

The independence of the Office of the Police Ombudsman for Northern Ireland

A follow-up review of inspection recommendations

January 2013

Criminal Justice Inspection
Northern Ireland
a better justice system for all





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List of abbreviations

CJI	Criminal Justice Inspection Northern Ireland
CRP	Critical Review Panel (in the Office of the Police Ombudsman for Northern Ireland)
CU	Confidential Unit (in the Office of the Police Ombudsman for Northern Ireland)
DoJ	Department of Justice
HMIC	Her Majesty's Inspectorate of Constabulary
HOLMES	Home Office Large Major Enquiry System
IO(s)	Investigating Officer(s)
MoU	Memorandum of Understanding
OPONI	Office of the Police Ombudsman for Northern Ireland
PSNI	Police Service of Northern Ireland
QA	Quality Assurance
RUC	Royal Ulster Constabulary
SIO(s)	Senior Investigating Officer(s)
SMT	Senior Management Team
SPOC	Single Point of Contact



Chief Inspector's Foreword

Criminal Justice Inspection Northern Ireland (CJI) published a report on '*An inspection of the independence of the Office of the Police Ombudsman for Northern Ireland*' in September 2011. The report was extremely critical of the manner in which historical cases were being progressed through to the publication of a report, and our overall assessment was one which was not made lightly.

Rebuilding public confidence in the way historical cases are investigated and reported has been a priority for the new Police Ombudsman, in post from July 2012, and our follow-up review shows that he has recruited experienced Senior Investigating Officers, invested in new technology, introduced new processes and procedures with quality assurance checks and regular reviews to ensure the integrity of both the investigation process and public reports.

More importantly, there was clear evidence of the direct involvement of the Police Ombudsman at every stage of the investigation process and an intention to provide direct ownership of the public report. This leadership is welcomed and valued by staff in the History Directorate and by other senior staff.

Our overall conclusion is that substantial progress has been made, and we recommend that the Police Ombudsman recommences his investigation of historical cases and to publish public reports. It is only when public reports have been published that we can assess whether the full independence of the Office has been restored, and I intend to return to this issue when a sufficient number of reports have been progressed through to publication.

This review was undertaken by William Priestley and myself, with assistance provided by colleagues from Her Majesty's Inspectorate of Constabulary (HMIC). I wish to thank all those involved.



Brendan McGuigan
Chief Inspector of Criminal Justice in Northern Ireland
January 2013



Executive Summary

Introduction

In April 2011 the then Police Ombudsman, Mr Al Hutchinson, asked the Chief Inspector of Criminal Justice in Northern Ireland to undertake an urgent independent review of the relationship between the Office of the Police Ombudsman for Northern Ireland (OPONI) and the Police Service of Northern Ireland (PSNI) following allegations made by the then OPONI Chief Executive of a ‘*significant lowering of the professional independence between our operations (OPONI) and those of our key stakeholder, the PSNI.*’¹ Inspectors conducted an examination of these allegations and a report making six recommendations for improvement was published on 5 September 2011.

The main finding of the September 2011 CJI report was: ‘*The way in which the OPONI deals with the investigation of historic cases has led to a lowering of its operational independence.*’²

The serving Police Ombudsman left his post in January 2012 and the new Police Ombudsman, Dr Michael Maguire, took up post on 16 July 2012. On 22 October 2012 Dr Maguire wrote to the then Acting Chief Inspector of Criminal Justice inviting him to undertake a follow-up review into the September 2011 report.

During November 2012 CJI conducted a follow-up review of the OPONI focusing on progress made on the recommendations contained in its 2011 full inspection into the independence of the OPONI.

Findings

The overall conclusions of Inspectors are that there had been substantial progress made with the recommendations, and that investigations into historic cases should recommence as soon as practicable.

Inspectors found that new structures and processes had been developed and implemented with a focus on providing comprehensive and robust Quality Assurance (QA) of investigations into historic cases and any subsequent production of public reports. The role of the Police Ombudsman had become central to each step of the investigative process and to the QA framework. The strategic plan for the enhanced History Directorate had been implemented. The skills base of the History Directorate had been substantially enhanced by recruiting skilled and experienced Senior Investigating Officers (SIOs). Inspectors found that History Directorate staff had a clear focus on delivering high quality, comprehensive investigations, investigative and public reports. SIOs spoken to during the inspection fieldwork had welcomed the new structures, the dedicated Case Review Team, and the challenging interventions of the Police Ombudsman in pursuit of a quality product.

1 These allegations were set out in the Chief Executive’s resignation letter of 31 March 2011 to the Permanent Secretary of the Department of Justice (DoJ).

2 ‘*An inspection of the independence of the Office of the Police Ombudsman for Northern Ireland*’, CJI, September 2011.



Précis of progress made

Recommendation 1

The Police Ombudsman should suspend the consideration of historical cases through the Critical Review Panel and initiate an immediate review to consider the most effective way of managing those investigation reports which are awaiting publication.

Status: Partially achieved

The consideration of historical cases had been suspended; a review had been commenced but not completed before the then Police Ombudsman left his post. A reassessment of procedures had continued under the newly appointed Police Ombudsman which had identified the embedding of QA into each step of the investigative process as critical, together with the active involvement of the Police Ombudsman throughout the investigative and reporting processes. The restructuring of the History Directorate together with new QA processes had provided a framework capable of delivering quality investigations and public reports. A full assessment of the operation of the newly structured investigative and QA processes will be necessary once full operations have been commenced and some final reports have been published.

Recommendation 2

The Police Ombudsman should suspend historical case investigations except those currently being pursued jointly with the PSNI until the Strategic Plan for the Historic Investigations Directorate has been adequately resourced and becomes fully operational.

