

Terms of Reference for the Investigation of Complaints

Standards for the Prisoner Ombudsman's investigation of complaints are set out in Prison Rules 79I – 79N.

Introduction

1.	The Prisoner Ombudsman is appointed by the Minister of Justice, is independent of the Northern Ireland Prison Service (the Prison Service) and makes an Annual Report to the Minister of Justice which is made available on the Prisoner Ombudsman's website.
2.	The Ombudsman will consider eligible complaints submitted by individuals in custody, individuals formerly in custody, and visitors to prisons in Northern Ireland who have exhausted the Prison Service Internal Complaints Process as set out in Prison Rules.
3.	Complaints can be submitted orally or in writing.
4.	Complaints should normally be submitted to the Ombudsman no later than 30 days after the Prison Service Internal Complaints Process has been exhausted.
5.	The Ombudsman will normally act only on the basis of eligible complaints from those individuals described in paragraph 2 (above) and not on those from other individuals or organisations. The Ombudsman has discretion to: <ul style="list-style-type: none"> a) Accept a complaint which is out of time if the Ombudsman is satisfied that it was not reasonably practicable for the complainant to comply with timescales; b) Allow a complainant to appoint someone to act on their behalf in exceptional circumstances where the complainant is unable to act or has difficulty acting for themselves.

6.	<p>The Ombudsman will consider complaints relating to the:</p> <ul style="list-style-type: none"> • Treatment of an eligible complainant by any person employed by the Prison Service, including how their welfare has or has not been provided for while in prison • Facilities available for eligible complainants • The cleanliness and adequacy of prison premises
7.	<p>In relation to issues detailed in paragraph 6 above, the Ombudsman will be able to consider:</p> <ul style="list-style-type: none"> • the merits of matters complained of and procedures involved • all decisions taken by Prison Service staff relating to individuals in custody • complaints from visitors concerning a matter which is the responsibility of the Prison Service.
8.	<p>If the Ombudsman receives a complaint that does not relate to issues detailed in paragraph 6 above, the Ombudsman will write to the complainant within 14 days of receiving the complaint and explain that the complaint is not within the scope of the Ombudsman's remit and therefore not appropriate for consideration by the Ombudsman.</p>
9.	<p>Terms of Reference do not include investigation of:</p> <ul style="list-style-type: none"> • policy decisions taken by a Minister¹ and the official advice to Ministers upon which such decisions are based; • the merits of decisions taken by Ministers, except in cases which have been approved by Ministers for consideration by the Prisoner Ombudsman; • healthcare related complaints; • the personal exercise by Ministers of their function in the certification of tariff and the release of mandatory life sentenced individuals; • actions and decisions outside the responsibility of the Prison Service such as issues about conviction and sentence; cases currently the subject of civil litigation or criminal proceedings, and the decisions and recommendations of outside bodies such as the judiciary, the police, the Public Prosecution Service, the Immigration Service, the Probation Service, the Sentence Review Commissioners, Parole Commissioners, Loss of Remission Commissioner, and their secretariats; • actions and decisions taken by contracted-out service providers;

¹ A personal Ministerial decision is one where the Minister makes a decision either in writing or orally following the receipt of official advice or signs off a letter drafted for their signature.

	<ul style="list-style-type: none"> actions and decisions taken by the Criminal Cases Review Commission; and the actions and decisions of people working in prisons who are not employees of the Prison Service.
Submitting an eligible complaint	
10.	For a complaint to be eligible for consideration by the Ombudsman complainants must have exhausted the Prison Service Internal Complaints Process as set out in Prison Rules. ²
11.	<p>In summary, the Ombudsman will consider complaints for possible investigation if:</p> <ol style="list-style-type: none"> an <u>individual in custody or formerly held in custody</u> has received a response to their complaint from the Prison Service, or 14 days have passed since submission of their complaint and no response has been received if a <u>visitor</u> has received a response from the Prison Service, or 22 days have passed since the visitor submitted a complaint and no response has been received from the Prison Service
12.	Complainants have confidential access to the Ombudsman and may withdraw a complaint at any time by notifying the Ombudsman orally or in writing.
13.	Complainants must submit their complaint within 30 days of exhausting the complaints procedure under Prison Rules.
14.	Complaints submitted outside of the 30-day deadline will not normally be considered eligible. However, the Ombudsman has discretion to accept such a complaint if satisfied that it was not reasonably practicable for the complaint to be submitted within 30-days. (See paragraph 5 above)
15.	On receipt of a complaint the Ombudsman will examine it to ensure it meets the eligibility criteria as set out in paragraphs 10-11 & 13 above. If not eligible in these terms the Ombudsman will consider whether exceptional circumstances apply as set out in paragraph 14 above.
16.	Where there is some doubt or dispute about the eligibility of a complaint the Ombudsman may request information from the Prison Service or inform the Prison Service of the nature of the complaint and where

² Prisoners: *Prison Rules 76-79B*; Former Prisoners: *Prison Rules 79F & 79G*; Visitors: *Prison Rules 79HB-79HE*

	necessary the Prison Service will then provide the Ombudsman with such documents or other information the Ombudsman considers relevant to considering eligibility.
17.	If a complaint is not considered eligible for investigation in terms set out in paragraphs 10-11 & 13-14 above, the Ombudsman will write to the complainant within 14 days of receiving the complaint and inform them that their complaint is not eligible for investigation by the Ombudsman.
18.	If a complaint is considered eligible for investigation it will proceed to Preliminary Investigation and the Ombudsman will write to the complainant within 14 days to inform them their complaint has progressed.
Investigation	
19.	A Preliminary Investigation will be carried out on all eligible complaints.
20.	<p>During Preliminary Investigation the Ombudsman may decide not to accept a complaint or continue any investigation where it is considered that the complaint is:</p> <ul style="list-style-type: none"> a. vexatious b. repetitious c. frivolous d. raises no substantial issue e. either on its own or with other complaints appears to have an intention to hamper the good operation of the complaints procedure. <p>See</p> <p><u>Guidance for handling complaints under Prison Rule 79N</u></p> <p><u>Guidance for handling unacceptable behaviour from complainants or their representative</u></p>
21.	If a complaint is not considered for further investigation in one or more of the terms set out in paragraph 20 above, the complainant will be informed in writing of the decision and the reason for the decision.
22.	If the Preliminary Investigation does not result in a complaint being treated under the terms set out in paragraph 20 above, then it will proceed to investigation.
23.	Good practice for complaints handling requires that resolution should be achieved as early as possible. Should the Ombudsman, either before investigation begins or during the course of an investigation, identify an

