

# The relationship between the Police Service of Northern Ireland and the Office of the Police Ombudsman for Northern Ireland

December 2013

Criminal Justice Inspection  
Northern Ireland  
*a better justice system for all*





# **The relationship between the Police Service of Northern Ireland and the Office of the Police Ombudsman for Northern Ireland**

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December 2013





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## List of abbreviations

<b>ACC</b>	Assistant Chief Constable
<b>CEO</b>	Chief Executive Officer and Senior Director of Investigations, OPONI
<b>CJI</b>	Criminal Justice Inspection Northern Ireland
<b>DB</b>	Discipline Branch, Service Improvement Department, PSNI
<b>ECHR</b>	European Convention on Human Rights
<b>HMIC</b>	Her Majesty's Inspectorate of Constabulary
<b>HRA</b>	Human Rights Act 1998
<b>MoU</b>	Memorandum of Understanding
<b>NIM</b>	National Intelligence Model
<b>NIPB</b>	Northern Ireland Policing Board
<b>OPONI</b>	Office of the Police Ombudsman for Northern Ireland
<b>PSNI</b>	Police Service of Northern Ireland
<b>SDI</b>	Senior Director of Investigations
<b>SIO</b>	Senior Investigating Officer



# Chief Inspector's Foreword

The legitimacy of the police to uphold and enforce the law is strengthened when the public are confident that their complaints about unlawful or unacceptable police behaviour, will be fully investigated by an independent civilian oversight body.

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This inspection examines the overall relationship between the Office of the Police Ombudsman for Northern Ireland (OPONI) and the Police Service of Northern Ireland (PSNI) and in particular, how requests for police intelligence surrounding historical cases are handled by the PSNI and recommendations from the OPONI, are considered and implemented by the PSNI.

Concerns have been expressed from non-governmental organisations, the Northern Ireland Policing Board (NIPB) and some families of victims of the Troubles that the PSNI were being unhelpful in supporting the OPONI investigations of historical cases. Questions were raised about whether the OPONI was able to access all sensitive intelligence material held by the police in respect of historical cases and about how the police were responding to recommendations and findings of the OPONI investigations into historical cases.

Founding legislation never envisaged the OPONI conducting retrospective Troubles related investigations. However, in the absence of an agreed mechanism for dealing with the past, the Office must now fulfil these statutory obligations.

The use of informants and actions or inactions of the police during the Troubles has little or no relevance for many of the operational officers of the PSNI, the majority of whom were recruited after the Belfast Agreement. However, the issue continues to divide public and political opinion and fuels the call for an agreed mechanism for dealing with the past.

It is in the interest of both the OPONI and the police that a mutually respectful working relationship is developed. The police need to be confident that complaints made against officers will be investigated thoroughly and fairly, and the Police Ombudsman's investigators need to be confident that the police are co-operating fully with their investigations.



It is also incumbent on the leadership of both organisations to ensure that the statutory responsibilities both organisations have to each other and the operational relationships which both need to be successful, are not affected by the investigation of historical cases.

This report confirms that the PSNI cooperates fully with the OPONI in providing sensitive information, and that the OPONI handles and stores sensitive information correctly. The report also outlines the policies and procedures that are in place to ensure that recommendations made by the OPONI, have an appropriate impact on police behaviour and that lessons are learnt in the process.

This inspection was conducted by William Priestley with assistance provided by Chief Superintendent Paul Holewell, Her Majesty's Inspectorate of Constabulary (HMIC). My sincere thanks to all who contributed to this work.

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**Brendan McGuigan**  
**Chief Inspector of Criminal Justice**  
**in Northern Ireland**

December 2013



# Executive Summary

Inspectors found there were well-defined processes in place regarding the interactions between the PSNI and the OPONI. The strategic oversight of the processes and procedures is provided by a number of protocol documents agreed between the OPONI and the PSNI. At the time of fieldwork, a revised protocol on the sharing of sensitive information had not been agreed.

The PSNI raised concerns about the proposed protocol, particularly with regard to being able to fulfil its Article 2 Human Rights Act 1998 (HRA) obligations<sup>1</sup>. Agreement of a clear protocol is essential to further developing the professional working relationship between the two organisations and Inspectors' one strategic recommendation was that as soon as practicable, leaders of both organisations agree and implement a revised protocol that satisfies each organisation's obligations and enables a productive and professional working relationship.

During the factual accuracy checking period of the report, Inspectors were informed that the Police Ombudsman and the Chief Constable had agreed and signed a Memorandum of Understanding (MoU) regarding the sharing of sensitive information. The measure of the effectiveness of the MoU will be

whether its implementation satisfies each organisation's obligations and delivers a productive and professional working relationship. This will require continuous commitment from both parties.