Status: Achieved

The strategic plan for the History Directorate had been implemented and this had included a revised prioritisation index. The strategy had been underpinned by enhancing the skills base of the Directorate and implementing supporting policies and procedures. Revised processes within the restructured History Directorate demonstrated adherence to recognised standards of investigation and QA.



Recommendation 3

The Police Ombudsman should commission a full review of the Confidential Unit and the protocol for dealing with sensitive information ensuring that the needs of the OPONI as a civilian oversight body, are fully represented in the review and integrated within the recommendations.

Status: Partially achieved

A review had been completed, and from it a series of recommendations with regard to the Confidential Unit (CU) had been made. Some recommendations had not been fully implemented at the time of inspection fieldwork. A new Memorandum of Understanding (MoU) was being progressed that focused on positioning the agreement between the leaders of the respective organisations. Changes to the structure of the History Directorate had strengthened the relationship between investigative teams and the CU.

Recommendation 4

The OPONI policy for the investigation of State related deaths (Article 2 European Convention on Human Rights) should be reviewed and clarified. Clear and unambiguous guidance on the policy should be provided to all staff.

Status: Achieved

The Article 2 policy had been reviewed and legal advice of Senior Counsel had been sought. The policy and guidance had been communicated to all OPONI staff. During fieldwork, Inspectors found that staff demonstrated a clear understanding of the Article 2 policy and the guidance issued to help clarify it.

Recommendation 5

The Police Ombudsman should carry out an immediate skills and competency audit of everyone having significant input into complex cases to ensure that staff are appropriately equipped to deal with such investigations.

Status: Achieved

This recommendation had been pursued as suggested and had resulted in gaps being identified in the skills profile of the History Directorate. Whilst Investigators had achieved the accredited training through Portsmouth University, those operating in the History Directorate had been identified as requiring additional skills. A programme of recruiting contract Investigators was commenced and Inspectors interviewed a number of these Investigators. Through the recruitment programme additional skills had become available within the History Directorate which include HOLMES³ skills and experience.

³ Home Office Large Major Enquiry System used by United Kingdom police services in complex and large cases.



Recommendation 6

The prioritisation regime contained in the Strategic Plan for the Historic Investigations Directorate should be reviewed and consulted on to reflect the needs of victims' families, the police and the wider public interest.

Status: Achieved

This recommendation had been pursued by further developing the existing prioritisation index and putting it out to public consultation. Some minor changes resulted from the consultation responses and the index had then been applied to existing cases. Results had indicated that the index had operated effectively, but a full assessment will only be possible when a higher number of cases become live once again and reports are published. At that stage a full assessment of the impact of the prioritisation regime should be made.

Conclusion

Inspectors' observations, examination of documents and interviews with a wide range of staff within the OPONI demonstrated that much had changed since CJI last inspected the organisation. Inspectors found that staff had been clear as to what was expected of them and that they had confidence in the revised investigative and QA processes. SIOs had welcomed the challenge and checking function of the Police Ombudsman and the Review Team throughout the investigative process and saw this as critical in producing high quality investigative and public reports. Challenge was seen as focused on improving the final product and not an exercise in subverting investigations and blaming Investigators. Other senior staff outside the History Directorate expressed confidence in the new structures, processes and enhanced skills base of the History Directorate.

Inspectors recommend that the Police Ombudsman should recommence historical investigations as soon as practicable. Further challenges lie ahead when difficult investigations are published. However, Inspectors believe that the changes made have the potential to deliver quality investigations and reports, and to protect the independence of the OPONI.

Section



Follow-up Review

CHAPTER 1:

Introduction and context

In April 2011 the then Police Ombudsman, Mr Al Hutchinson, asked the Chief Inspector of Criminal Justice in Northern Ireland to undertake an urgent independent review of the relationship between the OPONI and the PSNI following allegations made by the then OPONI Chief Executive of a *'significant lowering of the professional independence between our operations (OPONI) and those of our key stakeholder, the PSNI.'*⁴

During May and June 2011 following the agreement of Terms of Reference, Inspectors conducted an examination of these allegations and a report setting out inspection findings was published on 5 September 2011. In its report, CJI defined independence as:

'...free from outside control' or 'not subject to another's authority'. Independence is not an absolute. In the context of civilian oversight of the police, it is a complex and difficult area which can often be presented as a zero sum position. Any movement along a continuum can be seen to either weaken or strengthen independence depending on viewpoint.'

It is relevant to restate the point made in the September 2011 report that in the context of Northern Ireland, the perception of independence is critical as it impacts directly on the confidence of those who engage with the organisation. The police need to believe that complaints against them will be treated fairly and

impartially, while the community require confidence that the accountability mechanisms are sufficiently robust to deal with concerns over policing. It is a necessary, indeed obligatory, dimension to the work of the OPONI that it develops a good working relationship with all stakeholders, including the PSNI, in order to maintain confidence in the working of the Office. Complete independence (isolation) is no more satisfactory than the police investigating themselves.

Dealing with the allegation that the independence of the OPONI had been lowered in its relationship with the PSNI, the main finding of the September 2011 CJI report was that: *'The way in which the OPONI deals with the investigation of historic cases has led to a lowering of its operational independence.'*

Given the gravity of the situation and the importance of the OPONI as a major component in police oversight mechanisms in Northern Ireland, this finding was not made lightly. The consequences of the finding were fully understood by all stakeholders and the recommendations arising from the finding reflected the challenging situation reported by CJI. A total of six recommendations for improvement were made including:

- *'The Police Ombudsman should suspend the consideration of historical cases through the*

⁴ These allegations were set out in the Chief Executive's resignation letter of 31 March 2011 to the Permanent Secretary of the Department of Justice (DoJ).



