

(Education file)

PROTECT - INVESTIGATION



Ombudsman Northern Ireland

Your Ref: JA/SMcK/Education/5504-2
Our Ref: 201100483

29th January 2014

Mr James Allister QC MLA
38 Henry Street
Harryville
BALLYMENA
BT42 3AH



Dear *Mr. Allister,*

THE OMBUDSMAN (NI) ORDER 1996

I refer to the complaint about the actions of the Department of Education that you submitted to me on your own behalf.

I have now concluded my investigation into your complaint. In accordance with Article 16(1) of the above Order, I enclose my report of the results of that investigation.

Yours sincerely

T. Frawley
T FRAWLEY CBE
Assembly Ombudsman

Enc

Reference: 13524

THE OMBUDSMAN (NI) ORDER 1996

**INVESTIGATION REPORT
UNDER ARTICLE 16(1)(a)**

**Complainant
and Referring MLA:**

**Mr James H Allister QC MLA
38 Henry Street
Harryville
Ballymena
BT42 3AH**

Body complained of:

Department of Education

GUIDANCE NOTE ON CONFIDENTIALITY AND PRIVILEGE

Confidentiality

The Ombudsman is mindful of the requirement of Article 13(3) of the Ombudsman (NI) Order 1996 to the effect that every investigation is conducted in private. Under this legislation, the Ombudsman has no general power to share information with the public and is in fact barred from disclosing any information obtained for the purposes of an investigation except in very limited circumstances.

Consequently, it is the Ombudsman's view that the information in this report is confidential until such times as it is published by him in accordance with the provision of the above Order. Although ultimately a matter for the Court to decide in any case, the Ombudsman considers that any unauthorised publication of this report, or its contents, may breach confidentiality.

Privilege for Certain Publications

While the Ombudsman enjoys absolute privilege for the purposes of the law of defamation when he publishes his report to the Northern Ireland Assembly, please note that this privilege does not extend to the publication by any person (other than a sponsoring MLA) of this report.

REPORT SUMMARY

Mr James Allister QC MLA complained to me, on his own behalf, about the actions of the Department of Education (the Department). Mr Allister's complaint concerned the Department's failure to provide timely responses to two letters he sent to the Permanent Secretary regarding constituency matters.

In the course of my investigation of this complaint, the Department acknowledged that it had failed to meet its customer service standards with regard to its handling of Mr Allister's correspondence. While its service standard is to provide a substantive response to a written enquiry within 15 working days, the Department had taken 57 working days to respond to one of Mr Allister's letters and 23 working days to reply to the other. I have established that these delays were attributable to the fact that the Department gave priority to responding to correspondence from elected representatives that had been addressed to the Minister rather than that which had been sent to the Permanent Secretary.

I have concluded that the Department's unacceptable handling of Mr Allister's correspondence constitutes maladministration, and that Mr Allister sustained an injustice as a result. I have therefore upheld his complaint.

By way of redress for the injustice sustained, I have recommended that the Department provides a written apology to Mr Allister.

THE OMBUDSMAN (NI) ORDER 1996

INTRODUCTION

1. Mr James Allister QC MLA wrote to me, on his own behalf, claiming to have sustained injustice as a result of maladministration by the Department of Education (the Department). Mr Allister's complaint concerns the Department's failure to provide timely responses to two letters he sent to the Permanent Secretary concerning constituency matters.

