

**Protocol between the
Northern Ireland Audit Office and the
Northern Ireland Public Services Ombudsman**

1. Introduction

The Northern Ireland Audit Office¹ (the NIAO), headed by the Comptroller and Auditor General of Northern Ireland (the “C&AG”) is responsible for the financial and value for money audit of central government bodies in Northern Ireland. This includes Northern Ireland Government Departments, their executive agencies, non-departmental public bodies (NDPBs) and health and social care bodies. The principle legislation governing the operation of the NIAO are the Audit (Northern Ireland) Order 1987; the Northern Ireland Act 1998; the Government Resources and Accounts Act (NI) 2001; and the Audit and Accountability (NI) Order 2003. Except for any statutory requirements, the C&AG has complete discretion in the discharge of his functions.

The audit of local government bodies is undertaken by a senior member of staff of the NIAO, designated by the Department for Communities and the C&AG as the Local Government Auditor (LGA), assisted by staff of the NIAO. The NIAO’s Chief Operating Officer is currently the designated LGA. The statutory responsibilities and powers of the LGA are set out in the Local Government (NI) Order 2005 (the 2005 Order), as revised by the Local Government (NI) Act 2014. The 2005 Order places certain restrictions on the disclosure of information obtained by the LGA in the course of any audit or study.

The Ombudsman’s principal purpose is to investigate alleged maladministration in listed authorities. In her role as Northern Ireland Local Government Commissioner for Standards (the Commissioner), the Ombudsman also investigates and adjudicates on complaints that Councillors have, or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors.

The NIAO and the Ombudsman seek, through this Protocol (the Protocol), to define the principles that guide the joint working which they undertake and to set out the circumstances and the processes for co-operation and information sharing.

The Ombudsman has a statutory duty to consult with the C&AG and the LGA in accordance with the provisions of section 51(2), (3) & 51(4) (j) of the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman may co-operate with the C&AG and the LGA in accordance with the provisions of section 51(1), section 51(3) and section 51(4) (j) of the 2016 Act.

¹ Except where stated, references to the NIAO in this Protocol are to be read as references to the C&AG in respect of central government matters and to the Local Government Auditor in respect of local government.

2. Functions of Northern Ireland Audit Office

In respect of the Financial Audit of central government bodies, the role of the NIAO is to:

- provide assurance that the body's financial statements give a true and fair view, and have been properly prepared;
- identify, assess and examine risks to regularity, propriety and financial control and report on significant weaknesses; and
- provide advice on improvements to corporate governance, financial risk management control and reporting.

In respect of Public Reporting in central government, the role of the NIAO is to:

Undertake independent evidence-based investigations and make recommendations highlighting ways in which audited bodies can make financial savings or reduce costs; guard against the risk of fraud, irregularity and impropriety; provide a better quality of service; strengthen and enhance their internal processes; and achieve their aims and objectives more cost-effectively.

The results of the NIAO's financial audit and public reporting work are reported to the Northern Ireland Assembly.

In respect of Local Government audit, the role of NIAO is to

Undertake the audit of the financial statements, and the audited bodies' arrangements for securing economy, efficiency and effectiveness in its use of resources, as well as councils' performance improvement responsibilities. The results of work undertaken by the LGA are reported to the Councils and to the Department for Communities. The Local Government Auditor can, if appropriate, publish a Public Interest Report on any matter coming to her notice in the course of an audit.

The Local Government (NI) Order 2005 provides for the LGA to undertake studies and make recommendations for improving economy, efficiency and effectiveness (the "3Es") in the provision of services. Reports on the LGA's 3E work are published.

Under the Public Interest Disclosure (NI) Order 1998 both the C&AG and the LGA are 'prescribed persons' to whom public employees may make protected disclosures (whistleblowing complaints) regarding:

- the proper conduct of public business²
- value for money; and

² There is no standard definition, but the seminal report "The Proper Conduct of Public Business" by the Westminster Committee of Public Accounts of 27 January 1994, identified failures in 'proper conduct' which included: failure to follow established procedures (particularly those relating to procurement), lack of expertise, conflicts of interest, mismanagement, and misconduct.

- fraud and corruption.

The NIAO will also consider complaints of this nature which it receives from concerned citizens. However, it is not the NIAO's role to provide a direct service to members of the public.

3. Functions of the Ombudsman

Maladministration

The 2016 Act provides the Ombudsman with the power to investigate a complaint made by a person aggrieved who claims to have sustained an injustice if the requirements of the legislation are met. The Ombudsman may also investigate a complaint which has been referred to her by a listed authority under the 2016 Act.