Inspectors saw evidence of robust processes in place within the PSNI to enable them to meet their obligations with regard to the provision of sensitive information to the OPONI. The processes were monitored and overseen to ensure that the statutory obligations were met. Inspectors did not find any evidence of material being withheld or delayed apart from those instances when questions over the application of Article 2 European Convention on Human Rights (ECHR) had been raised by the PSNI.

During the year 2011-12 the OPONI submitted a total of 34 Regulation 20 reports<sup>2</sup> and 29 other policy recommendation files to the Chief Constable. Senior

<sup>1</sup> The right to life: 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.'  
<sup>2</sup> At the conclusion of any investigation of a matter investigated under Section 55 of the Police (Northern Ireland) Act 1998, the Police Ombudsman is required to send a copy of the investigation report (Regulation 20 Report) to the Chief Constable, Department of Justice and Northern Ireland Policing Board.

police officers raised concerns with Inspectors about the NIPB requiring access to draft reports. Access to draft reports by a third party, albeit one that also has responsibility for oversight, had potential to impact adversely on the necessarily frank and professional exchange of views between the OPONI and the PSNI about issues of factual accuracies and disagreements about analysis and interpretation.

The overriding duty on all parties imposed by Articles 2 and 6<sup>3</sup> of the HRA was the cause of some tension between the PSNI and the OPONI. There needs to be clarity within the PSNI about the powers of the OPONI to ask for material that is relevant to its investigations. Moreover, there needs to be trust that material requested is relevant to any investigation that the OPONI is carrying out. Work remained to be done by both organisations in building the appropriate trust in their respective systems and processes, which would provide continued assurance that material required by the OPONI would always be relevant to an investigation and that the provision of such material, would not breach the HRA obligations of the PSNI.

Building trust in the requisition, provision and handling of sensitive material may be achieved by demonstrating probity, security and integrity at every stage of the process. The revised structures introduced in the OPONI provided this assurance internally. Firewalls and processes operating within the OPONI had been strengthened. However, this needs to be clearly demonstrated in a way that provides continuing assurance to the PSNI, that material supplied by them on requirement from the OPONI, would always be relevant to investigations, would always be stored and handled appropriately, and would not expose the PSNI to charges of contravening its HRA obligations.

A Policy Evaluation Group had recently been formed. The first meeting took place during the drafting of this report. This group consisted of senior officials from the OPONI, the PSNI and the NIPB and its remit was to evaluate policy recommendations and the

effectiveness of their implementation. The group had the potential to improve the formulation, categorisation and implementation of policy recommendations.

There were difficulties with the categorisation and framing of OPONI recommendations. Recommendations arising from the OPONI Regulation 20 reports had been given the status of policy recommendations, when issues raised had clearly referred to local operating procedures. Work was on-going in the OPONI to accurately describe recommendations arising from Regulation 20 reports and to further develop its recommendations to take account of the difficulties experienced with regard to categorisation, especially regarding what constituted policy recommendations and what would be better referred to as 'areas for improvement'.

Independence is critical to the working of the OPONI to enable the proper investigation of complaints against the police and the making of recommendations free from undue influence. Any earlier involvement of the PSNI in the process of the framing of recommendations would need to be subject to robust monitoring to overcome any suggestions of inappropriate influence. However, there would be benefits of having such a mechanism whereby recommendations, would be better framed and targeted to achieve the intended outcome.

There had been little evaluation of the outcomes of the many recommendations made by the OPONI with regard to PSNI policy and practice. The remit of the Policy Evaluation Group should include the commissioning and analysis of assessments of the impact and effectiveness of policy recommendations to inform the further development of recommendation processes.

3 Right to a fair and prompt public trial: 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'



# Areas for Improvement

1

The OPONI and the PSNI should share information handling processes and procedures with each other and through the current meeting structure, agree steps that would build trust in the security and robustness of processes, to reduce the incidence of challenge when sensitive material is required to be produced (paragraph 2.17).

2

The PSNI should, as soon as practicable, develop and implement a system of monitoring performance in implementing policy recommendations and should report this to the recently formed Policy Evaluation Group (paragraph 2.22).

3

The OPONI should, as soon as practicable, develop and implement a system of monitoring the effectiveness of policy recommendations in improving the service delivery of the PSNI (paragraph 2.23).

4

In order to provide feedback to OPONI, SIOs and the PSNI, as well as assessing the effectiveness of processes and systems, the OPONI should introduce a formal tracking and monitoring system for requests based on the existing informal systems in use by individual SIOs (paragraph 3.5).

