

Terms of Reference for the Investigation of Complaints

Introduction

1. The Prisoner Ombudsman is an independent body who is appointed by the Minister of Justice.

The Ombudsman and his staff may request information relating to a complaint, in addition to the information contained in the written complaint, from the prisoner, former prisoner or visitor and the Department of Justice.

The Ombudsman and his staff may visit any prison, Young Offenders Centre or any other premises used by the Northern Ireland Prison Service for the purpose of investigating a complaint.

The Ombudsman and his staff may interview, with the consent of the person concerned, the prisoner or former prisoner making the complaint, any prisoner or any other person who has information relevant to the complaint.

Those employed in the Northern Ireland Prison Service shall, subject to any legal constraints, co-operate fully with the Ombudsman.

Exhaustion of internal procedure

2. The Ombudsman will consider complaints submitted by prisoners, former prisoners and visitors to prisons in Northern Ireland who have exhausted the Northern Ireland Prison Service (NIPS) Internal Complaints Procedures as set out in Prison Rules 79J-79N.
3. Complaints from prisoners should be submitted orally or in writing and submitted to the Office of the Ombudsman no later than 30 days after the NIPS Internal Complaints Procedure has been exhausted. (Prison Rules 76-79B and 79K).

Complaints from former prisoners should be submitted orally or in writing and submitted to the Office of the Ombudsman no later than 30 days after the NIPS Internal Complaints Procedure has been exhausted. (Prison Rules 79F-79G and 79K) .

Complaints from visitors should be submitted orally or in writing and submitted to the Office of the Ombudsman no later than 30 days after the NIPS Internal Complaints Procedure has been exhausted. (Prison Rules 79HB-79HE and 79K).

4.	<p>The Ombudsman has discretion to:</p> <ul style="list-style-type: none"> a) accept a complaint which is out of time if the Ombudsman is satisfied it was not reasonably practicable for the complainant to comply within 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; c) accept a complaint, in exceptional circumstances that has not gone through the NIPS Internal Complaints Process.
<i>Subject matter of the complaint</i>	
5.	<p>The Ombudsman will consider complaints as eligible if they relate to:</p> <ul style="list-style-type: none"> • a prisoners treatment by any person employed in the Northern Ireland Prison Service, including provision for the prisoner's welfare while in prison, and treatment includes an omission; • the facilities available to the prisoner at the prison; and • the cleanliness and adequacy of the prison premises. <p>In the case of a visitor a complaint is only appropriate to be dealt with by the Ombudsman if it deals with a matter which is the responsibility of the Northern Ireland Prison Service.</p>
6.	<p>In relation to the issues detailed above, the investigation will consider:</p> <ul style="list-style-type: none"> • if NIPS followed the relevant policies and procedures; • processes followed by NIPS in respect of the complaint; and • complaints from visitors concerning a matter which is the responsibility of NIPS.
7.	<p>If the Ombudsman receives a complaint outside the scope of paragraph 5, the Ombudsman will write to the complainant within 14 days of receipt to explain why the complaint is not appropriate to be dealt with by his Office.</p>

8.	<p>The Ombudsman's remit does 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 prisoners; • actions and decisions outside the responsibility of NIPS 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; • actions and decisions taken by contracted-out service providers; • 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 NIPS
<i>submission of complaints</i>	
9.	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 it was not reasonably practicable for the complaint to be submitted within 30 days.
10.	Complainants have confidential access to the Ombudsman and may withdraw a complaint at any time by notifying the Ombudsman orally or in writing.
<i>procedure for submitted complaints</i>	
11.	On receipt of a complaint the Ombudsman will ensure it meets the eligibility criteria. If ineligible the Ombudsman will consider whether exceptional circumstances apply.
12.	<p>At any stage, should the Ombudsman identify an opportunity to resolve the complaint early, that is, without completing an investigation, the Ombudsman will exercise discretion to seek early resolution.</p> <p>Early resolution will be agreed with the complainant and recorded as 'complaint withdrawn – early resolution.'</p>

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.