MY ROLE AS OMBUDSMAN

2. The Ombudsman (Northern Ireland) Order 1996 (the Order) gives me the authority to investigate complaints from those who consider they have sustained injustice through maladministration by a public body within my jurisdiction. I can investigate any action taken by or on behalf of the body in the exercise of its administrative functions. The independence of my role means that I do not advocate the cause of the person who has complained to me, nor do I defend the actions of the body complained about.
3. The term "maladministration" is not defined in the Order but it includes delay, wrong action, or inaction, by public servants or decisions arrived at with improper consideration or motive. My consideration of whether the actions of a public body constitute maladministration includes reference to the Parliamentary Ombudsman's Principles of Good Administration. These Principles, which are the appropriate and relevant standards against which the actions of a public body within my jurisdiction are to be judged when a complaint about that body is made to me, outline the approach that public bodies should take when delivering good administration and customer service. Good administration means getting it right; being customer focused; being open and accountable; acting fairly and proportionately; putting things right; and seeking continuous improvement.
4. Where I find evidence of maladministration, I must consider whether this has caused the complainant to sustain injustice. Injustice is also not defined in my legislation but can include upset, inconvenience, frustration, disappointment or a loss of opportunity. Unless I am satisfied that there is evidence of

maladministration, and that this has caused injustice to the person who has complained to me, I cannot take any further action on a complaint.

MR ALLISTER'S COMPLAINT

5. Mr Allister complained that the Department failed to provide timely responses to his correspondence concerning two constituency matters. Mr Allister referred specifically to letters he had sent to the Department's Permanent Secretary on 26 April 2012 and 29 May 2012. He informed me that the Minister for Education provided responses to those letters on 25 July 2012 and 4 July 2012 respectively. Mr Allister was also aggrieved that, according to the Minister's responses, these delays were due to the fact that Mr Allister had not written directly to him (the Minister).

6. Having received the delayed responses to his correspondence, Mr Allister wrote to me, requesting that I investigate the matter. Article 9(2) of the Order gives me the authority to investigate any action taken by a public body within my jurisdiction *"only if a written complaint is duly made to a member of the Assembly by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and the complaint is referred to [me], with the consent of the person who made it, by a member of the Assembly with a request to conduct an investigation into it"*. When I first received Mr Allister's complaint, I was therefore conscious that its circumstances were somewhat unusual, in that Mr Allister was not only acting in the capacity of the referring MLA but was also the member of the public that was claiming to have sustained injustice as a consequence of maladministration. Being mindful, however, that the legislation requires only that a complaint is referred to me *"by a member of the Assembly"*, and does not specify which MLA may refer it, I was satisfied that there was no statutory bar to Mr Allister sponsoring his own complaint. I was also of the view that there was an artificiality to requiring Mr Allister (as the person aggrieved) to write to himself (as the referring MLA) in order to raise his complaint. In the circumstances, and being conscious of the discretion I have under Article 11(8) of the Order to determine whether a complaint has *"been duly made under [the] Order"*, I was

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content to accept the one letter Mr Allister had sent to me as satisfying both provisions of Article 9(2) of the Order.

7. However, during the course of my investigation, the Department contended that the specific provisions of Article 9(2) had not been met, in that a written complaint had not been made by the person aggrieved to an MLA *and* an MLA had not then referred that written complaint to me, and that consequently, I did not have the authority to investigate Mr Allister's complaint. While I remained of the view that the complaint did fall within my jurisdiction, I responded to the Department's concerns by arranging for Mr Allister (as the person aggrieved) to submit a written complaint to himself (as the referring MLA) and for him (as the referring MLA) to then refer the written complaint to me.
8. I should also point out that although there is no statutory requirement in the Order for a complainant to have exhausted the internal complaints procedure of the public body before complaining to me about that body's actions, it is my usual practice not to accept a complaint for investigation until the aggrieved person has exhausted the public body's internal complaints procedure (in order to afford the body a reasonable opportunity to respond to the complaint at the highest level). In this instance, however, I did not consider it necessary to ask Mr Allister to pursue that course of action as I was content that the Department, at the highest level, had already stated its position on why responses to Mr Allister's correspondence had not been provided sooner, that is, that the Minister, in his letters of 4 and 25 July 2012, had informed Mr Allister that the delay had resulted from him (Mr Allister) not having written directly to him (the Minister) in the first instance. Consequently, I saw no benefit in requiring Mr Allister to raise his concerns through the Department's internal complaints procedure before I would accept his complaint.