5

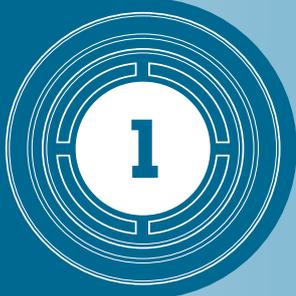
The OPONI and the PSNI should jointly develop an approach that enables the refinement of recommendations informed by early interaction between officials in both organisations (paragraph 3.14).

6

The remit of the Policy Evaluation Group should include the commissioning and analysis of assessments of the impact and effectiveness of policy recommendations to inform the further development of recommendation processes (paragraph 3.15).



# Inspection Report



# Introduction and context

## Introduction

- 1.1 This report concerns the relationship between an oversight body, in the shape of the Office of the Police Ombudsman for Northern Ireland (OPONI), and its principal object of oversight, the Police Service of Northern Ireland (PSNI).
- 1.2 Inspecting a relationship between two organisations necessarily requires a broad approach. Using purely quantitative information to form judgements about a relationship would be to ignore a whole body of evidence to be found in the personal and professional transactions that have evolved between organisations. Conversely, relying purely on qualitative information would mean that judgements would lack the strong foundations provided by verifiable data upon which precise, well-founded statements could be based. Inspectors therefore based this examination on inspection of a range of exchanges between the two organisations including requests for information (sensitive and non-sensitive), recommendations for change, and the framework of meetings in place to discharge the legal obligations of both organisations. An examination of the qualitative information obtained from face-to-face interviews with PSNI officers and OPONI staff enabled Inspectors to assess whether the relationship was based purely on legislative compliance or on broader service excellence aspirations.
- 1.3 The inspection originated from previous work carried out by Criminal Justice Inspection Northern Ireland (CJI)<sup>4</sup> and from concerns that had emerged about the nature of the relationship between the PSNI and the OPONI, specifically with regard to how requests for the provision of sensitive information made to the PSNI are handled and managed; and with regard to how recommendations made or directions given by the OPONI are progressed and implemented by the PSNI.
- 1.4 The methodology used in this inspection is detailed in Appendix 1 but the aims and objectives were to:
  - examine and assess the effectiveness of processes in place for the handling and management of requests for the provision of sensitive information;
  - assess the nature of the relationship between the PSNI and the OPONI in the light of these transactions;
  - examine the processes by which the PSNI manages and implements recommendations made by the OPONI; and
  - assess the organisational impact on the PSNI of recommendations and directions made by the OPONI.

<sup>4</sup> Police Ombudsman for Northern Ireland: An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland, CJI, September 2011.

- 1.5 In order to broaden the range of information available on which to base judgements concerning the nature of the relationship between the two organisations, Inspectors also examined the processes in place for the handling and management of requests for non-sensitive information.
- 1.6 This inspection looked at the strategy and governance in place with regard to: handling requests for information and the implementation of recommendations and directions; delivery as measured against such requests, recommendations and directions; and outcomes arising from these activities. As with all CJI inspections, this inspection was based on the principles of inspection outlined in the Government's Policy on Inspection of Public Services.
- 1.7 Inspectors had engaged with colleagues from HMIC during fieldwork for the follow-up review of the OPONI in November 2012 and made use of their expertise again during each stage of this inspection. Fieldwork took place between January and March 2013.
- 1.8 The relationship between an organisation and its oversight body is a complex one involving the independence of both. Where the overseen organisation is involved in wide ranging policing activities requiring the Chief Constable to retain clear operational independence, the relationship becomes even more complex. However, the importance of the relationship to the heads of the respective organisations and to all the stakeholders spoken to as part of the inspection had been made very clear to Inspectors.
- 1.9 There was a recognition and clear acknowledgement at the highest levels of the PSNI that the OPONI played a central role in fostering confidence in the community concerning all the activities of the PSNI. Accordingly, Inspectors had been assured by senior police officers and staff that their dealings with the OPONI had been founded upon the premise that the relationship was critical to improving public confidence in policing.
- 1.10 The provision of any information by the PSNI to the OPONI is governed by legislation which empowers the OPONI to require the provision of information from the PSNI in pursuit of investigations. These powers are distinct from the more limited scope of the OPONI to make recommendations to the PSNI and to give directions. It is within the power of the OPONI to make policy recommendations to the PSNI. A direction to the Chief Constable may only be made with regard to taking disciplinary proceedings if he/she is unwilling to act on the Police Ombudsman's recommendation.



