

Including the Ombudsman in Prisoner Complaints: Reasons for Inclusion

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Dear Editor,

Prisoners in this jurisdiction are currently excluded from the remit of the Ombudsman. Ireland first established an Office of the Ombudsman in 1984 under the Ombudsman Act 1980. In debating the original Bill in 1980, the Minister for State noted that ‘prisoners already have adequate means of redress and their rights are adequately protected under the law and the Constitution. There is also the likelihood that the facility would be abused.’¹ He furthermore stated that ‘whether [procedures] are adequate will depend on the person’s point of view – I suppose from a prisoner’s point of view they are not, from others’ they probably are’.² The precise nature of these remedies was not discussed further, although questions were raised by a number of politicians, most notably Mary Robinson. She stated in debating the Ombudsman Bill 1979 that ‘[i]t may not be easy to include prisons [in the remit of the Ombudsman], but that is not the reason to exclude them’.³

In more recent years, the office of the Ombudsman was put forward by the Inspector of Prisons in his report entitled ‘Review, Evaluation and Analysis of the Operation of the Present Irish Prison Service Prisoner Complaints Procedure’ as the suggested independent external component for the existing complaint system.⁴ This proposal was accepted by the then Minister of Justice in June 2016 and the Inspector’s specific recommendation to extend the Ombudsman’s mandate to cover prisoner complaints was accepted.⁵ In April of 2017, the role of the Ombudsman was again raised at the Prison Officers’ Association Annual Conference by former Minister for Justice and Equality, Frances Fitzgerald TD, where she stated that

¹ Seanad Deb 2 July 1980, vol 94, no 13 <https://www.oireachtas.ie/en/debates/debate/seanad/1980-07-02/7/> accessed 17 February 2019.

² Seanad Deb 3 July 1980, vol 94, no 14 <https://www.oireachtas.ie/en/debates/debate/seanad/1980-07-03/7/> accessed 17 February 2019.

³ *ibid.*

⁴ Judge Michael Reilly, ‘Review, Evaluation and Analysis of the Operation of the Present Irish Prison Service Prisoner Complaints Procedure’ (Office of the Inspector of Prisons 2016) <http://justice.ie/en/JELR/Review,%20Evaluation%20and%20Analysis%20of%20the%20Operation%20of%20the%20IPS%20Prisoner%20Complaints%20Procedure.pdf/Files/Review,%20Evaluation%20and%20Analysis%20of%20the%20Operation%20of%20the%20IPS%20Prisoner%20Complaints%20Procedure.pdf> accessed 18 February 2019.

⁵ Inspector of Prisons, ‘Tánaiste Accepts Recommendation to Give Ombudsman a Role in Prison Complaints’ *Review, Evaluation and Analysis of the Operation of the IPS Prisoner Complaints Procedure* (Recommendation No 1, 2016) <http://justice.ie/en/JELR/Pages/PR16000125> accessed 25 February 2019.

discussions in relation to the role of the Ombudsman were at an advanced stage.⁶ The Minister expected the role of Ombudsman to be incorporated into the complaint mechanism as of the end of that year. The Minister reiterated that discussions for extending the mandate of the Ombudsman to prisons was at advanced stages in February 2018.⁷ The merits for expanding the mandate of the Ombudsman to include prisoner complaints will be discussed briefly below.

Prisoners are a particularly vulnerable population, as the public are often unaware of life inside prisons and there are inherent power differentials between prisoners and staff, and amongst prisoners themselves. Those in prison are entirely dependent on staff for the provision of their daily needs and ensuring that prisons are run in a humane manner. Our protections for prisoners' rights are still only in development. Until 2007, prisons in Ireland had no statutory independent Inspector and no formal prison complaints mechanism until 2014, so the possibility of access to justice was limited to the courts.⁸ While the courts have protected prisoners' rights in a number of key cases, access may be restricted because of a lack of awareness and/or lack of financial means for a large portion of prisoners.⁹ This means that the courts are often not a suitable option for people in prison who wish to resolve an issue. The Ombudsman on the other hand is a free service which investigates matters in a much shorter timeframe.

In addition, court proceedings can often be quite drawn out and difficult for those unfamiliar with the procedures to navigate. This can be frustrating for those in prison, especially if they are still serving a sentence and fear the possible repercussions of taking a case against the prison. The Ombudsman, however, has greater flexibility in terms of resolutions and also in terms of mediating between the parties involved so that tensions can be more easily managed. The shorter time period can also be of vital importance in an environment where things that may be viewed as trivial by those on the outside (such as losing an item of clothing) are given a greater significance in the prison environment. As noted by one participant in our study, while

⁶ Frances Fitzgerald, 'Address by Minister for Justice and Equality' (Prison Officers' Association Annual Conference, Galway, 27 April 2017).

⁷ Dáil Deb 8 February 2018, vol 965, no 3 Response to Question 158 by Minister of Justice Charles Flanagan <https://www.kildarestreet.com/wrans/?id=2018-02-08a.412> accessed 1 May 2018.

⁸ Mary Rogan, 'Accountability Structures and the Regulating Irish Prisons' (Irish Penal Reform Trust, Dublin Institute Technology 2012) <https://arrow.dit.ie/cgi/viewcontent.cgi?article=1009&context=aaschlawoth> accessed 10 March 2019.

⁹ For example *Holland v Governor of Portlaoise Prison* [2004] 2 IR 573; *Kinsella v Governor of Mountjoy Prison* [2011] IEHC 235. For further discussion see Rogan (n 8).

it is easy to reschedule a phone call or a visit on the outside, those in prison cannot simply text to arrange a new time if their slot for a phone call is missed.

Court proceedings may also be quite daunting for those with literacy issues. A significant number of prisoners have left school early and experience literacy issues. While in the wider population 90% of students now complete their Leaving Certificate, a recent prison survey found that 80% of prisoners left school before their Leaving Certificate, more than half left before Junior Certificate and just over a quarter never attended secondary school.¹⁰ An innovative approach in New Zealand has been introduced where prisoners can contact the office of the Ombudsman through a designated phone line. This means that those who may not be able to write out their complaint or feel insecure about seeking help within the prison could access the service. This is especially important in an environment of low trust, where discussing problems or asking for help can be seen as a point of weakness and bring unwanted attention to an already vulnerable person. Any such system would need to be located in a readily accessible place for all persons, such as through providing a specific dial code on existing phone boxes and ensure that conversations could take place in confidence.

As of yet, it is unclear when the Ombudsman will become part of the prisoner complaint system and what form it will take, should it be introduced. However, it would be a welcome reform to the current complaint system and redress mechanisms for Irish prisoners providing a key independent aspect to the existing system.

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¹⁰ Carl O'Brien, 'Half of Prisoners Drop out of School before Junior Certificate' *Irish Times* (Dublin, 6 February 2018) <https://www.irishtimes.com/news/education/half-of-prisoners-drop-out-of-school-before-junior-certificate-1.3381403> accessed 17 February 2019.