

**Memorandum of Understanding between the
Northern Ireland Commissioner for Children and Young
People (the Commissioner) and the
Northern Ireland Public Services Ombudsman (the
Ombudsman)**

June 2018

1. Introduction

- 1.1 The Commissioner's principal aim is to safeguard and promote the rights and best interests of children and young people. The Ombudsman's principal purpose is to investigate alleged maladministration in listed authorities. The Commissioner and the Ombudsman seek through this Memorandum of Understanding (the Memorandum) to define the principles that guide the joint working which they undertake.
- 1.2 The Ombudsman has a statutory duty to consult with the Commissioner in accordance with the provisions of section 51(1), section 51(2) and section 51(4)(c) of the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman may co-operate with the Commissioner in accordance with the provisions of section 51(1), section 51(3) and section 51(4)(c) of the 2016 Act.

2. Functions of NICCY

- 2.1 The Commissioner is a non-departmental public body which was established under the Commissioner for Children and Young People (NI) Order (2003) – (the 2003 Order).
- 2.2 The principal aim of the Commissioner is to safeguard and promote the rights and best interests of children and young people.
- 2.3 The legislation sets out a number of powers and duties of the Commissioner. The Commissioner has a duty to:
 - Promote an understanding and awareness of the rights and best interests of children and young people;
 - Keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children;
 - Keep under review the adequacy and effectiveness of services provided for children by relevant authorities;
 - Provide advice on matters concerning the rights and best interests of children;
 - Take reasonable steps to ensure that children, young people and parents are aware of the functions of the Commissioner and are encouraged to communicate with the Commissioner and that the views of children and young people are sought concerning the exercise of the Commissioner's functions.

2.4 The Commissioner also has the following powers to:

- Undertake, commission or provide assistance for research and educational activities concerning the rights and best interests of children and young people or the exercise of the Commissioner's functions;
- Issue guidance on best practice in relation to any matter concerning the rights or best interests of children and young people;
- Conduct such investigations as the Commissioner considers necessary or expedient, including formal investigations;
- Compile information, provide advice or information or publish any matter concerning the rights and best interests of children and young people;
- Make representations to anybody or person about any matter concerning the rights or best interests of children or young people;
- Review the complaints, advocacy, inspection and whistle blowing arrangements of relevant authorities, including in individual cases and in providing assistance to a child or person;
- Investigate complaints against relevant authorities;
- Bring, assist in or intervene in legal proceedings.

2.5 Health and Safety

Article 23 of the 2003 Order contains a prohibition on the disclosure of information which is obtained in the course of, or for the purposes of, a formal investigation save in specific circumstances. Article 23(2) provides that where information is obtained which indicates that any person is likely to constitute a threat to the health or safety of any other person ("the person at risk"), the Commissioner may disclose that information to any person to whom the Commissioner thinks it should be disclosed in the interests of the health or safety of the person at risk. The Commissioner may therefore disclose information to the Ombudsman in these circumstances.

Commissioner's Statement of Reasons and Reports

2.6 By virtue of Article 12 of the 2003 Order the Commissioner is empowered to investigate complaints against relevant authorities. Article 12(4) requires that where the Commissioner decides not to conduct an investigation under this Article, she shall

prepare a statement of her reasons for that decision and shall send a copy of the statement to the complainant and such other persons (if any) as the Commissioner considers appropriate. The Commissioner may consider in a relevant case whether or not to send a copy of the statement of reasons to the Ombudsman.

- 2.7 Article 18 of the 2003 Order empowers the Commissioner to share reports in relation to formal investigations under Articles 9, 10 or 12(1) with such other bodies as the Commissioner thinks appropriate. The Commissioner may consider, in a relevant formal investigation, whether or not to send a copy of the report to the Ombudsman.

3. Functions of the Ombudsman

- 3.1 The Ombudsman provides a free, independent and impartial service for handling complaints about public service providers in Northern Ireland. These include government departments and agencies, Councils, public housing providers and Health and Social Care Trusts. The Ombudsman's aim is to help public services improve through the Ombudsman's investigations and reports. The powers of the Ombudsman are provided for by the 2016 Act.
- 3.2 People have the right to complain to the Ombudsman if they feel that a public service provider has treated them unfairly, or if they have received a poor service and their complaint to that organisation has not been resolved to their satisfaction. 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.
- 3.3 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. The Ombudsman will make balanced decisions on complaints, based on what she regards as fair.

