaints, some of which will inevitably arrive with me. I firmly believe that, as the final resort for citizens, the role of the Northern Ireland Ombudsman takes on an increased responsibility in such circumstances. Indeed, I would suggest that my office can also be a shield for public services and public servants in that my independent scrutiny can offer objective protection against unfair criticism.

The second aspect relates to the Health Service. The removal of the independent review stage of Health Service complaints in 2009 has led to a doubling in the number of health-related cases that are received by my office. Based on the experience of colleagues in Scotland, we anticipated that upsurge in numbers and, therefore, prepared for it. However, it is becoming clear that, in many cases, I am required to source independent clinical advice. To be fair to the complainant and to the medical or nursing staff involved, I have to obtain that advice from outside Northern Ireland. That involves additional cost and significant additional time for me to complete my investigations, and creates circumstances that I am not happy with. However, in the interests of equity, I believe that I must seek professional advice from sources that are wholly independent of the Northern Ireland health and social services system.

The third aspect that I would like to address is the devolution of justice. It is very difficult to predict the future impact that that extension of devolved responsibility will have on the workload of my office. However, I recognise that it brings a range of potentially complex and sensitive circumstances within my remit. Although the number of cases under direct rule was limited, that may change when review, remedy and redress are available from an office in Northern Ireland. We are currently in discussions with the Department of Finance and Personnel about the financial resources needed to respond to the new circumstances. Without additional funding, it is my view that our ability to maintain our current workload would be compromised.

I am happy to take questions from the Committee.

The Chairperson:

Thank you very much for that overview, Mr Frawley. One of your central points appears to be

the lack of action following the 2004 independent report. One of that report's recommendations was to give you the authority to initiate systemic investigations. Are you still keen for that to happen, and how do you see that working?

Mr Frawley:

There has been a developing tradition in some ombudsman offices for what are described as own-initiative investigations. However, there is certain unease in some quarters, which I want to share with the Committee, that giving an office such as mine that type of authority might encourage the politicisation of the office, in the sense that people from different political viewpoints, or from the media, would argue for the ombudsman to investigate different matters.

I take a different view. One of the most powerful examples of an own-initiative investigation, which some Committee members may be aware of, was carried out by my then counterpart in the Republic of Ireland, Kevin Murphy. He had the authority to undertake own-initiative investigations and did so into the inappropriate use of moneys allocated to people in residential homes for their personal comfort. That money had been allocated for small items such as newspapers, tobacco and so on. However, through a systemic examination, he discovered that it was being used for their support and maintenance, which it was never intended for. As a result, that was found to be a systemic practice across all health boards in the Republic of Ireland. Having reported that finding to the Oireachtas, the Government were required to pay back in excess of €1 billion to the families who were affected by those deductions. That is a good example of a public interest intervention by an ombudsman on behalf of people who do not necessarily have a lot of advocacy or support. Such issues can be brought into the public domain through those types of examinations.

I would be very sparing in my use of own-initiative examinations, as it is a measure that should not be the norm, but should be exceptional. Another requirement is that I would need to liaise very closely with the Comptroller and Auditor General to make sure that there was no duplication of effort and that, where appropriate, a synergy was developed. Such investigations are an appropriate recourse in very defined circumstances, and have the potential for real public service improvement and, indeed, real accountability. However, that authority would be used sparingly.

The Chairperson:

Since the 2004 review was undertaken, the situation has, as you mentioned, changed, owing to the devolution of justice. There are other ombudsman positions, such as the Police Ombudsman and Prisoner Ombudsman, to name but two. Do you see any competing conflicts between your role and those other roles? Heaven seems to be getting a bit crowded.

Mr Frawley:

I suppose for those of us who were there first, it is good to see others come on board. *[Laughter.]* My office still has some primacy in the devolution of justice arrangements under the current model, because of the way in which the legislation is structured. For example, if administrative complaints were made about the way in which the Police Ombudsman applied processes, those complaints could come to my office, whereas they previously went to the Northern Ireland Office. In certain circumstances, those complaints could also have gone to the Parliamentary Ombudsman at Westminster, but the protocol that was arranged here was for them to go to the Northern Ireland Office.