# Strategy and governance

## Introduction

- 2.1 Inspectors found that there were well-defined processes in place regarding the interactions between the PSNI and the OPONI. The interactions can be viewed as three distinct categories;
- requests/demands for non-sensitive information;
  - requests/demands for sensitive information; and
  - actions taken in response to
    - recommendations (misconduct and policy), and
    - directions.
- 2.2 The strategic management of these exchanges is at the crux of the relationship between the PSNI and the OPONI as is the tone and spirit in which requests are made and responded to.
- 2.3 The strategic oversight of the processes and procedures is provided by a number of protocol documents agreed between the OPONI and the PSNI. At the time of inspection fieldwork, the protocol regarding the sharing of sensitive information was under revision and was unavailable to Inspectors as it had not yet been finalised internally within the OPONI. The revision of the protocol was part of the overhaul of procedures instigated within the OPONI by the Police Ombudsman. In the period following fieldwork, the OPONI shared the document with the PSNI and during this period, Inspectors had sight of the document.
- 2.4 The Chief Constable and the Deputy Chief Constable told Inspectors that they had concerns with the proposed protocol, particularly with regard to the PSNI being able to fulfil its Article 2 HRA 1998 obligations. The Police Ombudsman believed that the proposed protocol did not interfere with the PSNI's obligations with regard to the HRA. The agreement of a clear protocol is essential to further developing the professional working relationship between the two organisations. During the factual accuracy checking period of the report, Inspectors were informed that the Police Ombudsman and the Chief Constable had agreed and signed a MoU regarding the sharing of sensitive information. This recent development is welcomed by Inspectors and addresses the main strategic recommendation made during the drafting of this report. The measure of the effectiveness of the MoU will be whether its implementation satisfies each organisation's obligations and delivers a productive and professional working relationship.

- 2.5 The Northern Ireland Policing Board (NIPB) had also played an important role in the relationship between the OPONI and the PSNI. A protocol had been agreed between the OPONI and the NIPB which included a move to bi-annual meetings with the full Policing Board to consider complaint trends and other policing issues. The OPONI presented complaints statistics on a six-monthly basis to the NIPB Policy and Standards Committee. In addition the NIPB continued to have a role in oversight of the implementation of recommendations made by the OPONI in Regulation 20 reports<sup>5</sup> through a new Policy Evaluation Group which had been due to meet for the first time in late May 2013. During the year 2011-12 the OPONI submitted a total of 34 Regulation 20 reports to the Chief Constable.
- 2.6 Senior police officers raised concerns with Inspectors about the NIPB requiring access to draft reports that were shared between the OPONI and the PSNI. Inspectors were told that the PSNI had sought legal advice on the right of access by the NIPB to draft reports. The advice they received indicated that there was no right of access to draft reports by the NIPB. The situation of a third party requiring access to draft reports had the potential to adversely impact on the strategic relationship between the OPONI, the PSNI and the NIPB. Draft Regulation 20 reports had been regularly shared between the OPONI and the PSNI for factual accuracy checking. This is a necessary part of a mature professional relationship and provided robust checks and balances are in place, which are fully implemented and monitored, independence can be protected. It was apparent to Inspectors that the Police Ombudsman had introduced such robust checks and balances into the processes and procedures pertaining to factual accuracy checking with the PSNI.
- 2.7 Access to draft reports by a third party, albeit one that also has responsibility for oversight, had the potential to adversely impact on the necessarily frank and professional exchange of views between the OPONI and the PSNI about issues of factual accuracies and variance in analysis and interpretation. Such requests for access to draft reports by a third party also had the potential to be interpreted as a lack of confidence in the robustness of the checks and balances in place protecting the independence of the three organisations.

### Non-sensitive information

- 2.8 Requests for non-sensitive material are straightforward and were handled by the application of well defined processes operating in both organisations. The type of information requested under this category could include murder archive file records. Following a comprehensive audit of such material within the PSNI, the majority of information falling into this category was stored centrally where it could be more easily accessed following requests from the OPONI. There were occasions when extraneous material relating to requests from the OPONI had been found at other locations within the police estate. However, these occasions had become less prevalent as the size of the estate had reduced and material continued to be relocated centrally for ease of access.

### Sensitive information

- 2.9 Requests for the provision of sensitive information from the PSNI were also made as part of clearly defined processes now operating within the OPONI. A reworking of these processes had been completed by the present Police Ombudsman and had provided a system administered by the OPONI Confidential Unit that was auditable and unambiguous.

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5 At the conclusion of any investigation of a matter investigated under Section 55 of the Police (Northern Ireland) Act 1998, the Police Ombudsman is required to send a copy of the investigation report (Regulation 20 Report) to the Chief Constable, Department of Justice and Northern Ireland Policing Board.

