A REVIEW INTO THE METHODS THE POLICE SERVICE OF NORTHERN IRELAND USE TO DISCLOSE INFORMATION IN RESPECT OF HISTORIC CASES TO THE OFFICE OF THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

April 2020

Criminal Justice Inspection
Northern Ireland
a better justice system for all

A REVIEW INTO THE METHODS THE POLICE SERVICE OF NORTHERN IRELAND USE TO DISCLOSE INFORMATION IN RESPECT OF HISTORIC CASES TO THE OFFICE OF THE POLICE OMBUDSMAN FOR NORTHERN IRELAND.

Laid before the Northern Ireland Assembly under Section 49(2) of the Justice (Northern Ireland) Act 2002 (as amended by paragraph 7(2) of Schedule 13 to The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010) by the Department of Justice.

April 2020

Criminal Justice Inspection
Northern Ireland
a better justice system for all

Contents

List of abbreviations	4
Chief Inspector's Foreword	6
Executive Summary	8
Recommendations	10

List of abbreviations

ACC	Assistant Chief Constable (in PSNI)
AGS	An Garda Síochána
AP	Analytical Product
Article 2	Article 2 of the European Convention on Human Rights (ECHR). Incorporated into the Human Rights Act 1998
CHIS	Covert Human Intelligence Source
CJI	Criminal Justice Inspection Northern Ireland
CU	Confidential Unit (within OPONI)
D	Detective (within PSNI)
DIR	Disseminated Intelligence Report
DoJ	Department of Justice
ECHR	European Convention on Human Rights
GSOC	Garda Síochána Ombudsman Commission (in Republic of Ireland)
HET	Historical Enquiries Team
HIU	Historical Investigations Unit
HMG	Her Majesty's Government
HRA	Human Rights Act 1998
ICS	Information and Communication Services (within PSNI)
IT	Information Technology
IOPC	Independent Office for Police Conduct (in England and Wales)
IPCC	Independent Police Complaints Commission (in England and Wales)
LO	The OPONI Liaison Office within PSNI/Liaison Officer
LSU	Legacy Support Unit (within PSNI)
MoU	Memorandum of Understanding
NI	Northern Ireland
NIO	Northern Ireland Office
NIPB	Northern Ireland Policing Board
OCR	Optical Character Recognition
OPONI	Office of the Police Ombudsman for Northern Ireland
PFEW	Police Federation of England and Wales

PFNI	Police Federation for Northern Ireland
PIRC	Police Investigations and Review Commissioner (in Scotland)
PONI	Police Ombudsman for Northern Ireland
PRONI	Public Record Office of Northern Ireland
PSNI	Police Service of Northern Ireland
RIPA	Regulation of Investigatory Powers Act (2000)
RUC	Royal Ulster Constabulary
SIO	Senior Investigating Officer
SIR	Secret Intelligence Report
SOP	Standard Operating Procedure
UK	United Kingdom

Chief Inspector's Foreword

Public confidence in the Office of the Police Ombudsman (OPONI) to conduct independent and robust investigations is vital. In the absence of an alternative, the OPONI is the focal point for many seeking the truth about historic cases.

While the Police Service of Northern Ireland (PSNI) is struggling to meet the demands of historic investigations, it is critical that effective arrangements for disclosure are a key part of the OPONI investigation process otherwise time and resources are wasted, legal challenge is inevitable and, critically, families are frustrated, angry and hurt further.

While progress had been made and OPONI and PSNI leadership committed to renewed professional relationships; this needs to be sustained and tangibly evidenced through a revised Memorandum of Understanding underpinned by effective operational processes and procedures.

Regardless of what the future brings or when, the current arrangements for OPONI legacy investigations need to have the confidence of all the community.

Following a request from the Permanent Secretary in the Department of Justice (DoJ) and discussions with both the former Chief Constable of the PSNI and Police Ombudsman for Northern Ireland (PONI), the then Chief Inspector undertook to conduct this Review on how the PSNI service the legal demands for disclosure from the OPONI in relation to legacy cases.

It was clear from the outset that both the Chief Constable and Police Ombudsman believed that the failure in a particular legacy investigation was as a result of human error and not a deliberate act or omission. Understandably, this was small comfort to the families of the victims of the atrocity and evoked a strong reaction from the families and their legal and political representatives. It also brought the PSNI, the Northern Ireland Policing Board (NIPB) and the OPONI into a controversy over issues that they were neither designed nor resourced to manage.