Critical Review Panel and initiate an immediate review to consider the most effective way of managing those investigation reports which are awaiting publication;’ and

- *‘The Police Ombudsman should suspend historical case investigations except those currently being pursued jointly with the PSNI until the Strategic Plan for the Historic Investigations Directorate has been adequately resourced and becomes fully operational.’*

These were critical recommendations in that as a result, the investigation of historical cases effectively stopped. The only exceptions were those cases that had been pursued jointly with the PSNI as parallel investigations. All six recommendations were accepted by the then Police Ombudsman.

The serving Police Ombudsman at the time of the September 2011 report, left his post in January 2012 and the new Police Ombudsman, Dr Michael Maguire, took up post on 16 July 2012. On 22 October 2012, Dr Maguire wrote to the then Acting Chief Inspector of Criminal Justice inviting him to undertake a follow-up review into the September 2011 report.

During November 2012, CJI conducted a follow-up review of the OPONI focusing on progress made on recommendations contained in its September 2011 inspection into the independence of the OPONI. CJI assembled a team of four Inspectors, including two from HMIC who had extensive experience as SIOs in police services in England and Wales.

The follow-up review consisted of:

- a self-assessment prepared by the Police Ombudsman and the Senior Management Team (SMT);
- a preliminary interview with the Police Ombudsman;
- a review of processes and procedures applied to case files that had continued to be progressed due to them being subject to

parallel investigation by the PSNI;

- a desktop review of new structures, processes and procedures;
- one-to-one interviews with the head of the History Directorate and SIOs;
- one-to-one interviews with members of the SMT;
- one-to-one and focus group interviews with both the head of the CU and CU staff; and
- focus groups with a cross section of members of staff from the History Directorate.

CHAPTER 2:

Progress on recommendations



This chapter sets out in detail the 2011 recommendations, the response of the Police Ombudsman to them, and Inspectors' assessment of progress made to date.

Recommendation 1

The Police Ombudsman should suspend the consideration of historical cases through the Critical Review Panel and initiate an immediate review to consider the most effective way of managing those investigation reports which are awaiting publication.

Status: Partially achieved

OPONI response

Within their report, CJI had clear concerns about the lack of consistency and transparency of the process used to bring reports to a conclusion. In response to this recommendation, the then Police Ombudsman instigated a review of the Critical Review Panel (CRP) process. This review was never brought to completion as it transpired that the Police Ombudsman would be stepping down prematurely and in his absence, there would be no prospect of publishing any of the reports which would have normally involved a CRP.

During the course of some of the early engagement with CJI some thought was given to identifying a small number of reports which might have the potential of being subject of a CRP in order to demonstrate a sound process. This would then be used as a basis for consistency for the future. However, this initiative was based on the premise that the CRP was part of the overall quality assurance (QA) process.

It quickly became apparent that holding a CRP for an investigation that would not have been the subject of the level of QA envisaged by CJI did not allow for an effective assessment of the CRP as a process. In addition, it was recognised that the crucial component of a CRP is the Police Ombudsman who ultimately has to make 'the call' on the outcome of the investigation. Clearly until the new Police Ombudsman was in post, any 'trial run' would have been very artificial and as a consequence of questionable use.

Sitting underneath this recommendation is the question of how QA principles and processes can be embedded into the entire investigation. The consequence of this would be more confidence in the investigative product and therefore allowing for the potential of a less rigid process in bringing a report to publication. Great care has been taken in the planning and implementation of the History Strategic Plan to ensure that there are clear points in the investigation where QA is applied.

The role of the Police Ombudsman has been made more central to all aspects of the investigation and it is envisaged that he will be in a position to take a more enhanced and active role at strategic points in the investigation. Simply put, he will be briefed at identified stages of investigations and in addition, will be provided with other updates and information as he requires. This will ensure that at the point that an investigation report is produced, there will be no



'surprises' and he and any others he requires to take part in any form of CRP will have the necessary degree of confidence in the final product, having seen and understood its evolution.

While this concept in some respects remains theoretical until an investigation has been taken from 'cradle to grave,' a demonstration of certain aspects of the Police Ombudsman's involvement have been demonstrated in a range of areas since his appointment, including the establishment of 'Gold group' meetings, investigation reviews and direct consideration of case papers (including intelligence files).

Recommendation 1 while referencing a number of investigations that were awaiting publication was really seeking some assurance that in future all investigations will follow a defined and consistent process that promotes confidence in the outcomes. The new investigation process in its entirety, including an enhanced report writing capability, means that preparation for the publication of a major or significant public report will be starting from a much stronger position. The Police Ombudsman will be central and will have made clear determinations which will inform the production of a draft report. He will then draw together a panel from the SMT to consider the report in the round and test the conclusions reached by the Police Ombudsman.

The purpose of this process which, for obvious reasons, will not be referred to as a CRP, is to facilitate the outcome of an investigation into the public domain. The current SMT is drawn from various disciplines within the organisation, and as such, brings different opinions and perspectives along with a wealth of experience in the production of such reports. Having had the opportunity to observe, under his leadership, the dynamics of the SMT, the Police Ombudsman is confident that this mix presents him with a healthy and manageable tension which must not be confused with what was present in the past.

In common with the introduction of any new process there will be some evolution and refinement in the way that reports are brought to a conclusion.

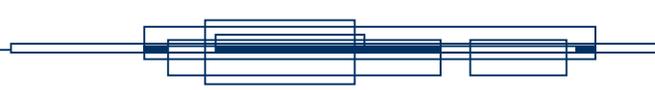
The replacement of the CRP is but one element of the overall picture and its ultimate success will be completely reliant on the quality of the actual investigation. While it is not currently possible to demonstrate the efficacy of the entire History investigation process until a number of investigations have been through the whole route, some judgements can be made on certain aspects of the Directorate.