The Ombudsman can consider complaints about maladministration. The term maladministration is not defined but is generally taken to mean poor administration or the wrong application of rules. The Ombudsman can also consider complaints about professional judgement and clinical decisions which have been made by health and social care professionals. If the Ombudsman investigates a complaint and finds an organisation has been at fault, she can recommend appropriate action.

Local Government Ethical Standards

Part 9 of the Local Government Act (Northern Ireland) 2014 (the 2014 Act) provides an ethical standards framework for local government based on a mandatory code of conduct for Councillors. This code was approved by the Northern Ireland Assembly and came into effect on 28 May 2014. The 2014 Act gives the Northern Ireland Public Services Ombudsman, in her role as the Northern Ireland Government Commissioner for Standards (the Commissioner), the authority to investigate, and to adjudicate on, complaints that Councillors have, or may have, failed to comply with the Code.

The Commissioner has delegated to the Deputy Commissioner (and to the staff of the Local Government Ethical Standards (LGES) Directorate of the Ombudsman's Office) the authority to conduct investigations and to report on the outcome of those investigations.

It is the role of the Commissioner to adjudicate on matters referred to her by the Deputy Commissioner.

4. Ombudsman's Reports

Maladministration

Under section 43 of the 2016 Act, the Ombudsman must send a report of an investigation, the reasons for discontinuing an investigation or not investigating a complaint to:

- a. the person aggrieved;
- b. the listed authority investigated, or which it was proposed be investigated;
- c. any other person alleged to have taken the action to which a complaint relates; and
- d. any other person that the Ombudsman considers appropriate.

The Ombudsman may, where relevant and appropriate, send a report (or any part of a report) of the results of her investigation to the NIAO for the purposes of its functions, in support of her findings and to ensure compliance with her recommendations.

The Ombudsman's Recommendations

Where the Ombudsman finds maladministration, she may recommend to a listed authority that specific action should be taken to ensure improvements for the public in future. The Ombudsman requires confirmation from the listed authority that her recommendations have been complied with.

Own Initiative Investigations

The Ombudsman has the power to investigate an issue on her 'own initiative' without first receiving a complaint. This may include for example: the investigation of an individual high profile case, the investigation of issues which were the subject of a complaint or a number of complaints, the investigation of a sector or across sectors on a particular theme, or an investigation on foot of a report or reference from another oversight or regulatory body.

Local Government Ethical Standards

A written notification of all adjudication decisions will be prepared by the Commissioner. Where a sanction is imposed, the notification will:

- a. Include a statement that the Respondent has failed to comply with the Code;
 - b. Specify the details of that failure;
 - c. State the sanction imposed by the Commission and when it comes into effect.
- In accordance with section 59(7) to 59(12) of the 2014 Act, the decision of the Commissioner will be notified to:

- a. the Chief Executive of the council of which the Respondent is a councillor;
- b. the person who is the subject of the notice;
- c. the person who made the original allegation (if known).

A copy of the notice will be provided to the Deputy Commissioner and will be published within six weeks of the conclusion of the adjudication hearing.

The Commissioner may exercise her powers under section 61 of the 2014 to make recommendations to council following an adjudication. Such recommendations may relate to the exercise of the council's functions or to the failure to observe the Code. The Commissioner may consult with NIAO, if she considers it appropriate, in framing recommendations where the matter under adjudication is one in which the NIAO has an interest or specialist knowledge.

5. Scope and purpose of the Protocol

This Protocol defines the circumstances in which, and the processes through which, the NIAO and the Ombudsman will consult, co-operate and disclose information when carrying out their respective functions. Where a function has been delegated by the Ombudsman, such as the delegation of LGES investigations to the Deputy Ombudsman, any relevant disclosures will be the responsibility of the individual to whom the function has been delegated.

This Protocol outlines the principles that will inform these functions and the limitations on any further use by the NIAO and Ombudsman of disclosed information between the two organisations. The intention of the NIAO and the Ombudsman is to work in co-operation, while recognising that their respective roles and responsibilities are different but complementary.

This Protocol is additional to and does not reduce the separate statutory duties, responsibilities and reporting rights of either organisation, even where they have decided to work collaboratively.

The relevant officers in each organisation will monitor and keep under review areas of co-operation as part of a periodic review of the Protocol.

The Ombudsman has a statutory duty to consult the C&AG and the LGA in accordance with the provisions of section 51(2) of the 2016 Act. Section 51(1) and (2) states:

51.—(1) This section applies if, at any stage in the course of considering a complaint or conducting an investigation, the Ombudsman forms the opinion that the matter could be the subject of an investigation by a person mentioned in subsection (4).

(2) The Ombudsman must consult that person about the matter.