- 2.10 The decision to categorise requested information as 'sensitive' initially rested with the OPONI and in the event of internal dispute, the final arbiter in making this decision was the Police Ombudsman. In compliance with data handling principles with regard to sensitive information, such requests were made formally, in hard copy, and were appropriately transmitted between the OPONI and the PSNI.
- 2.11 Inspectors, in compliance with legislative constraints, did not examine individual cases to report on their progress. To establish the type of relationship that operated between the organisations with regard to requests for sensitive information, Inspectors tracked requests with respect to the processes operating upon them, within both the OPONI and the PSNI. These requests comprised a number that had been signed off to completion and some at various stages of progress that remained to be fully discharged. Inspectors did not examine the content of requests, rather they studied the processes by which requests were handled within and between the organisations.
- 2.12 Inspectors saw evidence of robust processes in place within the PSNI to enable them to meet their obligations with regard to the provision of sensitive information to the OPONI. The processes were monitored and overseen to ensure that the statutory obligations were met. Inspectors consider that the processes in place were fulfilling the obligations of the PSNI to provide information to the OPONI. Within the period of fieldwork, Inspectors did not find any evidence of material being withheld or delayed apart from those instances already referred to when questions over the application of Article 2 ECHR had been raised by the PSNI. The recent signing of a MoU regarding the sharing of sensitive information should reduce the number of these incidents further.
- 2.13 In the event that material requested involved other document owners, the PSNI informed the third party involved that it had been requested to supply the information, and of its intent to make it available. The PSNI acted in accordance with legislation and protocol and made this category of material available to the OPONI. The duties on all parties involved imposed by Articles 2 and 6 of the HRA were the cause of some tension between the PSNI and the OPONI.
- 2.14 Problems were evident when the PSNI had questioned the OPONI about the relevance of material requested. Inspectors were told that this had been done in cases where the PSNI's Article 2 or Article 6 HRA obligations appeared to be engaged. The PSNI were clear about the OPONI's powers to require the production of material. Inspectors were told that whilst there had been some rubbing points and hard conversations over the years, this had almost always been about the relevance of material requested. That this had happened mostly in historic cases where there was a large volume of material and a range of agencies involved indicated that this is an area that required further clarification by way of a revised protocol.
- 2.15 There needs to be clarity within the PSNI about the powers of the OPONI to ask for material that is relevant to its investigations. Moreover, there needs to be trust that material requested is or may be relevant to any investigation that the OPONI is carrying out. There may be some conflict of interest in the OPONI revealing the exact relevance of material requested if there was a possibility that in doing so it would adversely affect the investigation. However, the PSNI also needs to demonstrate that it is acting legitimately in the steps taken, including seeking assurances about the relevance of material or its secure handling, to fulfil its various HRA obligations.

- 2.16 It seemed to Inspectors that work remained to be done by both organisations in building the appropriate trust that material required by the OPONI would always be relevant to an investigation and that the provision of such material would not breach the HRA obligations of the PSNI. There had been, and should be, tension in providing material which had the potential to contravene human rights legislation and obligations. Inspectors consider that there should be robust checks in place to ensure that the release of such material is appropriately questioned. However, the building of trust between the organisations is key to reducing the tension surrounding the provision of sensitive material to a level where it does not adversely impact on the time taken to complete investigations, nor on the relationship between the two organisations.
- 2.17 Building trust in the requisition, provision and handling of sensitive material may be achieved by demonstrating probity, security and integrity at every stage of the process. The revised structures introduced in the OPONI provided this assurance internally. Firewalls and processes operating within the OPONI had been strengthened. However, this needs to be clearly demonstrated in a way that provides continuing assurance to the PSNI that material supplied by them on requirement from the OPONI, would always be relevant to investigations, would always be stored and handled appropriately, and would not expose the PSNI to charges of contravening its HRA obligations. **The OPONI and the PSNI should share information handling processes and procedures with each other and through the current meeting structure, agree steps that would build trust in the security and robustness of processes, to reduce the incidence of challenge when sensitive material is required to be produced.**

## Response to policy recommendations

- 2.18 The strategy of the PSNI in responding to policy recommendations arising from Regulation 20 reports and other cases was under further development during the time of inspection fieldwork. Responsibility for managing recommendations made by the OPONI rested with the PSNI Discipline Branch, Service Improvement Department (DB). Recommendations from OPONI were channelled to DB who then allocated them according to area of responsibility. The processes of managing and monitoring recommendations through to closure rested with DB, although actions were carried out by operational staff throughout the PSNI. Closure on recommendations was subject to challenge and sign-off by an Assistant Chief Constable (ACC). The whole process was tracked, monitored and recorded by DB. Access to these process records was provided to the PSNI Audit and Risk Committee and to the NIPB.
- 2.19 A Policy Evaluation Group had recently been formed which had replaced the previous Regulation 20 committee. The first meeting was due to take place during the drafting of this report. This group consisted of senior officials from the OPONI, the PSNI and the NIPB and its remit was to evaluate policy recommendations and the effectiveness of their implementation. The group had the potential to improve the formulation, categorisation and implementation of policy recommendations.
- 2.20 The issue of miscategorisation and its effect on the performance of the PSNI with regard to policy implementation, has the potential to impact on the relationship between the OPONI and the PSNI. There needs to be agreement between the two organisations as to the system of categorisation in use when formulating recommendations, so that policy issues are clearly identified separately from other areas for improvement not amounting to policy.