The office of the Prisoner Ombudsman is different because it sits within the Prison Service, which is part of the Department of the Justice. The Department of Justice also comes within the jurisdiction of my office, so recourse exists for anyone who is dissatisfied with the outcome of a decision of the Prisoner Ombudsman to appeal to the Department of Justice, and then to my office. In that sense, my office is still the final level of remedy for everyone involved in decision-making outside of government.

Mr Spratt:

I thank Tom for his presentation. Having sent quite a number of cases to Tom, I know that he investigate cases with professionalism and in depth, and very often find problems in Departments. I thank him for that, because that work reassures the public on issues that they and we have tried to resolve, and on which everyone has become frustrated. I admire the work of the Northern Ireland Ombudsman its outcomes.

I am frustrated that, six years after the review was completed, there has been no movement. That is absolutely disgraceful, and that situation must change.

Tom mentioned the impact of financial entrenchment and the possible future cuts. The work

of the office has obviously increased considerably since devolution was restored, and Tom is very good about informing MLAs that investigations will take a certain amount of time. We all must live with that, given the restraints under which the office operates. Tom has been quite modest, but he is obviously under a considerable amount of pressure. It would be good if he could share some detail of that with the Committee, and outline the current cutting-edge problems that his office faces, whether in the form of staff levels or lack of finance, etc.

The Chairman touched on the impact of the devolution of policing and justice on the office. There has been discussion in other places in relation to the Police Ombudsman, and the Policing Board undertook an examination of Criminal Justice Inspection Northern Ireland, the Police Ombudsman and other bodies. The police are under fairly significant pressures with investigations, and the Policing Board found that there was duplication in the work carried out by Criminal Justice Inspection Northern Ireland, the Police Ombudsman and the Policing Board. There must be some action on that, and it would be worthwhile if the Northern Ireland Ombudsman could examine that issue.

Undoubtedly, the office will also face an increased workload in the area of justice and the complaints that will arise in that area. Dealing with some of those complaints could be quite a protracted process and may require a great deal of additional resource, which must be borne in mind.

It would be worthwhile if Tom could share his views with the Committee on those issues, so that we can try to make some progress.

Mr Frawley:

I shall ask my deputy, Marie Anderson, to address the workload issues. If the Committee is content with that approach, I can then develop the discussion.

Mrs Marie Anderson (Office of the Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints):

We have established a working group in the Northern Ireland Ombudsman's office to look specifically at both the jurisdictional and caseload impact of the devolution of justice. I have some statistics to hand that I will mention later.

Before I deal with the devolution of justice specifically, I will address the point about cuts and pressures on Departments that may result in an increase in complaints. During the past year, our office has already seen a 15.4 % overall increase in complaints. Therefore, I believe that we are already experiencing the consequences of that retrenchment. Certainly, the level of complaints has increased significantly from the previous year, during which we saw a reduction in complaints. I appreciate that a good portion of that 15.4% relates to health complaints, which have doubled. Nevertheless, that is a significant increase in the number of cases that our office must deal with.

As for the devolution of justice, the position prior to 12 April is that cases that related to bodies such as the Northern Ireland Court Service, which has now been rebranded as the Northern Ireland Courts and Tribunals Service, and the functions of the Northern Ireland Office that are now devolved, went to the Parliamentary Commissioner for Administration, Ms Ann Abraham. Her casework on those non-devolved Northern Ireland cases, as they were at that time, was quite low. We believe that it amounted to around 34 cases per annum.

Prior to 12 April 2010, many people were confused about which ombudsman to go to. Our statistics show that we were turning away around 220 cases each year and pointing them towards the Parliamentary Ombudsman. In effect, people did not go there. Perhaps, one reason for that was that it was not a local ombudsman. Certainly, we are looking at around 250 cases each year that might come our way. Not all of them will lead to full-blown investigations. However, that increases our caseload substantially.

We have had some discussions with the Police Ombudsman. We understand that, prior to 12 April, there were around 10 complaints to the Secretary of State about maladministration at the Northern Ireland Office, of which around five ended up as substantive investigations. The difference between them and policing-type cases — overseeing the Police Ombudsman — is, perhaps, that those five cases were about quite sensitive issues that would require in-depth and fairly forensic investigation skills.