The cornerstone of the new History investigation process is the introduction of a Review Team led by a SIO who has significant experience in the investigation of major crime. The remainder of the team consists of a Deputy SIO and six Investigation Officers, one of who is the nominated single point of contact (SPOC) for the Confidential Unit, a role that will be subject of commentary elsewhere in this report.

The Review Team is now fully staffed and is crucial in respect of the support and focus it provides for SIOs and other investigative functions. It also presents the Police Ombudsman with an additional point of reference through which he can monitor the path of an investigation. The model creates a solid platform from which investigations are assessed and prepared for the investigation phase. Initial investigative reviews consider and establish:

- the identities of serving or former police officers subject of the complaint;
- links between complaints which may identify complex cases;
- evidential opportunities/lines of enquiry;
- an assessment of the available intelligence.

From the initial review it can be identified whether the complaint can be finalised without any further investigation or if an investigation is required, and serve to inform the terms of reference of the investigation.



Following the initial investigative review, there is sufficient information available for cases recommended for investigation to be subjected to a prioritisation process (see Recommendation 6) which is designed to provide a structured approach to assign resources to investigations co-ordinated through the History Directorate Business Meeting.

The Review Team also support investigations by conducting case reviews at strategic stages of an investigation, an important component of the Directorate's QA strategy.

OPONI assessment: Partially achieved.

Inspectors' assessment

The consideration of historical cases had been suspended; a review of the operation of the CRP had been commenced but not completed before the then Police Ombudsman left his post.

Upon the appointment of the new Police Ombudsman, a reassessment of procedures had continued. This had identified the embedding of QA into each step of the investigative process as critical, together with the active involvement of the Police Ombudsman throughout the investigative and reporting processes.

It had been recognised that Recommendations 1 and 2 were linked in that it would be necessary to tie in the new History Strategic Plan with any reworking of QA mechanisms including final determinations (formerly the CRP). Inspectors found that restructuring of the History Directorate together with new QA processes had provided a framework capable of delivering quality investigations and public reports.

Inspectors had been able to assess some of the new processes as they had been applied to three historic cases in various stages of completion, and SIOs had provided comprehensive information as to how the processes would be applied to suspended cases.

A framework of meetings had been established appropriate to the complexity of investigations. The most complex, involving linked cases had been subject to individual 'Gold group' monthly meetings. Other 'Gold group' meetings had considered a number of cases which had been categorised as 'second tier' cases during a single meeting. Inspectors had viewed the minutes of these meetings which had been chaired by the Police Ombudsman, which indicated a robust assessment of cases had taken place involving the relevant SIOs.

A Review Team had been established within the History Directorate and this Team had conducted initial case reviews to establish the most appropriate method of handling the particular complaint. The Review Team had also been operational in implementing a framework of case reviews as part of the QA process.

The revised processes demonstrated adherence to recognised standards of investigation and QA. Whilst the new processes had been viewed in operation, this had been limited in scope, and Inspectors had been unable to fully assess their effectiveness due to the small size of active cases. Given the small range of active cases available for review, it is too early to say whether some variations found in the approach of SIOs to the completion of policy logs would be a significant factor.

A full assessment of the operation of newly structured investigative and QA processes will be necessary once full operations have been commenced and some final reports have been delivered. This will enable an assessment to be made of the proposed replacement of the CRP by a team drawn from the SMT which would be provided with a product to review that had been through robust QA processes and which had benefitted from significant input by the Police Ombudsman.



Recommendation 2

The Police Ombudsman should suspend historical case investigations except those currently being pursued jointly with the PSNI until the Strategic Plan for the Historic Investigations Directorate has been adequately resourced and becomes fully operational.

Status: Achieved

OPONI response

It was in 2009-10, in the recognition that there were an increasing number of cases either being investigated or awaiting investigation, that it was decided to create the History Directorate to introduce a method for managing the investigation of cases emanating predominantly from the 'Troubles'.

The lack of structure and consistency of process – manageable with a smaller number of cases – became problematic when the number of cases increased.

The business case outlining the funding requirements for the Strategic Plan was agreed by the Department of Justice (DoJ) in March 2012 and the relevant monies released. The Strategic Plan required that there would be a combination of existing Police Ombudsman staff drawn from Current Investigations along with the identification of staff with specific skills in relation to the investigation of major crime to be brought in on temporary contracts. While preparation for the relevant recruiting was at an advanced stage, the funding allowed for the organisation to move to a position where it could start to make firm plans around the staffing of the History Directorate.

The Strategic Plan identified the need to create 26 additional posts within the History Directorate and as of the end September 2012, the position in relation to the establishment is that the majority of staff are in post.

Since the creation of the Directorate a great deal of focus has been on developing and introducing a strategic plan to manage historical investigations. In essence, this comprises a range of confidence building and quality assurance mechanisms including:

- the creation of specialist investigation teams headed by an experienced SIO;
- the establishment of a specialist Review Team that will provide an external perspective on critical investigations as they progress; again headed by an experienced SIO with murder investigation experience; and
- the establishment of a Support Unit to provide greater consistency in the communication with families and their representatives and in the drafting of public statements arising from investigation reports.

While the whole package has yet to be fully tested, it is clear that the new structure is far in advance of anything that has existed in the past and will provide the Police Ombudsman with a secure platform from which he can make his determinations and public statements. Elements of the new structure have been working including the Review Team and engagement with families.

OPONI assessment: Achieved.

Inspectors' assessment

In CJI's September 2011 report Inspectors outlined the lack of progress of a business case designed to restructure and adequately resource the History Directorate to deal with historic cases in a more structured way. This plan had been delayed, the effects of which had meant that a more structured approach to dealing with the complex historical cases had not been fully implemented.