- 2.21 Although monitoring was evident in the recommendations viewed by Inspectors, an overall approach to examining how well the PSNI performed in implementing recommendations was absent. Also absent was evaluation of the impact of the implementation of policy recommendations on the performance of the PSNI, linked back to the original reason for making the recommendation.
- 2.22 Inspectors heard arguments as to whether monitoring the PSNI performance with regard to implementation of policy recommendations was a matter for the PSNI because the benefits of doing so were not clear. Inspectors contend that such performance information would be useful to both the PSNI and the OPONI, but that because it refers to performance of the PSNI, that it should be taken forward by them. Such information would enable analysis of the effectiveness of recommendations through the Policy Evaluation Group. It may also help further develop approaches to implementation by the PSNI and provide assurance on service delivery to oversight organisations and the public that the PSNI is serious about organisational and service improvement. **The PSNI should, as soon as practicable, develop and implement a system of monitoring performance in implementing policy recommendations and should report this to the recently formed Policy Evaluation Group.**
- 2.23 Separately, an overall system for monitoring the effectiveness of implemented policy recommendations was not in place. Inspectors were told if such an evaluation framework was to be implemented that it would be unclear where the responsibility for this would rest. However, this information would constitute important performance measurement for the OPONI, reporting on the effectiveness of its recommendations in delivering the changes expected. Whilst Inspectors recognise there is no power to compel the PSNI to implement recommendations **the OPONI should, as soon as practicable, develop and implement a system of monitoring the effectiveness of policy recommendations in improving the service delivery of the PSNI.**



# Delivery and outcomes

## Introduction

- 3.1 In order to evaluate the organisations' performance in relation to the handling of sensitive and non-sensitive information, Inspectors needed to examine and track requests for such information and recommendations made. However, Inspectors did not attempt to make assessments of individual cases.
- 3.2 Inspectors were provided with relevant figures, tracked requests for both sensitive and non-sensitive information from the OPONI to the PSNI, and accessed the database of recommendations made to the PSNI by the OPONI in Regulation 20 reports.

## Non-sensitive information

- 3.3 Inspectors found that there was an established and mutually agreed process in place to deal with requests within this category. The relevant Senior Investigating Officer (SIO) from the OPONI followed a process which required authorisation of a pro-forma request. This was required to be recorded internally within the OPONI and forwarded to the PSNI liaison officer. The process of communication may be completed within a matter of minutes because of the use of secure e-mail facilities.
- 3.4 Inspectors viewed a sample of requests that had been made, some of which had completed the authorisation process in less than 15 minutes of being raised by the SIO. There were options for viewing material at the storage site or elsewhere within the PSNI estate or copying and removing material if that was required. SIOs from the OPONI told Inspectors that these processes were operating effectively.
- 3.5 Although SIOs had monitored the progress of requests and responses had been recorded on the individual case files, Inspectors could find no formal tracking process in place within the OPONI that would have enabled effective monitoring of PSNI performance in this area. Nor had there been formal monitoring by the PSNI of its response to requests other than individual requests being signed off at the appropriate level. The requests made by the OPONI had been scanned on to the relevant case file and stored with it rather than having a separate audit trail for the requests. Individual SIOs within the OPONI had produced their own tracking system using spreadsheets but there had been no overall co-ordination of performance information. **In order to provide feedback to OPONI, SIOs and the PSNI, as well as assessing the effectiveness of processes and systems, the OPONI should introduce a formal tracking and monitoring system for requests based on the existing informal systems in use by individual SIOs.**