Therefore, apart from actual volume, the skills base in our office will have to change. For instance, some cases in the Police Ombudsman's current workload involve issues such as past murders and the work of the Historical Enquiries Team. If a case comes to our office and there is a query about process, it may mean that the ombudsman, some of the staff who work on that type

of case and I will require a level of security vetting.

You can see already that it is not only a matter of casework changes but of skills-base changes. This will also require a substantial cultural change for the office.

Mr Elliott:

Thank you very much for that. Like Jimmy Spratt, I want to thank you for your ongoing work.

I try to explain to people what your office does before they actually make a complaint. Often, we find, as I am sure do you, that members of the public want to use the ombudsman in an attempt to overturn a decision. That is an area on which I want to question you. I do not see that power as one of the recommendations in the review. It is frustrating if someone takes a complaint that relates to bad administration in the Planning Service, for example, and you make a ruling in that direction, but have no remit to overturn the decision. That is extremely frustrating for the member of the public who has taken the trouble to make the complaint. Do you see that as a helpful option, whereby you would have it in your power to overturn a decision?

Mr Frawley, you referred to bureaucratic processes in government. Obviously, you believe that bureaucracy is getting worse. I thought that it may have started to improve slightly with devolution. Evidently, it has not. I would like further comment from you on that.

The review recommended that MLA sponsorship should be an option, rather than a requirement. What are your thoughts on that?

Mr Frawley:

I must word my response carefully; I am clearly in the company of people who judge words carefully.

Our view was this: as you may know, in Westminster, all cases to the Parliamentary Ombudsman have to be sponsored. That is why our legislation is written in that way, and how we have arrived at this situation. The Scottish Parliament has abolished sponsorship by Members, and the Welsh Assembly has also abolished it. The argument is that sponsorship, in some ways, creates a barrier for people. People ask, understandably in some instances, why they should have to talk to him or her about their private problem. In other instances, people demand that their

MLA or MP be involved. That is why we used the word “option”. We say that it should not be a requirement, but we are very happy to say to complainants that they might want the support of the MLA, or the complainant may come to us with the MLA if they go first to him or her. It could work either way. We will always ask complainants whether they want an MLA to be involved because we are happy to share the detail with them.

However, when Westminster attempted to abolish sponsorship, the view of many MPs was that having an insight into the workload of the ombudsman was helpful for MPs in understanding the experience of their constituents or what was happening with public services more generally through the postbag MPs received through sponsoring cases. MPs saw real value in sponsorship. We want to ensure engagement with Members. The option is about reducing the sense of a barrier, but leaving the option of involving a local representative to the complainant.

The issue of complex public services is nothing to do with the Assembly. If you look at an area of which I have some knowledge, the Health Service, you meet language such as “The commissioners are this”, “The local primary care trust is that”, and “The independent contractor is this” — and the public becomes completely bemused as to who provides what.

When the public complains, it becomes necessary to simplify matters. We need to be much more aware of the challenge that complaining presents to ordinary people who do not complain that often. When they do, the process needs to be made more accessible to them. That is one of the other things that my office needs to do more of: sponsor that simplification of the way in which the public is engaged. People encounter various layers and levels of responsibility and bureaucracy. People may eventually feel, and this may sometimes reflect your own views, that they do not have the energy to go on with a complaint — they may feel that they have given it their all. The trust may tell them that it is nothing to do with them, and that it is to do with the health board; the health board does not exist any more; and now we have a regional commissioning authority or a regional public health authority that says that the Department of Health is responsible. There are so many actors that people have to negotiate with. There should be one point of contact to engage the other parties as appropriate, rather than saying: “This is nothing to do with us, and you will have to go somewhere else with it.” I want to challenge that, and that is where the office of the Northern Ireland Ombudsman can play a part.

Marie Anderson will address the issue of the planning cases and the power of remedy.