13.	<p>The Ombudsman may not deal with a complaint, other than in accordance with the procedure if he considers:</p> <ul style="list-style-type: none"> (a) it to be vexatious; (b) it to be repetitive; (c) it to be frivolous; (d) it to raise no substantial issue; or (e) the complaint either on its own or taken together with other complaints is intended to seriously hamper the proper operation of the complaints procedure set out in this part of the rules. <p>The prisoner, <i>former prisoner or visitor</i> who submitted the complaint will be told in writing that his complaint is considered by the Ombudsman to fall under either rule 79N (1)(a), (b), (c), (d) or (e) and as a consequence it will not be dealt with any further.</p>
Investigation	
14.	<p>If a particular issue of concern requiring urgent attention by NIPS is identified it will be brought to the attention of the Director General and appropriate Governors of NIPS who shall take any steps necessary to address the matter.</p>
15.	<p>If it comes to the Ombudsman's attention a criminal offence may have been committed the Ombudsman will pause the investigation and refer the matter to the Police Service for Northern Ireland. When matters are resolved, that is:</p> <ul style="list-style-type: none"> • no offence has been committed • criminal proceedings have been completed • the Police Service has confirmed that proceeding with the investigation would not prejudice the criminal investigation <p>the Ombudsman will continue the investigation.</p>
16.	<p>If it comes to the Ombudsman's attention a disciplinary offence may have been committed by a person employed by NIPS, the Ombudsman will pause the investigation and inform the Director General of NIPS as soon as is reasonably practicable.</p> <p>Upon resolution where it has been found:</p> <ul style="list-style-type: none"> • no offence has been committed • disciplinary proceedings have completed • NIPS has confirmed that proceeding with the investigation would not prejudice the disciplinary investigation <p>the Ombudsman will continue the investigation.</p>

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

Access to evidence and information

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| 17. | Arrangements to ensure the Ombudsman has access to materials required to carry out investigations are set out in Prison Rules 79M. The Ombudsman and NIPS have a Data Sharing Agreement in place. |
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Disclosure of sensitive information

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| 18. | The Data Sharing Agreement outlines how sensitive information will be handled, ensuring official information is made available unless it is clearly not in the public interest to do so. |
| 19. | 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 acts will be considered subject to restrictions or exemptions from the rights of access under those Acts which apply. Complainants should note the Privacy Notice |
| 20. | Information will be shared with other relevant statutory bodies as set out in formal information sharing agreements. |

Reports and Recommendations

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| 21. | Ombudsman reports may make recommendations either to the Minister of Justice, the Director General of NIPS or the relevant Prison Governor, as appropriate to their roles, duties, and powers. |
| 22. | Final Investigation Reports are subject to an internal three tier review prior to issue for factual accuracy. |
| 23. | Ombudsman final investigation reports are sent to NIPS to: <ul style="list-style-type: none">• draw attention to points of factual accuracy,• consider confidential or sensitive material which ought not to be disclosed• allow any identifiable persons subject to criticism an opportunity to make representations• provide a response to the factual accuracy of the report to the Ombudsman's Office within 21 days from the date of receipt of the Investigation Report |
| 24. | Upon receipt of points of factual accuracy from NIPS, consideration will be given to revising the report prior to issue to the complainant. |
| 25. | Ombudsman final investigation reports will then be sent to the complainant to: |

	<ul style="list-style-type: none"> • draw attention to points of factual accuracy, • inform the complainant of NIPS responses to any recommendations. • allow the complainant the opportunity to comment on the factual accuracy of the final report within 21 days from the date received clearly explaining reasons for any comments
26.	The investigation is now 'closed'.
27.	The Ombudsman has discretion to give due consideration to a request for a review where new evidence, not available earlier, is presented. Should the Ombudsman agree a review is required an investigator, not part of the original investigation, will be assigned to the complaint.
Annual Reports	
28.	<p>The Ombudsman submits an Annual Report to the Minister of Justice following the end of each financial year. In relation to complaints the report will include:</p> <ul style="list-style-type: none"> • a summary of the number of complaints received and addressed • outcome of complaints and complaint categories per prison; • examples of recommendations including NIPS responses; <p>any issues of general significance arising from individual complaints which the Ombudsman has raised to NIPS.</p>