## Sensitive information

- 3.6 Requests for sensitive information emanating from a SIO within the OPONI were made and recorded on a National Intelligence Model (NIM) compliant form entitled a 'sensitive information request form'. This meant that the request and the recording of it followed national standards for organisations dealing with sensitive material. This was important in providing the necessary level of assurance that information had been appropriately requested, that the request had an underpinning sound rationale and that handling of the information between and within organisations was auditable.
- 3.7 All requests for such information from the OPONI required to be authorised by a SIO or deputy. The attachment of a unique reference number to each individual request for sensitive information meant that tracking requests within the OPONI and following its progress through to completion had been enabled. The interaction of the SIOs with the manager of the Confidential Unit in a revised working arrangement, had provided for the application of appropriate checks and balances to each individual request for sensitive information.
- 3.8 Responsibility for deciding upon the appropriateness of requests based upon the HRA principles of being justifiable, necessary and proportionate, rested initially with the head of the OPONI Confidential Unit. The role of Senior Director of Investigations (SDI) in the OPONI has been subsumed into the Chief Executive Officer's (CEO) role. The CEO has overriding responsibility for deciding whether requests were in accordance with HRA principles. In the event of any dispute as to whether requests were HRA compliant, the final arbiter within the OPONI is the Police Ombudsman.
- 3.9 The adoption of a system that allocated an individual from within the OPONI Confidential Unit to a particular investigation provided a valuable single point of contact for SIOs. This, in turn had improved SIO's confidence in the internal systems being capable of delivering the information they had required at the appropriate stage of each investigation.
- 3.10 The range of requests tracked by Inspectors included ones that had been progressed from start to finish in a matter of days. The shortest period in which a request had been fully answered had been eight days. The longest outstanding request had been in the system for a period of just over four months at the time of examination. Most of the longer running requests had involved older material, held in hard copy, meaning that retrieval had often been less speedy than more recent documents that were stored electronically. Questions raised by the PSNI about the relevance of some sensitive information required by the OPONI had also impacted on the time taken to make the information available. The use of NIM compliant processes and forms by the OPONI had reduced the incidences when the provision of information had been queried by the PSNI, but had not completely eradicated this practice.

## Response to policy recommendations

- 3.11 There were difficulties with the categorisation of recommendations and in how recommendations had been framed. Recommendations arising from OPONI Regulation 20 reports had been given the status of policy recommendations when issues referred to clearly referred to local operating procedures. Inspectors viewed policy recommendations and spoke with officials in both organisations who recognised that categorisation as policy recommendations had not always been appropriate. Work was on-going in the OPONI to accurately describe recommendations arising from Regulation 20 reports and

to further develop its recommendations to take account of the difficulties experienced with regard to categorisation, especially regarding what constituted policy recommendations and what would be better referred to as 'areas for improvement'. This work also encompassed developments in producing Regulation 20 reports in a standard format and reviewing how reports are communicated between the OPONI and the PSNI.

- 3.12 Issues of categorisation and interpreting recommendations had been manifest in meetings between the NIPB and the PSNI when on occasion, figures of 40% rejection of policy recommendations had been raised. The PSNI contend that rejection of policy recommendations runs at less than 10% and that the 40% rejection rate figure was the result of an administrative error. Rejections are often due to the implementation of the recommendation being assessed as disproportionate when compared with expected benefits. Inspectors examined the PSNI document tracking recommendations and their progress. It was evident that the PSNI had expounded considerable effort in consolidating numerous recommendations and in allocating them to appropriate staff for implementation. There had also been development within the PSNI, to move to risk based guidance rather than management by strict policy in line with developments in other police organisations in England and Wales.
- 3.13 Inspectors followed up a number of recommendations contained within the PSNI tracking system and spoke with those people charged with implementation. In the majority of cases examined, implementation had been complete and had been appropriately signed off. However, Inspectors were told that the framing of recommendations had sometimes caused difficulties and that there was overlap with other similar recommendations. Internally the PSNI had worked to consolidate many of the recommendations which had the effect of reducing the overall number of separate recommendations and had assisted with more effective implementation. Those people within the PSNI charged with implementation of recommendations felt that more could be done to liaise with the OPONI earlier in the process, to better understand recommendations and to ensure that they were framed in a way that better delivered the intended outcome.
- 3.14 Independence is critical to the working of the OPONI to enable the proper investigation of complaints against the police and the making of recommendations free from undue influence. Any earlier involvement of the PSNI in the process of the framing of recommendations would need to be subject to robust monitoring to overcome any suggestions of inappropriate influence. However, there would be benefits of having such a mechanism whereby recommendations would be better framed and targeted to achieve the intended outcome. **The OPONI and the PSNI should jointly develop an approach that enables the refinement of recommendations informed by early interaction between officials in both organisations.**

## Outcomes

- 3.15 There had been little evaluation of the outcomes of the many recommendations made by the OPONI with regard to PSNI policy and practice. Officials in both organisations recognised the difficulties in clearly understanding and reporting on cause and effect and acknowledged that evaluation had not been undertaken in a meaningful way in the past. Senior officials in the PSNI recognised that policy had been changed as a direct result of recommendations made by the OPONI and saw this as a very positive outworking of the relationship between the two organisations. For example, policy with regard to the

processes for dealing with reports of missing persons had undergone complete revision. However, there was no overall evaluation of the impact of recommendations on police policy and practice which could be used to further refine the mechanisms for delivering such recommendations. The recently formed Policy Evaluation Group would only be able to perform this type of evaluation, if supported by all participating organisations in the commissioning of such work. **The remit of the Policy Evaluation Group should include the commissioning and analysis of assessments of the impact and effectiveness of policy recommendations to inform the further development of recommendation processes.**



# Appendix

# Appendix 1: Terms of Reference

## Introduction

Criminal Justice Inspection (CJI) proposes to undertake an inspection of the relationship between the Police Service of Northern Ireland (PSNI) and the Office of the Police Ombudsman Northern Ireland (OPONI).