Mrs Marie Anderson:

The ombudsman's jurisdiction is limited in respect of planning, because anyone who requests planning permission and is refused it has recourse to the Planning Appeals Commission to seek a remedy. Therefore, we often find that the types of planning cases that we receive are from third-party objectors. However, in the current planning legislation, there is no third-party right of appeal. In a sense, the ombudsman's office is the body of last resort for an objector who is unhappy with a decision to grant planning permission and who wants to be heard. I start with the limited jurisdiction that is available because of the legislative framework and the fact that there are no third-party rights of appeal to the Planning Appeals Commission.

I have been in correspondence with Tom Elliott to try to explain the next stage, which is that the ombudsman cannot question the merits of a decision that is taken except in cases of maladministration. That means that he can look at a case only after first finding maladministration. He can only look at a decision in which there has been first been some fault in the decision-making process. Such cases are unusual and exceptional. Nevertheless, the fresh set of eyes brought by my legal background and experience of judicial review means that we have begun to look more forensically at planning cases and at the decision-making process to see whether a fully evidence-based decision was based on wrong information, and whether proper weight was given to all due considerations, including third-party objections. Therefore, MLAs will notice a change this year in the annual report; they will see more findings of maladministration in respect of planning cases because of that more forensic evaluation and consideration.

That does not create a panacea for the third-party objector. However, we have made real efforts to revisit our view of planning cases because we have taken on board — as relayed by Committee members and other MLAs — the frustration that a citizen feels in being told that the ombudsman cannot look at a decision unless maladministration is found first. Although this year's statistics include a composite figure, we found partial or full maladministration in 41 out of 64 full reports, so the scrutiny is there. I echo what Tom Frawley said: people can be exhausted by the time they get to the end of stage 3 of a planning complaints process, and sometimes they give up. However, we are increasingly trying to use early resolution and effective settlements where we can and, when we find maladministration or partial maladministration, we will not baulk at making that finding and at considering an appropriate remedy.

Mr Elliott:

Reaching an early settlement can be quite difficult, if not almost impossible, because it involves going through all the departmental processes before getting to the stage of involving the ombudsman. Once it gets to that stage, a member of the public is so frustrated with the whole system that there will be no early settlement.

I am genuinely pleased to hear of the progress that has been made, Mrs Anderson, but my second issue is this: how can the ombudsman ever look at the actual decision or make a difference to that decision? After all, that decision has already been made.

Mrs Marie Anderson:

I totally agree, and I think that that pertains mainly to planning cases. If a decision is made and a property is built, I do not see the ombudsman coming along and saying: "Knock down that block of flats."

On the learning point that Tom Elliott raised about public services, if we find that a decision in a planning case has been based on maladministration and that the only remedy in that case is a consolatory payment, we will, nevertheless, feed back to the Planning Service our difficulties with the decision. In some instances, we have asked for an action plan for what will be done in similar future cases. If those decisions were being approached wrongly, we say that we expect to see some improvement. In that sense, learning is fed back into the process.

Mr Frawley:

Without turning the issue right back on the Committee, Mr Chairman, the other issue is that you are the legislature; you are the people who change these rules. If you were to give me that power, I should enjoy it. However, it is your judgement as to whether that power would be a positive or a negative one.

The Chairperson:

Very neatly done, Tom.

Mr McElduff:

Do you believe that there is any difference in the level of awareness of your office east and west

of the Bann? Can you provide more distinction between the roles of the Commissioner for Complaints and that of the Assembly Ombudsman?

Mr Frawley:

To take Mr McElduff's latter point first: they were originally two offices. One was created an ombudsman in relation to Departments and their agencies. A separate office was then created — indeed, it was the original office of Commissioner for Complaints — to look at public bodies and other Government-created organisations. Therefore, in a sense, they were occupied by two different people. At that time in the early 1970s, it was decided that the workload was not sufficient to justify full-time posts for either person, so the posts were merged into one office. Therefore, in that sense, I occupy two offices. Part of the review's recommendations is to merge those roles into one office as the Northern Ireland Ombudsman. That is the appropriate thing to do.

The differences between the roles are that, first, if I make a decision as the ombudsman, the complaint must be sponsored and must be about a Government Department. Secondly, if I find in favour of the complainant, and the body — that is; the Government Department or agency — refuses to accept my recommendation, I have the right to forward a special report to the Assembly to say that my ruling has not been implemented. The difference is that complaints to the Commissioner for Complaints do not need a sponsor, and, interestingly, we are the only jurisdiction in these islands where, if a public body refuses to implement my recommendation, we have the right to take it to the County Court.