3.4 The Ombudsman has a statutory duty to consult the Commissioner in accordance with the provisions of section 51(1) and section 51(2) of the 2016 Act. Section 51(1) and (2) state:

*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.*

3.5 Section 51(3) of the 2016 Act provides that the Ombudsman may also co-operate with the Commissioner:

- 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*

3.6 Otherwise than stated in this protocol, the Ombudsman has no general power to share information with the Commissioner.

Health and Safety

3.7 Section 49(2)(j) of the 2016 Act provides for the Ombudsman to disclose information to any person to whom she thinks it should be disclosed in the public interest where the information is to the effect that a person is likely to constitute a threat to the health and safety of one or more persons. The Ombudsman may therefore also disclose information to the Commissioner where this information relates to the safeguarding and welfare of children and young people.

3.8 The Ombudsman has developed a Practice Note 'Disclosure of Information under the provisions of Section 49(j) of the Public Services Ombudsman Act (NI) 2016 in the interests of Health and Safety or a Person at risk' which sets out her approach to the disclosure of information obtained where the information is to the effect that a person (the subject) is likely to constitute a threat to the health or safety of one or more persons to any person to whom the Ombudsman thinks it should be disclosed in the public interest. A copy of that Practice Note is attached at appendix one to this Protocol.

Ombudsman's Reports

3.9 By virtue of 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.

3.10 The Ombudsman may consider in a relevant case whether or not to send a report (or any part of a report) of the results of her investigation to the Commissioner for the purposes of its functions, in support of her findings and to ensure compliance with her recommendations.

The Ombudsman's Recommendations

3.11 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. The Ombudsman may share information relating to these recommendations, or compliance with these, where these are relevant to the Commissioner's role in relation to children and young people.

4. Scope and purpose of the Memorandum

4.1 This Memorandum defines the circumstances in which, and the processes through which, the Commissioner and the Ombudsman will consult, co-operate and disclose information when carrying out their respective functions.

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

- 4.3 This Memorandum 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.
- 4.4 The purpose of the Memorandum is to ensure:
- effective and appropriate consultation, co-operation and information sharing between the Commissioner and Ombudsman and
 - that the Ombudsman's responsibilities and duties under section 51 of the 2016 Act – to consult and co-operate with the Commissioner are met.
- 4.5 The Memorandum also identifies the purposes for which and the manner in which the Commissioner and the Ombudsman can use the disclosed information.
- 4.6 The relevant officers in each organisation will monitor and keep under review areas of co-operation as part of an annual review of the Memorandum.

5. Definitions

- 5.1 In this Memorandum unless otherwise stated words and phrases shall have the meaning outlined below:

Complaint (in relation to the Ombudsman): 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 Body who provides a service to children or young people.

Complaint (in relation to the Commissioner) – shall mean any complaint received by the Commissioner against or about a relevant authority concerning of the rights and/or best interests of children or young persons.

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.

Commissioner's Report: shall mean a report published under Article 18 of the 2003 Order.

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

- the name of the Body concerned,
- the name of the person aggrieved (complainant) and details of a complaint made to the Ombudsman, subject (if required) to the consent of the person aggrieved or any relevant third parties
- a summary of the Ombudsman's findings, recommendations and contextual information¹ to support those recommendations which may be required to enable monitoring by the Commissioner in terms of keeping the adequacy and effectiveness of services provided by a Body to children and young people under review,
- a copy of Independent Professional Advice (IPA) or a full or redacted copy of the Ombudsman's Report. This will also include disclosure of any action plans given to the Ombudsman by a Body in response to the recommendations contained within the Ombudsman's report.

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

- Copies of statements of reasons as set out at 2.6 above
- Formal investigation reports as set out at 2.7 above.

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 Memorandum.

¹ In this Memorandum, 'contextual information' may include anonymised information relating to persons or bodies not within the Commissioner's jurisdiction.

6. Consultation and Co-operation

- 6.1 The Ombudsman and the Commissioner agree that, 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 insofar as they are permitted to do so under their respective legislative frameworks. This will enable them to fulfil their respective responsibilities as fully, effectively and efficiently as possible.
- 6.2 Where the Ombudsman forms the opinion that a matter being investigated as part of a complaint could be the subject of an investigation by the Commissioner, the Ombudsman will consult and may co-operate with the Commissioner in accordance with section 51 of the 2016 Act.
- 6.3 Within available resources, the Commissioner and the Ombudsman will invite representation from each organisation to relevant meetings or project groups etc where both offices believe there would be advantage in cross-representation and stakeholder engagement.
- 6.4 The Commissioner and the Ombudsman will encourage 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 once a year.