Inspectors had described the plans to enhance the History Directorate as an attempt to restructure and professionalise the processing of historic investigations by implementing a Strategic Plan for dealing with these cases. Inspectors had reported that the implementation of the



Strategic Plan would provide a more robust and sustainable model for dealing with historic cases.

In the 2011 report Inspectors had found that the method of prioritisation designed could have been further developed if the business case had been approved and implemented. Inspectors believed that the implementation of the Strategic Plan would provide a more robust and sustainable model for dealing with historic cases.

This follow-up review found that the business case had been agreed by the DoJ in March 2012. The Strategic Plan for the History Directorate had been implemented and this had included a revised prioritisation index which had been widely consulted on. The strategy had been underpinned by enhancing the skills base of the Directorate and by implementing a comprehensive suite of supporting policies and procedures.

At the time of inspection fieldwork a few remaining posts identified under the Strategic Plan remained to be filled. However, these posts were expected to be filled imminently. Revised processes within the restructured History Directorate demonstrated adherence to recognised standards of investigation and QA. The new structure outlined in Figure 1 illustrates the methodical approach taken to progress historic cases, the support mechanisms in place for historic investigations, and the relationship with the CU.

Two Investigation Teams are supported in the production of quality products by the Review Team, led by a SIO, supported by a Deputy and six Investigating Officers (IOs). The Review Team conduct initial case reviews and also have responsibility for reviewing cases at intervals of 28 and 90 days. The 90-day reviews may be recurring at the discretion of the Director of

Investigations. These reviews provide an important 'independent' assessment of the case progress and Inspectors examined some reviews that had taken place in cases that had not been suspended.

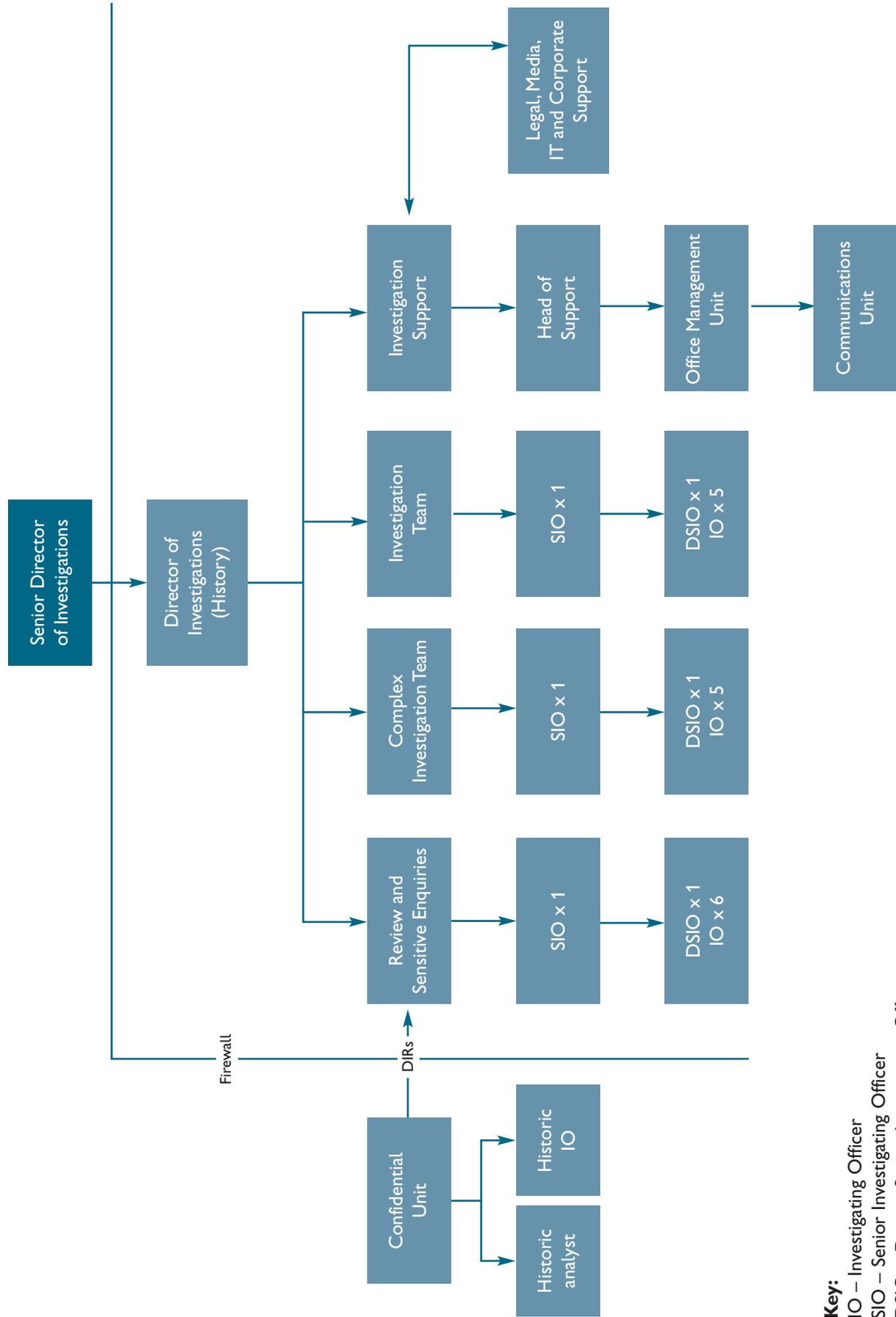
The two Investigation Teams handle different categories of historic cases. Those cases found by the initial case review to be linked with other investigations are handled by the Complex Investigation Team. Other stand-alone cases are handled by the Investigation Team. Each Team is led by a SIO supported by a Deputy and five IOs. Teams have a dedicated SPOC for their interactions with the CU, and SIOs told Inspectors that they were fully confident in the products being produced by the CU and how the relationship with the CU was being managed through the revised structures and processes.