INVESTIGATION METHODOLOGY

9. To enable me to consider Mr Allister's complaint, I arranged for written enquiries to be made of the Department's Permanent Secretary on a number of occasions.

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The Minister provided a response to my initial enquiries, and the Permanent Secretary and the Department's Head of Equality and All Ireland Directorate responded to my subsequent requests for additional information. Whilst I have not included in this report every detail investigated, I am satisfied that nothing of significance has been omitted.

ISSUE OF COMPLAINT AND MY FINDINGS

Issue of Complaint

10. Mr Allister is aggrieved that the Department failed to respond to his correspondence within a reasonable time frame. He informed me that he wrote to the Permanent Secretary on 26 April 2012 ('Letter 1') and on 29 May 2012 ('Letter 2') about two separate constituency matters, and that responses to his correspondence were provided by the Minister. In his response of 4 July 2012 to Letter 2, the Minister wrote, *"As you know, protocol requires that a response to elected Members should issue from the Minister, failure to write to me as Minister will result in delay as I respond to properly addressed mail first"*. In his response of 25 July 2012 to Letter 1, the Minister wrote, *"As you will now be aware correspondence from MLAs to the Department of Education will be dealt with by me as the Minister. As you are also aware, I deal with properly processed correspondence firstly hence the delay in responding to you"*.

Evidence Considered

11. In response to my initial enquiries, the Minister informed me that the Department received correspondence from Mr Allister on 30 April 2012 (Letter 1) and 30 May 2012 (Letter 2), and that replies were issued on 25 July 2012 (to Letter 1) and 4 July 2012 (to Letter 2). The Minister provided me with copies of Mr Allister's letters to the Permanent Secretary; the related advice and draft responses that Departmental officials had submitted to him (the Minister); and his replies of 4 and 25 July 2012 to Mr Allister.
12. The Minister informed me that the Department aims to respond to correspondence from MLAs within 15 working days and that it was *"regrettable that [the Department] had fallen some way short of that standard in relation to*

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Mr Allister's letters" in that it had taken 57 working days to respond to Letter 1 and 23 working days to respond to Letter 2. He further advised that the Department did not have a formal written policy for handling letters MLAs sent to the Permanent Secretary but that it was his (the Minister's) "*established preference that [he] respond to such correspondence*". The Minister confirmed that this arrangement had not been drawn to MLAs attention generally, but that an explanation of the handling of a letter an MLA had sent to the Permanent Secretary was provided in the associated letter of response.

13. The Minister also informed me that in relation to this same matter, Mr Allister had submitted a statutory questionnaire to the Department under the Fair Employment and Treatment (NI) Order 1998.
14. At a later stage of my investigation, the Head of Equality and All Ireland Directorate advised me that the Department had sent acknowledgements of its receipt of Letter 1 and Letter 2 to Mr Allister on 2 and 31 May 2012 respectively. He also provided me with a copy of Mr Allister's statutory questionnaire, to which the Minister had referred in his response to my initial enquiries, along with a copy of the Minister's associated response.
15. I noted that in his questionnaire, which was dated 20 September 2012, Mr Allister referred to the Department's responses of 4 and 25 July 2012 to Letter 1 and Letter 2. He asked "*why and when was this tactic of deliberately delaying responses to [his] correspondence introduced*" and also "*what regard was had to the resulting prejudice to the constituents on whose behalf [he] was corresponding*". In his response of 12 November 2012 to the questionnaire, the Minister stated that it was his "*established practice to reply personally to correspondence received by [his] Department from any MLA*". The Minister also stated that "*as the Minister is, in law, the Head of the Department, [he replies] to all such correspondence whether addressed to [him] or [his] Permanent Secretary*", and that "*in managing [his] correspondence, [he] give[s] priority to letters that are addressed to [him] over those that are addressed to [his] Permanent Secretary*". The Minister also referred to Mr Allister having written to the Permanent Secretary "*on a number of occasions*" and to the arrangements

for handling MLA correspondence having been explained in each reply, and he contended that Mr Allister “[could not] have been therefore unaware, after the first such reply, of how such correspondence is handled”. Additionally, the Minister stated that he “[did] not intentionally delay any reply” and that his actions “[had] not resulted in any prejudice to the constituents on whose behalf [Mr Allister had] acted” as “the handling of [Mr Allister’s] correspondence [had] made no difference to the outcome of the matters therein”.