In the most recent case in which that happened, a consolatory payment of £80,000 had been identified for the affected group, but the judge increased the sum to £200,000. Therefore, we find that many public bodies have no desire to go to the County Court to challenge my judgement against them.

There are a number of other differences, but I will not go into those now because the Committee does not have the time. However, they are highlighted in the review and are matters that I want to see aired. The creation of a single office will make the system much more accessible and understandable to the public at large, who are confused about the difference.

The other point was about east and west. In our annual report, we produce a graph that

outlines the cases that come through from each district council area. There is probably a reasonable balance between east and west. In a way, it is not fair to district councils because the way that the graph is illustrated gives the impression that complaints are about the district councils even though they are not. The complaints originate from inside different council districts and are relatively proportionate to the population sizes of each council. We probably tend to receive more complaints from the east owing to the location of Belfast, which has a higher population. However, proportionately, we receive significant complaints across the spectrum from the west of Northern Ireland.

Mr Molloy:

The west has always suffered in silence, whereas the east has always complained and received more. *[Laughter.]* That is true about hospitals and about all the issues that have arisen over the years.

I want to know how successful your office has been and about the satisfaction rates from Government Departments to your judgements. I pay tribute to the work that has been done, because many people see your office as the last avenue to redress a complaint. However, awareness of your role is not as high as people might expect. The office is maybe not that visible to the public. Often, people only find out about it when they speak to Assembly Members or advice centres. The creation of a single office would probably help to raise awareness and improve that situation.

If I picked it up correctly, you said that the number of complaints about health had doubled. That is an alarming figure, given that our local Assembly deals with those health issues. It is important to try to find a remedy. In relation to the legislation and your work with the Assembly and the Administration here, should we take it that the review does not cover all the issues for which you want greater empowerment?

Can you point out to the Committee where it may change legislation to benefit you? Perhaps we will not be able to address all of that today, but where can we help on an ongoing basis?

Mr Frawley:

I am conscious that the Committee is at a disadvantage because it has not had sight of the review. I do not wish to presume on your kindness, but I would love to return to talk about the review.

That is a judgement for you to make. It is a wide-ranging review, which makes a comprehensive series of recommendations that would be helpful. Since it was carried out, some other issues have emerged that could be added to it, but those could be picked up in a consultative process without having to undertake a major new exercise.

I am proud of our office and its history, and I feel that I have a stewardship role. I get a little frustrated that our colleagues in Scotland and Wales, who started way behind us, have moved ahead of us. We should address that with some urgency, because we have a good track record. The legislation will emerge from the recommendations, and I would welcome the opportunity to discuss those and consult on them. That is why I suggest the concept of the Committee being consulted on them, while recognising how busy and committed OFMDFM is.

You mentioned the fact that the number of health complaints has increased significantly. As Marie Anderson said, that is partly due to the abolition of the independent review stage of complaints in the Health Service, with which you will all be familiar. Those complaints now come directly to our office from the trusts, and that represents real progress because, previously, we were at the end of an extended experience for complainants, and the witnesses' awareness and consciousness of the detail of their evidence "decayed". The current process represents a much better circumstance; it means that we deal with complaints at a much earlier stage.

That, in turn, relates to a point about the satisfaction of complainants. The fact that we are in the process earlier may allow for earlier resolution of some of the complaints. We are an "informed" office, so we have specialists on health who are much better placed to get reasonable and fair outcomes for all parties. I emphasise that, without doubt, health is the most complex area in our jurisdiction. Complainants include people who feel hurt, upset and distressed at what happened to a loved one. Complaints are about things that arose during emotional and anxious times for families and which were not dealt with well. Much of it is to do with interpersonal communication, a lot of it is attitudinal and significant parts of it are clinical. Complaints on health are very complex, and we will never have a system with which patients are always happy. Dealing with that is challenging for us, but I hope that we do reasonably well.