The Investigation Support Team is led by a SIO and consists of an Office Management Unit and a Communications Unit. The Office Management Unit has the responsibility of administering and supporting the working of the History Directorate including records management, the delivery of IT strategies and a SPOC for accessing Royal Ulster Constabulary (RUC) records. Amongst other functions the Communications Unit delivers the initial assessment process which includes management of interaction with families and their supporters; the production of management briefing documents, and handles the writing of public reports and regulation 20 documents⁵. Inspectors had been unable to examine Communication Unit outputs in the shape of public reports into historic investigations. However, SIOs and IOs told Inspectors that they regarded as critical the support of a team dedicated to turning complex investigative documents into a report fit to be submitted to the Police Ombudsman and Senior Management with a view to publication.

⁵ Report on the investigation of matters not the subject of a complaint.



Figure 1: OPONI Historic Investigations Directorate



- Key:**
 IO – Investigating Officer
 SIO – Senior Investigating Officer
 DSIO – Deputy Senior Investigating Officer
 DIR – Disseminated Intelligence Report

Recommendation 3

The Police Ombudsman should commission a full review of the Confidential Unit and the protocol for dealing with sensitive information ensuring that the needs of the OPONI as a civilian oversight body are fully represented in the review and integrated within the recommendations.

Status: Partially achieved

OPONI response

The CJI inspection reported concerns about the manner in which the Confidential Unit (CU) transacted sensitive information in and out of the organisation. Concerns were also expressed about the manner in which some of the recommendations of an independent review conducted in 2008 were either not fully implemented or disregarded entirely.

In response to Recommendation 3, a review of the Confidential Unit was commissioned and a report was submitted to the then Police Ombudsman. Following on from this a copy of the report was provided to CJI. The report contained 10 recommendations which can be grouped into the following subject areas:

- Memorandum of Understanding (MoU) with the PSNI and Standard Operating Procedures;
- development of performance indicators;
- corporate structure (CU line management arrangements and succession planning); and
- training in intelligence awareness.

The recommendations are a 'work in progress' as, in practice, the majority of them will flow from the creation and agreement of a new MoU with the PSNI.

The current MoU between the OPONI and the PSNI was signed in 2005 and a review and update is clearly long overdue. Work has been ongoing to develop this MoU to ensure that it meets with the requirements of the CJI recommendation and a draft

document has been presented to the Police Ombudsman and is currently the subject of amendment to ensure it meets his needs.

The MoU will clearly articulate the obligations placed on the police to provide material to the OPONI and will also describe the responsibilities of the organisation in terms of how it handles sensitive material. This MoU will be between the Police Ombudsman and the Chief Constable a subtle but significant shift from the 2005 document which was between the Director of Investigations and the ACC (Crime) PSNI. It would also be the intention to publish the MoU with the PSNI in the interests of openness and transparency.

The processes of appointing a new Director of Legal Services and a new Chief Executive are in advanced stages and it is the intention that one of them will be given responsibility for the line management of the CU. The Police Ombudsman will make a final decision once he is fully conversant with the background and experience of the respective successful candidates.

Underpinning the whole debate about the CU is the ability to instil confidence in their information handling processes and their outputs. It is clear that in the past the apparently 'secretive' commission, execution and partial implementation of the 2008 Intelligence Review only served to reinforce any concerns that were starting to emerge and which ultimately manifested themselves in the comments some individuals made during the course of the CJI inspection.

As part of the process to review the CU in the light of the CJI report, the Senior Management Team were provided with copies of the 2008 Intelligence Review report and the current MoUs with the police, military and security service. From this came a better understanding of the intelligence processes of the OPONI and it has provided the cornerstone to the new draft MoU with the PSNI.



It is inevitable that tensions will exist between those that are charged with the acquisition and handling of sensitive material and those who have investigative requirements. These tensions can sometimes manifest themselves in an expression of frustration which can easily be interpreted as a lack of confidence in the actual product. Some people who are not experienced in the handling of sensitive intelligence hold the belief that the case to ensure that the most sensitive of information is tightly managed is overstated. Intelligence practitioners will take the opposing view.

The truth is that the organisation needs a strong layer of protection to ensure that it can demonstrate to those parties who are either required to or choose to share information with the OPONI that it can handle intelligence in a secure and professional manner, conforming to recognised conventions.

The function of the CU is to provide a service to investigations. This position has been reinforced internally and will no doubt be fully tested during the follow-up inspection by CJI. In his 'introduction' phase to the organisation, the new Police Ombudsman has been seeking general feedback about how the CU is currently viewed by 'service users', in particular the SIOs in History and the Significant Case Team. At present he has had no concerns reported to him and each person has stated that they are content with the service provided by the CU and the quality of the information being produced.

There remains the question of how sound QA processes can be introduced into the CU environment. By virtue of the subject matter being dealt with it would present significant challenges to introduce some form of external auditing mechanism from both a technical and security point of view. While not insurmountable, the likely cost of such measures in terms of resources would necessitate careful consideration of such a step. The full cooperation of those agencies that provide the Police Ombudsman's Office with sensitive material would also have to be secured.

The Police Ombudsman has direct access to all sensitive material and engages directly with the head of the CU when he requires further information. He has directly accessed material on a range of cases.

The increased funding secured for the History Directorate has allowed for the provision of an additional Intelligence Officer making three in total. In the meantime, a number of measures have been introduced or enhanced with the intention of improving the confidence of users of the services of the CU. These include:

- *the creation of CU liaison roles in the Review and Investigation Teams;*
- *access to CU material for the Disclosure Officer;*
- *appointment of an analyst to each investigation;*
- *access to sensitive material by SIOs;*
- *improved intelligence request audit trail;*
- *SIO access to final versions of intelligence request letters; and*
- *cross checking of notes produced from accessing raw material.*

The CU has to be seen and included as part of the overall Strategic Plan and as such, confidence will be fully restored once investigations are resumed and all parts of the 'system' have the opportunity to demonstrate their contribution to the production of quality investigations. We would invite CJI to speak with SIOs in relation to their on-going work to gain examples of how the above processes are working in practice.