16. Subsequently, the Permanent Secretary provided me with copies of the further correspondence (five letters) that Mr Allister had sent to him on other occasions, and the Minister’s related responses, as had been referred to in the Minister’s response to Mr Allister’s statutory questionnaire. I noted that prior to sending Letter 1 and Letter 2 to the Permanent Secretary, Mr Allister had written to the Permanent Secretary (in relation to separate constituency matters) on 11 December 2011 (‘Letter 3’) and on 14 February 2012 (‘Letter 4’). In responding to Letter 3 the Minister wrote (on an unknown date in January 2012), “As you know protocol requires that a response to elected Members should issue from the Minister”. In responding to Letter 4 on 6 April 2012, the Minister wrote, “As you know protocol requires that a response to elected Members issues from me, responses may be delayed if not properly addressed”.

Analysis and Findings

17. I have established, on the basis of information provided by Mr Allister; the written responses I received to the enquiries I made of the Department; and my examination of documentation provided to me, the following chronologies in relation to the Department’s handling of Letter 1 and Letter 2:

Letter 1:

Mr Allister sent a letter dated 26 April 2012 to the Permanent Secretary. The letter was received in the Permanent’s Secretary’s Office on 30 April 2012 and an acknowledgment was sent from the Minister’s Private Office to Mr Allister on 2 May 2012. A Departmental Official provided a submission dated 25 May 2012 to the Minister, along with a draft letter of response. The Minister’s reply to Mr Allister was issued on 25 July 2011.

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Letter 2:

Mr Allister sent a letter dated 29 May 2011 to the Permanent Secretary. The letter was received in the Permanent's Secretary's Office on 30 May 2011 and an acknowledgment was sent from the Minister's Private Office to Mr Allister on 31 May 2011. A Departmental Official provided a submission dated 8 June 2011 to the Minister, along with a draft letter of response. The Minister's reply to Mr Allister was issued on 4 July 2011.

18. The Department's published service standards for the handling of correspondence state that the Department will "*provide a written reply to an enquiry/communication within 15 working days*" and that if a substantive response cannot be provided within that timescale, "*an interim reply explaining the reasons for this, and how the matter is to be progressed*" will be issued. It is clear that, as it has acknowledged in responding to my enquiries (paragraph 12 refers), the Department did not meet this standard in relation to its handling of Letter 1, when it took 57 working days to respond, and Letter 2, when it took 23 working days to respond. (It is evident that this standard was also not met in relation to Letter 4 (paragraph 16).)
19. I have been informed that while the Department does not have a formal written policy for handling letters it receives from MLAs, it is the Minister's "*established preference*" that he responds to such correspondence (paragraph 12). It is not in dispute that a public body, such as the Department, should have discretion to determine the administrative arrangements by which it will handle written enquiries from elected representatives. However, such arrangements must have due regard to the body's customer service standards, and importantly, also to the Principles of Good Administration, to which I referred at the beginning of this report.
20. I have established, from my examination of the responses the Department provided to Mr Allister's correspondence and to his statutory questionnaire, that the delayed handling of Letter 1 and Letter 2 was attributable to the fact that Mr Allister had written to the Permanent Secretary, rather than to the Minister.