7. Disclosure of relevant information

- 7.1 From the date of this Memorandum, and in line with section 51 of the 2016 Act, the Ombudsman will:
- (i) consult the Commissioner about complaints where it appears that the issues of complaint accepted by the Ombudsman for investigation could be a matter within the remit of the Commissioner or where it otherwise appears appropriate to signpost a complainant or member of the public to the Commissioner. The

Ombudsman will (subject to any legal restrictions) promptly convey complaints to a person with relevant responsibility in the Commissioner's Office.

- (ii) when considering making recommendations which affect the rights of children and young people in her report to a Body, disclose to the Commissioner relevant information relating to the recommendations. This will usually be in the course of conducting an investigation and, with regards to final recommendations, as soon as possible from the date of issuing the final Report. The Ombudsman will also where applicable and appropriate provide information on receipt of an action plan from the Body investigated.
- (iii) identify in her Report that she intends relevant information to be disclosed to the Commissioner. and
- (iv) provide case summaries of Reports relating to the rights of children and young people.

7.2 The Commissioner will seek to:

- (i) consult the Ombudsman about concerns or cross refer a complaint where it appears that this could be a matter within the remit of the Ombudsman. The Commissioner 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 any relevant information provided by the Ombudsman;
- (iii) keep the relevant information provided by the Ombudsman confidential,
- (iv) use the information provided by the Ombudsman only for the purposes of its statutory function,
- (v) provide to the Ombudsman such information as may be permitted under the Commissioners legislative framework which may be helpful in relation to/compliance with the Ombudsman's recommendations.

8. Principles of joint working

8.1 There may be opportunities for the Commissioner 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. All decisions about collaborative working between the Commissioner 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 working relationships will be governed by the need to deliver maximum benefits to children and young people;
- 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.

9. Levels of co-operation

9.1 Each organisation, through the Chief Executive of the Commissioner and Deputy Ombudsman or other relevant staff in both organisations, undertake to keep the other informed on matters of strategic mutual interest.

9.2 The working relationships between the Commissioner 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.

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

10. Seeking and giving advice

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

11. Own initiative powers

11.1 From April 2018, the Ombudsman will have the power to investigate an issue on her 'own initiative' without first receiving a complaint.

11.2 The power to commence an 'own initiative' investigation can be used effectively in a variety of circumstances including 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, an investigation on foot of a report or reference from another oversight or regulatory body. This list is not exhaustive but gives a flavour of the wide range of circumstances which could prompt an 'own initiative' investigation by the Ombudsman. The decision to initiate an investigation, on this basis, would be evidence based, reasoned, proportionate and represent a practical use of public funds. It will also seek to be complementary with the work of other oversight or scrutiny bodies and avoid any duplication.

11.3 'Own initiative' investigations may give rise to collaborative working between the Ombudsman and the Commissioner on a matter which concerns the rights of children and young people. The Commissioner and Ombudsman will seek to discuss on a regular basis possible areas of work which may be of interest and relevance to the Ombudsman's use of Own Initiative powers or any wider joint working. Any decision about collaborative working between the respective offices on this basis will be measured and taken in line with the established criteria for such investigations as stipulated by the 2016 Act.

12 Co-ordination, consultation and exchange of information

12.1 In sharing information under the provisions of this Memorandum, the Commissioner and the Ombudsman will comply with all their respective legislative frameworks², and all other relevant legislation, including, but not limited to, the DPA, the GDPR (following

² 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.

its implementation date), the FOIA, the Human Rights Act 1998, the common law duty of confidentiality and any policies or frameworks produced by either the Commissioner or the Ombudsman relating to confidential personal information.

12.2 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

13.1 Any disagreement between the Commissioner 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 Memorandum, up to and including the Chief Executive of the Commissioner and Deputy Ombudsman who will be responsible for ensuring a mutually satisfactory resolution.

14. Review of the Memorandum

14.1 This Memorandum will be reviewed after 1 year.

15. Signature of parties to the Memorandum

Signed: _____
Koulla Yiasouma, Northern Ireland Commissioner for Children and Young People

Dated: _____

Signed: _____
Marie Anderson, Northern Ireland Public Services Ombudsman

Dated: _____