OPONI assessment: Partially achieved (will be completed when MoU has been finalised).

Inspectors' assessment

A review of the CU had been completed and from it a series of recommendations had been made. All recommendations had not been fully implemented at the time of inspection fieldwork. For example, those recommendations with regard to the development of performance indicators and those arising from the production of a new MoU with the PSNI. The MoU was



being progressed and it had focused on positioning the agreement between the leaders of the respective organisations. This was in contrast to the previous agreement which had rested with the head of crime (PSNI) and the Senior Director of Investigations (OPONI). Inspectors regard this as a positive step which gives due regard to the significance of how intelligence is handled between the two organisations.

Changes to the structure of the History Directorate had strengthened the relationship between Investigation Teams and the CU as reported under Recommendation 2. The changes had included appointment of a SPOC between Investigative Teams and the CU, as well as Disclosure Officers and a named CU Analyst for each investigation. This had provided more clarity and consistency in communication between Investigation Teams and the CU. In addition the CU had been strengthened by the appointment of a further two Analysts and the creation of a further IO post which has yet to be filled.

Within the CU Inspectors found that systems and processes had been refined to enable the systematic recording of requests for information, and responses to these requests. As part of the system of recording each request had been accompanied by the supporting rationale. This was an improvement from the looser system encountered by Inspectors in the September 2011 inspection.

Inspectors would encourage the Police Ombudsman to fully implement recommendations made in the review of the CU regarding the development of performance indicators, and provision of intelligence awareness training. We would also encourage the Police Ombudsman to continue the process of filling the remaining IO role in the CU.

Reporting lines for the CU had yet to be finalised upon the appointment of a new OPONI

Chief Executive Officer, which was expected imminently. All of the History Directorate Investigators spoken to by Inspectors expressed confidence in the CU, the products supplied by it to help progress investigations, and the revised processes and structures which had clarified and improved the relationship between the CU and Investigators. SIOs confirmed to Inspectors that they had been given the necessary level of access to sensitive material to enable them to appropriately direct their investigations, or in the case of suspended cases their initial preparations prior to investigations commencing.

Recommendation 4

The OPONI policy for the investigation of State related deaths (Article 2 European Convention on Human Rights) should be reviewed and clarified. Clear and unambiguous guidance on the policy should be provided to all staff.

Status: Achieved

OPONI response

One of the issues that CJI was asked to examine was the circumstances surrounding the deployment of an ex-PSNI police officer to investigate the shooting of Mr Marc Ringland by an off-duty police officer in February 2011.

While it appeared to CJI that the deployment was made within the policy of the Office, they had reservations about the robustness of the policy and in addition, believed that there was a lack of clarity in relation to what constituted a conflict of interest.

In response to Recommendation 4, Senior Counsel was instructed to provide advice on the existing Article 2 policy of the Office in relation to the ability of some staff to undertake certain investigations. The advice along with some clarification has now been received and in summary, the indications are that the current policy remains fit for purpose.



The Article 2 policy and associated guidance regarding conflicts of interest have now been approved by the Senior Management Team and made available for staff.

OPONI assessment: Achieved.

Inspectors' assessment

The Article 2 policy had been reviewed and legal advice of Senior Counsel had been sought. The policy and guidance had been communicated to all OPONI staff. During fieldwork Inspectors found that staff demonstrated a clear understanding of the Article 2 policy and the guidance issued to help clarify it.

Inspectors found that History Directorate Investigators came from a variety of backgrounds but that none would be excluded from investigating historic cases as a result of the application of the Article 2 policy. This had been the case at the time of the September 2011 report. However, the endorsement of the Article 2 policy by Senior Counsel and the approval of staff guidance with regard to it had provided clarity amongst all the staff spoken to by Inspectors during this review.

Recommendation 5

The Police Ombudsman should carry out an immediate skills and competency audit of everyone having significant input into complex cases to ensure that staff are appropriately equipped to deal with such investigations.

Status: Achieved

OPONI response

A skills and competency audit was completed and is held and retained by the HR Manager. In terms of Investigation Officers, all have reached the required standard by successfully completing the Accredited Training Programme which the OPONI operates in

partnership with Portsmouth University.

Skills gaps were identified, particularly in the History Directorate where it was recognised that the nature of the work would require more Investigators with specific skills and experience. As a consequence a number of contract investigators have been engaged all of who have been able to demonstrate that they have experience in investigating homicide/major crime.

The additional skills which are now available to the History Directorate include direct experience in the investigation of major crime, direct experience in the HOLMES data base, incident room management, report writing and trained analysts.

Some of the permanent staff who are within the History Communication Team are in the latter stages of Advanced Witness Interview Training. This is equipping them with the necessary skills to perform one of their primary functions of taking statements of complaint and carrying out witness assessments. All of the Communications Team are trained Family Liaison Officers.

While the History Directorate now has a broad base of skills there are some more specialist roles which are not cost effective to maintain on a permanent basis and it is intended that these will be brought in as required. Examples of this include the role of Advanced Interview Advisor for large scale operations and expertise to contextual forensic techniques available to past police investigations.

All of the staff in the CU were included in the skills and competency audit and no significant gaps were identified. In recognition of the additional resources being made available to the CU, the head of the Unit has been working with HR to produce a Training Needs Analysis to ensure that his team are able to develop in a way that will meet the demands of the organisation going forward.