I take your point on raising awareness. I get frustrated by that, and Members have alluded to that. The use of the brand name "ombudsman" should be much more limited, and it should be allowed to be used only in the same way that it is allowed under New Zealand legislation. The

Assembly should be the only authority that is allowed to give someone the title of “ombudsman”. No one else should be allowed to take on the title. If some of the offices that are described as ombudsman were made subject to the test of the British and Irish Ombudsman Association, they would not meet it. That is a debate for a different place, but it is an important and valuable brand that should be protected.

We have always treated all our cases as confidential. I do not have a public relations resource. I do not publish cases as they arise or publicly acknowledge the receipt of cases. I consider complaints private to the families and to the bodies that are complained of, because nothing is demonstrably wrong or inappropriate until it has been established as such. Therefore, up to now, we have come into the public arena only once a year with anonymised complaints. We anonymise the complainant and the public servant or civil servant who is involved in the complaint, and rightly so.

In those terms, we have not had the visibility that others have had. In some ways, that is frustrating, but, in others, it is a good thing. Judgments must be made about how one raises awareness and manages publicity, because, as the place of last resort, I do not want public servants to say: “Frawley was out canvassing for complaints again today”, or “Send him your complaints; he will sort them out.” That would be equally unfair to public bodies.

Sometimes, on the other side of those arguments, we have to be aware of the morale of public and civil servants who do their very best, but often find themselves being presented unfairly. That is why one of my vital responsibilities is to ensure that the office is independent and makes fair judgements that favour neither one side nor the other.

Mr Shannon:

I am sorry that I was not here for your presentation. The west of the Province has put its oar in, so, speaking on behalf of the east of the Province, I will have to do the same. Perhaps there have been more complaints there because there are more issues to be addressed.

Your briefing paper states that complaints to the Assembly Ombudsman must be referred by Members of the Assembly. Can MPs still refer complaints, or will that not happen any more?

Mr Frawley:

MPs cannot refer complaints to me. There may be a certain irony in that, but far be it from me to mention any people around the table.

The Chairperson:

Mr Frawley, be mindful that a number of prospective MPs are present.

Mr Frawley:

I wish you all success, but, if successful you would lose the privilege of accessing my office. Complaints must come from an MLA.

Mr Shannon:

I just wanted to clarify that point. Your briefing paper states that the ombudsman:

“cannot force a government department or related public body to put the problem right”.

I accept that. In the past, I have referred a number of complaints to Mr Frawley. Some were sorted out and some were not, which, by the way, was not his fault. When something is wrong, and you identify that the system has not worked correctly for someone, whichever government body it may be, do you feed into the process by saying that things have not been done right and that the body should now correct its procedure?

Mr Frawley:

Absolutely, and some of the frustration arises because, as some members will be aware, our reports can extend to 60, 80 or 90 pages, so our findings and conclusions can cover procedural changes. A challenge for the future — something that we want to do, and I know that it addresses a theme on which the Committee has picked up a number of times — is to achieve joined-up government and public services.

For example, in health, when there are procedural problems in a hospital or a nursing home, we are looking at working alongside the Regulation and Quality Improvement Authority (RQIA). I do not have the resources to go back in three or six months to find out whether a problem that I identified has been addressed by changing procedures. Therefore, we are looking at agreeing a memorandum of understanding with the RQIA whereby we will notify it about recommendations, which we have made and ask it to test during its next visit or inspection. We envisage a similar relationship with Criminal Justice Inspection Northern Ireland, so any faults that are found will be

communicated to it in order that they can be tested. We have made detailed recommendations about improvements and changes, and we are now looking at introducing mechanisms to ensure that other bodies with authority and purpose go out and make sure that those recommendations have been implemented.

Mrs Marie Anderson:

I also wish to raise a welcome point about public bodies. Recently, as a result of two significant reports from the Assembly Ombudsman concerning major issues of maladministration, the chief executive of a public body invited us to tell them where they are getting it wrong. That body wants us to tell its senior team what we saw in the complaints. That is a very positive development, because they see that we have that sort of information and intelligence. One does not have to pay a consultant if we can see what is wrong. It would then be a matter for the public body to put things right. Nevertheless, I suppose that that shows the willingness of the public sector to improve, and we would welcome more of that.