Section 51(3) of the 2016 Act provides that the Ombudsman may also co-operate with the C&AG and the LGA:

- a. *by way of disclosure of information relating to the complaint or investigation,*
- b. *in the conduct of the investigation,*
- c. *in the form, content and publication of a report*

Otherwise than stated in this Protocol, the Ombudsman has no general power to share information with the NIAO.

6. Definitions

In this Protocol unless otherwise stated words and phrases shall have the meaning outlined below:

Complaint: shall mean any complaint received by the Ombudsman which contains allegations of injustice in consequence of maladministration in relation to actions taken by or on behalf of a listed authority; OR any complaint received by the Deputy Commissioner which contains allegations that a Councillor has, or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors.

Body: shall mean any Body listed in schedule 3 of the 2016 Act as a listed authority subject to investigation.

Ombudsman's Report: shall mean a report under Part 4 of the 2016 Act.

Relevant information in the case of a disclosure from the Ombudsman to the NIAO can include:

- the name of the Body, or Councillor(s), concerned;
- the anonymised details of a complaint made to the Ombudsman or Deputy Commissioner. If the identity of the complainant is likely to be a relevant consideration this may also be disclosed, subject (if required) to the consent of the person aggrieved or any relevant third parties;
- details of significant issues arising during the course of an investigation where deemed relevant to the work of the NIAO;
- a summary of the Ombudsman's findings, recommendations and contextual information³ to support those recommendations which may be required to enable monitoring or investigation by the NIAO;
- a full or redacted copy of the Ombudsman's Report or Deputy Commissioner's report or decision, or the outcome of the Commissioner's adjudications. This

³ In this Protocol, 'contextual information' may include anonymised information relating to persons or bodies not within the C&AG's jurisdiction.

- will also include disclosure of any response to the Ombudsman by a Body or Councillor in response to a report or recommendations; and
- details of proposals for public interest or special reports and planned own initiative reports where deemed relevant to the work of NIAO

Relevant Information in the case of a disclosure from the NIAO to the Ombudsman can include:

- the name of the Body concerned;
- anonymised details of a whistleblowing (or other) complaint made to the NIAO. If the identity of the complainant is likely to be a relevant consideration this may be disclosed, subject (if required) to the consent of the complainant or any relevant third parties;
- a summary of significant matters arising during an audit or investigation which may be required to enable any appropriate action by the Ombudsman (subject to any necessary consents in the case of local government reports)
- audit findings and recommendations (and contextual information to support those recommendations) which may be required to enable any appropriate action by the Ombudsman (subject to any necessary consents);
- a full or redacted copy of a report and recommendations made by NIAO (subject to any necessary consents). This will also include disclosure of any response by a Body in response to a report or recommendation; and details of proposals for performance reports or good practice guides or special reports on councils deemed relevant to the work of the Ombudsman.

Use: shall mean the processing of relevant information to include receiving, holding, storing, deleting and retention of such information.

Disclosure: shall mean the provision of relevant information in any form for the purposes of this Protocol.

7. Consultation and Co-operation

The Ombudsman and the NIAO agree that, where there are overlapping roles and responsibilities or where the functions and actions of one organisation affect the functions and actions of the other, they will share appropriate information, maintain effective channels of communication, consult each other and generally co-operate together in order to inform and improve the work of their respective offices. This will enable them to fulfil their respective responsibilities as fully, effectively and efficiently as possible.

Where the Ombudsman forms the opinion that a matter which is to be investigated or which is under investigation as part of a complaint could be the subject of an investigation by the NIAO, the Ombudsman will consult and may co-operate with the NIAO in accordance with section 51 of the 2016 Act.

Where the NIAO forms the opinion that a matter which could be the subject of an investigation or which is under investigation by the Ombudsman, the NIAO will consult and may co-operate with the Ombudsman.

The NIAO and the Ombudsman will share and discuss forward work programmes for Own Initiative Reports, Public Reporting and Good Practice Guides and explore the potential for collaboration in producing such reports. Within available resources, the NIAO and the Ombudsman will invite representation from each organisation to relevant meetings, project groups or, where both offices believe there would be advantage in cross-representation and stakeholder engagement. They will also co-operate in any agreed activities to inform the public and public representatives of their respective roles and responsibilities. They will each invite the participation of the other in any relevant consultation exercise held.

The NIAO and the Ombudsman will encourage and facilitate formal and informal contacts between their staff to raise awareness of the roles and responsibilities and working methods of each organisation. The parties will aim to meet as required and at least twice a year.