OPONI assessment: Achieved.

Inspectors' assessment

This recommendation had been pursued as suggested in the September 2011 report. Whilst Investigators had achieved the accredited training through Portsmouth University, some skills gaps within the profile of the History Directorate had been identified due to the unique challenges that confronted Investigators of such cases. No other significant gaps were identified as a result of the audit. However, the CU Manager had been tasked to undertake a Training Needs Analysis for the CU to ensure the continued development of staff skills.

The approval of the business case for the restructuring and resourcing of the Directorate had enabled a programme of recruitment based on the identified skills gap to commence. The gaps had been filled by recruiting SIOs with extensive experience in handling very large and complex cases. This had provided comprehensive coverage in terms of skills and experience related to major crime, organised crime, corruption and family liaison.

The programme of recruitment had included an element of employing contract Investigators. Inspectors interviewed a number of these Investigators and they exhibited a wide skills set and good knowledge of OPONI requirements, procedures and processes. Additionally they had provided OPONI with skills in the interrogation of HOLMES which is an essential element when obtaining information from complex police investigations.

Recommendation 6

The prioritisation regime contained in the Strategic Plan for the Historic Investigations Directorate should be reviewed and consulted on to reflect the needs of victims' families, the police and the wider public interest.

Status: Achieved

OPONI response

The prompt for this recommendation comes to some extent from concerns that CJI had about the way that a seemingly serious and complex case was deferred solely on the basis of a lack of resources, with no apparent consideration being given to other factors. This led to questions being asked about how prioritisation was being approached across the board due to the seemingly arbitrary nature of the arrangements that were in place.

Prior to the CJI inspection, steps had been taken to try to develop a prioritisation policy and some engagement took place with selected Non-Governmental Organisations but this had limited success. The recommendation made by CJI provided fresh impetus and as a consequence, the policy was refined and made subject of public consultation which was completed on 9 March 2012. The responses received were assessed and minor changes were made to the draft policy as a consequence.

At the direction of the newly appointed Police Ombudsman, all of the cases currently held by the History Directorate have had the new policy applied to them in order to test the matrix and overall process prior to it being formally adopted by the organisation.

The policy has been designed to introduce a logical sequencing of the investigations conducted by the History Directorate. A clear priority is given to those cases where the alleged criminality may pose immediate danger to life, serious injury to a person, serious damage to property or loss of specific evidential opportunities.



Beyond that, the cases are subject to a four stage approach which assesses in sequence the following features of a complaint that has been made:

- *Stage One - Gravity of Specific Offences;*
- *Stage Two - Nature of Conduct;*
- *Stage Three - Pending Criminal/Inquest proceedings; and*
- *Stage Four - Qualitative Statement applied to cases of equal marking.*

The testing phase is now complete and the Director of History Investigations has satisfied himself that the process is effective and meets the needs of the organisation. The Police Ombudsman has been provided with details of the outcome of the exercise. It will fall to the Communications Team to make contact with complainants to ensure that they remain fully informed and any expectations are managed.

OPONI assessment: Achieved.

Inspectors' assessment

A prioritisation index had been developed and operated at the time of inspection fieldwork for the report of September 2011. However, the application of the prioritisation policy across all investigations was not apparent at that time. In some cases it had been found that consideration of resourcing had been the only determining factor in pursuing or not progressing investigations.

During this review Inspectors found that this recommendation had been pursued by further developing the existing prioritisation index and consulting on it more widely than had been possible previously. Some development of the index had resulted from the consultation responses and it had then been tested by applying it to existing cases. Inspectors found that there had been systematic recording of the application of the prioritisation index with regard to cases reviewed.

The initial prioritisation of cases had been tied in to the workings of the Communications Team who perform the initial case assessment. Cases had then passed to an initial prioritisation and assessment group which had made determinations on whether the case was within or without remit; whether and what form of communication should be initiated; and the priority of the case. Inspectors found that the operation of the prioritisation index had been underpinned by policies and procedures and that these had been deployed across the operation of the History Directorate.

Initial results had appeared to indicate that the prioritisation index processes had operated effectively. However, full assessment will only be possible when a higher number of cases become live once again and reports are published. At that stage, a full assessment of the impact of the prioritisation regime should be made.

CHAPTER 3:

Conclusions

Out of the six recommendations made four had been fully achieved and two had been partially achieved. Within the strict wording of Recommendation 1 it could be considered that the Police Ombudsman had fully discharged the recommendation. However, in consideration of the application of the most effective way of managing investigation reports, an examination of the full range of management right through to the final publication of a public report would be required. Therefore full achievement of this recommendation awaits the publication of reports and examination of the enabling processes and structures.

The only other recommendation not considered to have been fully achieved was Recommendation 3 with regard to the CU. Inspectors agree with the Police Ombudsman's self-assessment that full discharge of this recommendation will only be possible when the MoU between the OPONI and the PSNI is signed off.

On this review Inspectors had access to a wide range of OPONI staff at all levels and to a full range of documentation. There had been a sea change in the attitude of staff at all levels and those spoken with by Inspectors indicated that this had been as a result of them feeling confident about the newly structured History Directorate, revised processes and procedures, and a clear sense of direction from the leadership of the organisation. Senior staff on the administrative and support side of the OPONI also indicated that they had a clear

sense of their role in the organisation and that they had confidence in the new structures, staff and processes.

Inspectors' conclude that due to the substantial progress made with recommendations impacting on the delivery of high quality investigations and reports, the Police Ombudsman should recommence full operations as soon as reasonably practicable. This will enable the Police Ombudsman to evaluate the full impact of changes made and to make further refinements where necessary.

To assist in that process, CJI intends to return to the OPONI to conduct an inspection of the revised arrangements following the publication of at least three substantial historical reports.



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