

TERMS OF REFERENCE FOR INVESTIGATION OF COMPLAINTS

1. The Prisoner Ombudsman, who is appointed by the Secretary of State for Northern Ireland, is independent of the Northern Ireland Prison Service and reports to the Secretary of State.
2. The Ombudsman will investigate complaints submitted by individual prisoners and ex-prisoners who have failed to obtain satisfaction from the NIPS complaints system and who are eligible in other respects.
3. The Ombudsman will normally act on the basis only of eligible complaints from those individuals described in paragraph 2 (above) and not on those from other individuals or organisations.
4. The Ombudsman will be able to consider the merits of matters complained of as well as the procedures involved.
5. The Ombudsman will be able to investigate all decisions relating to individual prisoners taken by NIPS staff and decisions involving the clinical judgement of healthcare staff.
6. The Terms of Reference do not cover:
 - 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;

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.

- 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 the 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 such as the judiciary, the police, the Director of Public Prosecutions, the Immigration Service, the Probation Service, the Sentence Review Commissioners, Life Sentence Review Commissioners, Remission of Sentences Commissioners, Loss of Remission Commissioners and their secretariat;
- actions and decisions taken by contracted-out service providers; and
- the actions and decisions of people working in prisons but not employed in NIPS².

SUBMITTING COMPLAINTS AND TIME LIMITS

7. Before putting a grievance to the Ombudsman, a complainant must first seek redress through appropriate use of the NIPS complaints procedures. Complainants will have confidential access to the Ombudsman and no attempt should be made to prevent a complainant from referring a complaint to the Ombudsman.
8. The Ombudsman will consider complaints for possible investigation if the complainant is dissatisfied with the reply from the NIPS or receives no final reply within six weeks.

² “employed in NIPS” is defined as that contained in section 103 of the Terrorism Act 2000 – this would encapsulate staff in the same prison as the prisoner, other prisons, Headquarters, prison officers and other members of the prison staff.

9. Complainants submitting their case to the Ombudsman must do so within 30 days of receiving a substantive reply from NIPS. However, the Ombudsman will not normally accept complaints where there has been a delay of more than 12 months between the complainant becoming aware of the relevant facts and submitting their case to the Ombudsman, unless the delay has been the fault of NIPS.
10. Complaints submitted after these deadlines will not normally be eligible. However, the Ombudsman has discretion to consider those where there is good reason for the delay, or where the issues raised are so serious as to override the time factor.

DETERMINING ELIGIBILITY OF A COMPLAINT

11. The Ombudsman will examine complaints to consider whether they are eligible. To assist in this process, where there is some doubt or dispute as to the eligibility of a complaint, the Ombudsman will inform NIPS of the nature of the complaint and, where necessary, NIPS will then provide the Ombudsman with such documents or other information as the Ombudsman considers relevant to considering eligibility.
12. The Ombudsman may decide not to accept a complaint or to continue any investigation where it is considered that, the complaint is vexatious or repetitious or frivolous or no worthwhile outcome can be achieved or the complaint raises no substantial issue. The Ombudsman is also free not to accept for investigation more than one complaint from a complainant at any one time unless the matters raised are serious or urgent.

ACCESS TO DOCUMENTS FOR THE INVESTIGATION

13. The Director General of the Northern Ireland Prison Service will ensure that the Ombudsman has unfettered access to NIPS documents. This will include classified material and information entrusted to that service by other organisations, provided this is solely for the purpose of investigations within the Ombudsman's terms of reference and subject to the safeguards referred to below for the withholding of information from the complainant and public in some circumstances.

LOCAL SETTLEMENT

14. It will be open to the Ombudsman in the course of investigation of a complaint to seek to resolve the matter by local settlement.

VISITS AND INTERVIEWS

15. In conducting an investigation the Ombudsman and staff will be entitled to visit all NIPS establishments, after making arrangements in advance for the purpose of interviewing the complainant, employees and other individuals, and for pursuing other relevant inquiries in connection with investigations within the Ombudsman's Terms of Reference and subject to the safeguards set out below.

DISCLOSURE OF SENSITIVE INFORMATION

16. In accordance with the practice applying throughout government departments, the Ombudsman will follow the Government's policy that official information should be made available unless it is clearly not in the public interest to do so. Such circumstances will arise when disclosure is:

- against the interests of national security;
- likely to prejudice security measures designed to prevent the escape of particular prisoners or classes of prisoners;

- likely to prejudice the safety of staff;
 - likely to be detrimental on medical or psychiatric grounds to the mental or physical health of a prisoner or anyone described in paragraph 3 of those terms of reference;
 - likely to prejudice the administration of justice including legal proceedings; or
 - of papers capable of attracting legal professional privilege.
17. NIPS staff providing information should identify any details which they consider needs to be withheld on any of the above named grounds with a further check undertaken on receipt of the draft report from the Ombudsman.

DRAFT INVESTIGATION REPORTS.

18. Before issuing a final report on an investigation, the Ombudsman will send a draft to the Director General of NIPS, to allow the Prison Service to draw attention to points of factual inaccuracy, 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.

RECOMMENDATIONS BY THE OMBUDSMAN

19. Following an investigation all recommendations will be made either to the Secretary of State or the Director General of NIPS, as appropriate, to their roles, duties and powers.

FINAL REPORTS AND RESPONSES TO COMPLAINTS

20. The Ombudsman will reply to all those whose complaints have been investigated, sending copies to NIPS, and making any recommendations at the same time. The Ombudsman will also inform complainants of the response to any recommendations made.
21. The Ombudsman has a target date to give a substantive reply to the complainant within 12 weeks from accepting the complaint as eligible. Progress reports will be given if this is not possible.

NIPS RESPONSE TO RECOMMENDATIONS

22. The NIPS has a target of four weeks to reply to recommendations from the Ombudsman. The Ombudsman should be informed of the reasons for delay when it occurs.

ANNUAL REPORT

23. The Ombudsman will submit an annual report to the Secretary of State, following the end of the financial year. The report will include:
 - 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 and examples of recommendations made and of responses;
- any issues of more general significance arising from individual complaints on which the Ombudsman has approached the NIPS; and
- a summary of the costs of the office.