	<p>opportunity to resolve the complaint early based on a remedy being agreed, that is, without completing an investigation, then the Ombudsman will exercise discretion to seek early resolution. Early resolution will be agreed with the complainant, and recorded as 'complaint withdrawn – early resolution.'</p> <p><i>This should be read in conjunction with Guidance: Early resolution based on remedy</i></p>
24.	<p>During an investigation, a particular issue of concern requiring urgent attention by the Prison Service may be raised. In such circumstances the Ombudsman may submit an interim report to the Director General and appropriate Governors in which case they shall take any steps necessary to address the matters raised.</p>
25.	<p>During an investigation, it may come to the Ombudsman's attention that a criminal offence may have been committed. The Ombudsman will pause the investigation and shall draw this to the attention of the Police Service for Northern Ireland. When matters are resolved, that is when it is established that no offence has been committed, when criminal proceedings have been completed, <i>or when the Police Service has confirmed that proceeding with the investigation would not prejudice the investigation</i>, the Ombudsman may continue the investigation having consulted with the complainant.</p>
26.	<p>During an investigation, it may come to the Ombudsman's attention that a disciplinary offence may have been committed by a person employed by the Prison Service. The Ombudsman will pause the investigation and inform the Director General of the Prison Service as soon as is reasonably practicable. When matters are resolved, that is when it is established that no offence has been committed, when disciplinary proceedings have completed, <i>or when the Prison Service has confirmed that proceeding with the investigation would not prejudice the disciplinary investigation</i> the Ombudsman may continue the investigation having consulted with the complainant.</p>
Access to evidence & information	
27.	<p>Arrangements to ensure the Ombudsman has access to materials required to carry out investigations are set out in Prison Rules. The Ombudsman and Prison Service have also agreed a <i>Data Sharing Protocol</i>. It is confirmed that:</p> <ul style="list-style-type: none"> • The Ombudsman and staff are entitled to visit any Prison, Young Offenders Centre, or other premises used by the Prison Service for

	<p>the purposes of pursuing investigations and all other relevant inquiries in connection with investigations within the Ombudsman's Terms of Reference</p> <ul style="list-style-type: none"> • During the course of an investigation the Ombudsman will be entitled to interview the complainant, Prison Service employees, and other individuals in connection with investigations within the Ombudsman's Terms of Reference • The Ombudsman has unfettered access to Prison Service documents required for investigation purposes
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Disclosure of sensitive information

28.	The Data Sharing Protocol also agrees how sensitive information will be handled, ensuring that official information should be made available unless it is clearly not in the public interest to do so.
29.	The Ombudsman is subject to the Data Protection Act 2018, the UK General Data Protection Regulations (UK GDPR) and the Freedom of Information Act 2000. Any requests under these will need to be considered on receipt of a request. There may be restrictions or exemptions from the rights of access under those Acts which apply. Complainants should note the Privacy Notice for Complaints to the Ombudsman
30.	Information will be shared with other relevant statutory bodies as set out in formal information sharing agreements.

Reports & Recommendations

31.	The Ombudsman will complete investigations and submit reports in as timely a manner as reasonably practicable.
32.	The Ombudsman will make recommendations either to the Minister of Justice or the Director General of the Prison Service or to the relevant governor, as appropriate to their roles, duties, and powers.
33.	Before issuing a final report on an investigation, the Ombudsman will send a draft to the Director General of the Prison Service, to allow the Prison Service to draw attention to points of factual accuracy, to confidential or sensitive material which it considers ought not to be disclosed, and to allow any identifiable persons subject to criticism an opportunity to make representations.
34.	The Ombudsman will provide a Final Investigation Report to the Department of Justice via the Prison Service. The Prison Service should

	provide responses to the Ombudsman's Office within 21 days from the date of receipt of the Investigation Report.
35.	The Ombudsman will provide a Final Investigation Report to the complainant and will inform the complainant of Prison Service responses to any recommendations.
36.	Complainants have 21 days to ask for a review of the investigation or to provide comments on the accuracy of facts included in the Final Investigation Report. Complainants should clearly explain reasons for their responses. Should there be no response from complainants within 21 days, the report will be considered 'finalized.'
37.	Should a complainant request a review of findings in the Final Investigation Report the Ombudsman will give due consideration to the evidence presented and decide whether a review is required. Should the Ombudsman consider a review is required an investigator not part of the original investigation may be assigned to the complaint.
38.	<p>The Ombudsman will submit an Annual Report to the Minister of Justice following the end of each financial year. The report will include:</p> <ul style="list-style-type: none"> • A summary of the number of complaints received and answered, the principal subjects and the office's success in meeting time targets; • Examples of replies given in anonymous form, examples of recommendations made and of responses to those recommendations; • Any issues of general significance arising from individual complaints on which the Ombudsman has approached the Prison Service; • A summary of the costs of the office; and • Any other matter agreed with the Sponsor Body.