This inspection arose from the work undertaken by CJI in May and June 2011 at the request of the then Police Ombudsman, Mr Al Hutchinson. CJI published a report into the independence of the OPONI on 5 September 2011<sup>6</sup>. During and following the fieldwork undertaken for the September 2011 report, concerns emerged about the nature of the relationship between the PSNI and the OPONI, specifically with regard to how requests for the provision of sensitive information made to the PSNI are handled and managed; and with regard to how recommendations made or directions given by the OPONI are progressed and implemented by the PSNI. CJI undertook to consider an inspection of this area after a follow-up review of the September 2011 report had been completed.

CJI completed fieldwork relating to the follow-up review in November 2012 and a draft report was forwarded to the Police Ombudsman for factual accuracy checking. The report was published on 23 January 2013.<sup>7</sup>

## Context

CJI had previously published an inspection of the OPONI in December 2005 and a follow-up review in October 2007. Both reports had examined the provision of non-sensitive information by the PSNI at the request of the OPONI. A recommendation had been made in this regard in the report of December 2005 and Inspectors found this to have been implemented by the time of the follow-up inspection. This new inspection will be focused on the management of requests for sensitive information, how the PSNI react to and manage recommendations for change and directions from the OPONI, and in the light of these transactions, the prevailing relationship between the PSNI and the OPONI.

## Aims of the Inspection

The broad aims of the inspection are to:

- examine and assess the effectiveness of processes in place for the handling and management of requests for the provision of sensitive information;
- assess the nature of the relationship between the PSNI and the OPONI in the light of these transactions;
- examine the processes by which the PSNI manages and implements recommendations made by the OPONI; and,
- assess the organisational impact on the PSNI of recommendations and directions made by the OPONI.

6 Police Ombudsman for Northern Ireland: An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland, CJI, September 2011.

7 The independence of the Office of the Police Ombudsman for Northern Ireland - A follow-up review of inspection recommendations, CJI, January 2013.



## Methodology

The inspection will be based upon the CJI framework which is set out below.

**Figure 1: CJI Inspection Framework**



This inspection will look at the strategy and governance in place with regard to handling requests for information and the implementation of recommendations and directions; delivery as measured against such requests, recommendations and directions; and, outcomes arising from these activities. As with all CJI inspections, this inspection will be based on the principles of inspection outlined in the Government’s Policy on Inspection of Public Services. The principles of inspection are set out more fully on the CJI website at: <http://www.cjini.org/TheInspections/Our-Approach/The-Inspection-Process.aspx>.

The following methodology within a three-stage framework is proposed.

### *Design and Planning*

The work previously conducted within the OPONI up to and including the recent follow-up review will be used to describe the processes operating within the OPONI as regards requests for sensitive information. Inspectors had engaged with colleagues from Her Majesty’s Inspectorate of Constabulary (HMIC) during the follow-up review of the OPONI in November 2012 and will make use of their expertise again during each stage of this inspection. The PSNI have been informed that this inspection was planned to take place after the follow-up review of the OPONI and preliminary arrangements have been made to undertake inspection fieldwork in

January 2013. Following agreement of these terms of reference, the PSNI will be asked to make available all relevant documents that describe the arrangements for managing requests for sensitive information and how recommendations and directions are managed and implemented. The PSNI will also be asked to provide an assessment of the organisational impact of recommendations and directions such as evidence of changes to policy, procedure, strategy or tactics. The OPONI will be asked to supply similar documents showing instances where change has been effected within the PSNI as a result of recommendations or directions.

#### *Delivery*

Fieldwork with the PSNI will take place during the week commencing 21 January 2013 and will consist of a series of face-to-face, semi-structured interviews with senior and other staff identified as being able to provide evidence to fulfil the aims of the inspection. It is anticipated that the fieldwork will take a maximum of five days. Upon completion of the fieldwork, a draft report will be prepared by CJI and shared with the relevant organisations for factual accuracy checking.

#### *Publication and Closure*

The final draft report will be forwarded to the Minister of Justice for permission to publish. A date of publication will be agreed between CJI, the Department of Justice, the PSNI and the OPONI. A press release will be prepared and shared with the department and with the relevant organisations.

#### *Schedule*

The bulk of the work will take place in January and February. The aim will be to publish the inspection report before the end of the financial year.



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