



Memorandum of Understanding between the Northern Ireland Human Rights Commission and the Prisoner Ombudsman for Northern Ireland

Respective remits

1. The Northern Ireland Human Rights Commission (NIHRC) was established as a result of the Belfast (Good Friday) Agreement 1998. Its governing legislation is the Northern Ireland Act 1998, as amended by the Justice and Security (Northern Ireland) Act 2007. It is designated as a non-departmental public body, and receives grant-in-aid from the United Kingdom government through the Northern Ireland Office. It reports to Parliament through the Secretary of State for Northern Ireland.

2. The NIHRC is a National Human Rights Institution with A status accreditation from the United Nations. This recognition means that the organisation operates independently in full accordance with the Paris Principles.

3. The statutory functions of the NIHRC include:

- (i) providing advice on legislative Bills introduced in the Northern Ireland Assembly and on policy proposals made by Ministers in the Northern Ireland Executive. It also provides advice to the United Kingdom government and Parliament on matters affecting human rights in Northern Ireland.
- (ii) conducting investigations on systemic human rights issues. To do so, it may enter places of detention, and can compel individuals and agencies to give oral testimony or to produce documents.
- (iii) promoting understanding and awareness of the importance of human rights in Northern Ireland. To do so, it may undertake or support research and educational activities.

- (iv) providing legal advice and initiating strategic legal cases.
- (v) monitoring the implementation of international human rights treaties.
- (vi) engaging with other National Human Rights Institutions in the United Kingdom and working in partnership with the Irish Human Rights and Equality Commission.

4. The Prisoner Ombudsman for Northern Ireland (PONI) was established in 2005 following the Steele Review which was commissioned because of concerns about staff and prisoner safety in Maghaberry Prison. Inter alia it suggested that establishment of such an office would "*make a valuable contribution to defusing the tensions which are bound to arise in prisons in Northern Ireland.*" This contribution is fulfilled through two specific functions:

- (i) Investigation and report of Complaints from prisoners and their visitors.
- (ii) Investigation and report on Deaths in Prison Custody.

5. The Prisoner Ombudsman's powers regarding investigation of complaints by prisoners or visitors to prison establishments are currently set out in Rule 79 of the Prison and Young Offender Centre (NI) Rules 2009. In addition, the Prisoner Ombudsman has a standing commission from the Director General of the Northern Ireland Prison Service to investigate deaths in prison. He does not currently have any statutory powers in this matter.

Purpose of the Memorandum of Understanding

6. This Memorandum of Understanding sets out the agreement between the NIHRC and the PONI (the Parties) of the circumstances in which consultation, co-operation and disclosure of information between the Parties will occur. It outlines the principles that will inform these functions and the limitations on any further use of disclosed information. The intention of the Parties is to work in co-operation, while recognising that their respective roles and responsibilities are different but complementary.

7. This Memorandum of Understanding will be effective from 1 April 2018 and will be reviewed by the Parties, as deemed necessary (by either party). For the avoidance of doubt, amendments to this Memorandum of

Understanding may be put forward and agreed through mutual consent at any time in writing by the Chief Executive of the NIHRC or the Chief Executive of the PONI.

Consultation and co-operation

8. The Parties 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 the organisations. This will enable them to fulfil their respective responsibilities as fully, effectively and efficiently as possible.

9. Within available resources, the Parties will invite representation from each organisation to relevant meetings or project groups etc... where both organisations believe there would be advantage in cross-representation and stakeholder engagement.

10. The Parties 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 also aim to meet as required and at least once a year.

Disclosure of relevant information

11. From the date of this Memorandum of Understanding, the Parties will:

- (i) consult each other about enquiries received where these appear to be matters that may engage their respective statutory remits. They may also make referrals to each other. Such referrals will carry no obligation to assume carriage of a case as an application for assistance or initiate an investigation.
- (ii) when making recommendations in relation to investigations and research, disclose to each other information where relevant as soon as possible from the date of issuing the final report.
- (iii) when providing advice to government on legislation and policy, disclose to each other information where relevant as soon as possible from the date of issuing the advice.
- (iv) when monitoring the implementation of international treaties regarding issues affecting prisons, disclose to each other information where relevant as soon as possible.

- (v) take appropriate action in accordance with their statutory functions in respect of the relevant information.
- (vi) keep the relevant information confidential.
- (vii) use the information only for the purposes of their respective statutory remits.

Exchange of information

12. Cooperation between the Parties will often require the exchange of information. All arrangements for collaboration and exchange of information set out in this Memorandum of Understanding, and any supplementary agreements will take account of and comply with the General Data Protection Regulation (GDPR), the Freedom of Information Act 2000 (any amendments to those Acts) and any Codes of Practice, frameworks or other policies relating to confidential personal information applying to the NIHRC and the PONI.

13. Both the Parties are subject to the Freedom of Information Act 2000. If one organisation receives a request for information that includes information originated from the other, the receiving organisation will make the other aware before responding. However, the ultimate decision on the disclosure of information will remain with the information owner (the organisation that has been requested to release it).

Confidentiality and privilege

14. The NIHRC investigations and legal enquiries are often conducted in private and the information obtained may be confidential. Its legal function is subject to professional privilege. Details may be shared regarding legal casework. However, this could be dependent upon consent from the service user or any relevant third parties. The NIHRC shall conduct its investigations and publish reports of its findings as required by the Northern Ireland Act 1998.

15. All PONI investigations are conducted in private and the information and materials obtained are confidential. Information may be shared with partner organisations or families/individuals but will be done so in accordance with:

- (i) General Data Protection Regulation (GDPR),.
- (ii) The Freedom of Information Act 2000.
- (iii) Legal Privilege.

- (iv) The Prisoner Ombudsman's obligations as detailed in Terms of Reference.
- (v) The Prisoner Ombudsman Disclosure Policy.
- (vi) The Coroners and Justice Act 2009.
- (vii) The Justice Act (Northern Ireland) 2016.
- (viii) Any amendments to any of the above Acts....

16. Any complaints about the disclosure of information by the Parties under this Protocol should be made in the first instance to the organisation responsible (i.e. the NIHRC or the PONI) by way of request for an internal review. If the requestor remains dissatisfied following the completion of an internal review, he/she can ask the Information Commissioner's Office to assess their complaint under the Information Acts (General Data Protection Regulation (GDPR), Freedom of Information Act 2000 and Environmental Information Regulations 2004) and any amendments to those Acts.

Signature of the Parties to the Memorandum of Understanding



Signed:
David Russell, Chief Executive, Northern Ireland Human Rights Commission
25 May 2018

Signed: 
Kieron Moore, Director of Operations, Prisoner Ombudsman for Northern Ireland
25 May 2018