8. Disclosure of relevant information

From the date of this Protocol, and in line with section 51 of the 2016 Act, the Ombudsman will:

- (i) consult the NIAO about concerns or cross refer a complaint or matters arising during the course of an investigation where it appears that this could be a matter within the remit of the NIAO, where this may be a matter of interest to the NIAO or where the NIAO may hold information or may be undertaking activity which could be of relevance to the Ombudsman's handling of the complaint. The Ombudsman will (subject to any legal restrictions) promptly convey concerns/cross refer the complaint to a person with relevant responsibility in the NIAO [Andrew Allen].
- (ii) when making recommendations which relate to the activities of the NIAO in her report to a Body, disclose to the NIAO the relevant information in the course of considering a complaint or conducting an investigation where appropriate, as soon as possible from the date of issuing the final Report, and, where applicable and appropriate receipt of an action plan from the Body investigated.
- (iii) identify in her Report that she intends relevant information to be disclosed to the NIAO.
- (iv) provide case summaries of Reports on matters concerning the functions of the NIAO.

- (v) provide information summarising complaints received and investigated where this may be of relevance to the NIAO.

8.2 The NIAO will seek to:

- (i) consult the Ombudsman about concerns or cross refer a complaint or matters arising during an audit or investigation where it appears that this could be a matter within the remit of the Ombudsman. The NIAO will (subject to any legal restrictions) promptly convey those concerns/cross refer the complaint to a person with relevant responsibility in the Ombudsman's Office.
- (ii) take appropriate action in accordance with its statutory functions in respect of the relevant information;
- (iii) keep the relevant information provided by the Ombudsman confidential subject to compliance with statutory requirements,
- (iv) use the information provided by the Ombudsman only for the purposes of its statutory function,
- (v) provide to the Ombudsman such information as she requires in relation to/compliance with her recommendations by a Body.

9. Principles of joint working

There may be opportunities for the NIAO and the Ombudsman to undertake joint working across their respective statutory functions. This could be, for example, in relation to the Ombudsman's Own Initiative investigation functions or in relation to the Local Government Code of Conduct. All decisions about collaborative working between the NIAO and the Ombudsman will be subject to the following principles:

- each organisation will respect each other's independent status and will cooperate when necessary or appropriate;
- each organisation will work collaboratively within their respective legislative frameworks;
- the organisations will work together to encourage the development of consistent, high quality, accurate information; and
- the organisations will be open and transparent in their decisions about when and where it is considered appropriate for them to work collaboratively.

10. Levels of co-operation

Each organisation, through the NIAO Chief Operating Officer/ LGA and the Deputy Ombudsman or other relevant staff in both organisations, undertake to keep the other informed on matters of strategic mutual interest.

The working relationships between the C&AG and the Ombudsman will be characterised by regular contact and open exchange of appropriate information, including formal and informal meetings at all levels. It is envisaged that representatives of both organisations will meet as and when required. The relevant staff within each organisation will keep these arrangements under review.

Each organisation commits to developing links to ensure the effective exchange of information.

11. Seeking and giving advice

Each organisation will, on request, provide advice to the other on matters within its competence, subject to the legal competence to do so, availability of resources and the absence of conflict with the function of the organisation requested to provide that advice.

12. Co-ordination, consultation and exchange of information

In sharing information under the provisions of this Protocol, the NIAO and the Ombudsman will comply with all their respective legislative frameworks⁴, and all other relevant legislation, including, but not limited to, the DPA, the FOIA, the Human Rights Act 1998, the common law duty of confidentiality and any policies or frameworks produced by either the NIAO or the Ombudsman relating to confidential personal information.

Where either organisation has been subject to a request for information that relates to any area of collaborative working they will inform the other before responding.

13. Reconciliation of disagreement

Any disagreement between the NIAO and the Ombudsman will normally be resolved at working level between the relevant officials. If this is not possible, it may be referred upwards through those responsible for operating this Protocol, up to and including the NIAO and Ombudsman who will be responsible for ensuring a mutually satisfactory resolution.

14. Review of the Protocol

This Protocol will be reviewed in the first instance, after three years and periodically thereafter.

⁴ The Ombudsman's investigations are conducted in private and information obtained by the Ombudsman is confidential. It must not be disclosed except in the limited circumstances provided for in the 2016 Act.

15. Signature of parties to the Protocol

Signed: Marie Anderson

Marie Anderson, Northern Ireland Public Services Ombudsman

Dated: 3 December 2018

Signed: Kieran J Donnelly

Kieran Donnelly, Comptroller and Auditor General for Northern Ireland
(Northern Ireland Audit Office)

Dated: 3 Decembe 2018.

Signed: Pamela McCreedy

Pamela McCreedy, Local Government Auditor
(Northern Ireland Audit Office)

Dated: 3 December 2018