Mr Shannon:

Mr Frawley, your written submission refers to unavoidable delays, and recommendations such as the repayment of money due. Have there been occasions when such delays have led to compensatory or consolatory payments?

Mr Frawley:

I suppose that we used the wrong phrase. An unavoidable delay is one that cannot be avoided, whereas an avoidable delay, which is what we meant, is one that could have been avoided had payments and settlements happened earlier. In some cases, we found that the delay in making payments was a type of maladministration, because of the length of time that it took to settle the case. The lack of a systemic, organised and structured process, through which to inform the calculation, results in the claimant losing out, not the public body. An avoidable delay leads to two things: first, that the claimant should be repaid the lost sums, and, secondly, that we require that a consolatory payment also be made.

Mr Shannon:

Over the years, I have noticed that many people are not fully aware of how the ombudsman process works. It would, therefore, be helpful if that were explained. I always say to my constituents that they must do this, that and the other, before contacting the ombudsman. It is

important that the public be made aware of the ombudsman's role.

Mr Frawley:

I will outline how I think the process should, ultimately, be designed: as Assembly Ombudsman, I would report to the Committee of the Office of the First Minister and deputy First Minister, and send it a digest of cases every quarter. That Committee would then refer those cases to the relevant Committee, be it responsible for health, agriculture, health or economic development, all of which we get complaints about. That, in turn, would ensure that the cases moving through the system are publicised through the media and would highlight the fact that elected representatives are aware of them. That would allow the Committees to invite the leadership of any of the organisations complained about to explain what they have been doing to address the complaints.

That will provide clear evidence to the public that real accountability is being exercised across the lines of responsibility from the legislature to the Executive. In turn, through the media, that would keep the ombudsman's office in the public eye. People would see the ombudsman's office pursuing such matters and would, consequently, bring their problems to the ombudsman. It is not about having big advertising campaigns but about raising awareness through the open process that we design, which has the Assembly at the centre.

Mr G Robinson:

I thank Tom and Marie for their excellent presentation. I do not wish to sound negative, but I have referred a few cases to the ombudsman's office recently, and it has taken what seems like an eternity to get an answer. Mr Frawley, you mentioned lack of resources and the complexity of some cases. Is that the reason why there have been delays, or is there an underlying reason for that?

Mr Frawley:

There are several reasons. I am not selective, but our jurisdiction limits which cases we can and cannot handle. I know that the public often get frustrated about that. Mr Elliott raised the issue of planning. The reality is that we must find incidents of maladministration and be able to pursue them. We cannot just say that we do not like a decision, so we are going to get it overturned. That is not the process. A detailed screening system needs to be applied before we can accept a case. Once we have accepted a case, we must finish it. We have developed a rigid chronology that means that we address cases on a first come, first served basis.

Quite often, I can exercise discretion in deciding which cases I accept, but I am reluctant to do that unless someone has a health problem or there is a major time issue that affects the complaint. Most cases are very complex and take a long time to complete. We are still much more efficient than the court system. We represent an inquisitorial system, whereas the court system is adversarial. I am anxious to get early resolutions in order to reduce the number of complex cases that we have. The office must become more proactive and dynamic in managing cases.

At the end of that process, the public still tell us that they want their complaints examined thoroughly and comprehensively. Time is important, but it is not the issue. People want to be satisfied that every aspect of their complaints have been looked at. They are not willing to trade quality for timeliness, so we are trying constantly to balance those two issues. I do not deny that we must get better at that. Part of that concerns resources, and part is how we do our business. We are always determined to provide a complete answer on judgements that we make.

The Chairperson:

Thank you very much. Not to put too fine a point on it, but you hinted strongly that you would like to see some improvements, and perhaps even fresh legislation. Perhaps you could submit a paper to the Committee because part of our responsibility is to initiate legislation. We are not making promises, but we are in interesting territory. It may well be that there is a role for this Committee. There certainly seems to be a role for the Department to revise the earlier review process. I hope that that is useful.

Mr Frawley:

That is very helpful, Chairman. Thank you very much for the time that you have given us. If the Committee requires any further information, please do not hesitate to contact us.

The Chairperson:

Thank you very much. Good afternoon.