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Specifically, in the Department's response to his letter of 4 July 2012, Mr Allister was informed, "*failure to write to [the] Minister will result in delay as [he] respond[s] to properly addressed mail first*" (paragraph 10), and in the Department's response of 12 November 2012 to the statutory questionnaire, Mr Allister was informed that "*priority [is given] to letters that are addressed to [the Minister] over those that are addressed to [the] Permanent Secretary*" (paragraph 15). In my view, if this practice of prioritising the handling of written enquiries on the basis of to whom the correspondence was addressed in the first instance results in service standards not being met, then it is clearly not in keeping with the Principles of Good Administration.

21. As I have already recorded in paragraph 3 above, these Principles, which are reproduced at Appendix 1 to this report, are the standards against which the actions of a public body within my jurisdiction are to be judged when a complaint of maladministration by that body is made to me. The second Principle requires a public body to be customer focused by "*keeping to its commitments, including any published service standards*". The Department's failure to respond to Letter 1 and Letter 2 within its 15 working day target, or to provide Mr Allister with any interim responses, is evidence that this principle of good administration was not met. Consequently, I consider this failing to constitute maladministration.

22. I am conscious that within the context of explaining its actions in its response to Mr Allister's statutory questionnaire, the Department highlighted that he had been informed on "*on a number of occasions*" of the arrangements by which it handled correspondence from MLAs and that "*[he could not] have been therefore unaware, after the first such reply, of how such correspondence is handled*" (paragraph 15). In this regard, it is evident that the Department's responses to Letter 3 and Letter 4 (which Mr Allister received prior to sending the Department the letters that are the subject of this complaint) did both refer to a Departmental protocol that "*requires that a response to elected Members should issue from the Minister*", and that Letter 4 further stated "*responses may be delayed if not properly addressed*" (paragraph 16). However, in my view, these were not clear indications that a response to an MLA's written enquiry to

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the Department may be delayed if that enquiry was not directed specifically to the Minister. In fact, it was not until its response of 4 July 2012 (to Letter 2) that the Department first informed Mr Allister that a *“failure to write to [the] Minister [would] result in delay as [he] respond[s] to properly addressed mail first”*. In any event, even if a clearer and earlier explanation of how the Department handled MLA correspondence had been provided to Mr Allister, I would reiterate that the practice of giving priority to responding to such correspondence, solely on the basis of its addressee, is contrary to the Principles of Good Administration.

CONCLUSION

23. Mr Allister complained to me about the Department’s failure to provide timely responses to two letters (Letter 1 and Letter 2) that he sent to the Permanent Secretary concerning matters that had been brought to his attention by his constituents. It is not in dispute that the Department failed to respond to Mr Allister’s representations within the timescale stipulated in its customer service standards. I have found that these delays were attributable to the unacceptable practice of prioritising the provision of responses to correspondence from elected representatives on the basis of whether or not that correspondence had been addressed to the Minister in the first instance.

24. I have concluded that the Department’s failure to provide timely responses to Mr Allister’s correspondence constitutes maladministration (paragraph 21). I am satisfied that this caused Mr Allister to sustain an injustice by way of disappointment and frustration at having to wait an unacceptable length of time for a response to his representations and at not being able to advise his constituents of the Department’s position on the matters they had raised as quickly as he would have wanted. In my view, it is of no significance that, as the Department indicated in its reply to the statutory questionnaire, the outcome of Mr Allister’s representations on behalf of his constituents, would have been no different even if the Department’s responses had been provided sooner (paragraph 15). Mr Allister, as a member of the public, and as an elected representative, was entitled to expect a reasonable level of service from the

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Department. It is clear that in the instances highlighted in this report, the Department failed to meet its stated service standards.

25. By way of redress for the injustice caused by the failings I have identified, I recommend that the Department provides a written apology to Mr Allister.
26. In concluding this report of the results of my investigation, I would also record that the Department continues to contend that Mr Allister's complaint is not within my jurisdiction and has indicated to me that, for this reason, it rejects the recommendation I have made in paragraph 25.



T FRAWLEY CBE
Assembly Ombudsman

29th January 2014

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public bodies means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.