The PSNI former Chief Constable fully accepted the criticality of the situation and had already commissioned an internal review and initiated a programme including investment in IT systems to deliver improvements. By the time this review commenced, substantial work was already underway and the programme was clearly being prioritised as urgent to the clear detriment of other IT projects.

The scale of the task and the legal duty on the PSNI is clear and unambiguous and this has been publicly acknowledged by police leadership, however, the failure that led to this Review was almost inevitable.

The fieldwork for this Review took place in Spring 2019, however report publication was delayed after the PSNI, as part of its review of systems in response to the original failure of disclosure, notified the PONI in October 2019 that it had identified further additional undisclosed material. The PONI has now assured CJI that, having reviewed this additional material none of it was significant, required new lines of enquiry or further work, or related to matters already published.

This report comments on issues about the PSNI's historic records. When the fieldwork was completed, the PSNI did not have a comprehensive record of the documents previously provided to the OPONI, and the OPONI did not have a detailed record of the documents it had viewed. As a result neither organisation could categorically confirm whether the additional undisclosed material had been previously provided to the OPONI.

It also outlines issues about PSNI corporate knowledge, the condition of documents and material and resourcing and training implications for the OPONI.

My report also refers to the concept of giving OPONI staff unfettered access to the PSNI legacy systems, as offered by the then PSNI Chief Constable following the incident which led to this review. There are potential legal implications of adopting this approach and it is important that the PSNI and the OPONI work through these at pace to provide the clarity both would benefit from.

It is widely recognised that responding to disclosure requirements for legacy investigations and related legal actions is a significant draw on PSNI resources.

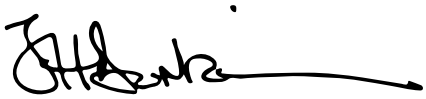
I am reassured that the ongoing work within the PSNI, together with the implementation of these strategic and operational recommendations, will secure many of the improvements that are required. The expertise and systems that are being developed are designed to ensure a more consistent quality of research and depth of response.

I have made a strategic recommendation to review the Memorandum of Understanding between the OPONI and the PSNI. I have been assured by the PONI and Chief Constable that this is being actively progressed and a revised draft developed.

However, the risk of the PSNI failing to find and disclose all relevant material cannot be fully eradicated.

Restoring and maintaining public trust is a serious concern and challenge. Trust, respect and confidence are won and lost by actions, behaviours and attitudes displayed in the daily working as much as the strategic intent. I believe it is incumbent on and there is a willingness by the PSNI and the OPONI, led from the top of their respective organisations, to work hard together to repair the damage that has been caused.

I am grateful to all those who have contributed to and supported Dr Ian Cameron and James Corrigan in completing this review.



Jacqui Durkin
Chief Inspector of Criminal Justice in Northern Ireland

April 2020

Criminal Justice Inspection Northern Ireland
a better justice system for all

Executive Summary

This Review came about following a report from the former Police Ombudsman for Northern Ireland (PONI) that sensitive material held by the Police Service of Northern Ireland (PSNI) had not been made available to the Office of the Police Ombudsman for Northern Ireland (OPONI) when investigating Troubles-related crime from the late 1980s and early 1990s.

Criminal Justice Inspection Northern Ireland (CJI) agreed to undertake this Review, following a request made by the Department of Justice (DoJ) to the then Chief Inspector of Criminal Justice Northern Ireland in February 2019, as it was considered that the PSNI's failure to disclose was impacting on current public confidence in policing.

Dealing with Northern Ireland's past remained controversial and at the time of writing, there was no political consensus as to the solution. It had therefore largely fallen to the criminal justice system to try and find closure for those who sought it. This Review looked at the current processes and Inspectors were aware of the broader context of a proposal to establish a Historical Investigations Unit (HIU).

Previous CJI Inspection reports had stressed the need for trust between the PSNI and the OPONI in their respective systems and processes to enable an effective and professional working relationship.

The disclosure of sensitive information was the subject of a number of legal considerations, and there was a Memorandum of Understanding (MoU[1]) between the PSNI and OPONI governing the procedural relationship.

Following a request by the OPONI, staff in the PSNI Liaison Office (LO) searched for sensitive material and made this available for viewing by OPONI staff. The PSNI needed to review its internal processes for appointing and training staff to perform this role. There was also a need for the PSNI to provide assurance that the material provided by the LO was that required in the original OPONI request; as well as a wider corporate assurance that the PSNI's disclosure and discovery regimes were effective and consistent across all Departments, and CJI has made a strategic recommendation to the PSNI in respect of these matters.

1 Memorandum of Understanding between PONI and the Chief Constable PSNI Internal Document, June 2018.

There was potential for the OPONI to provide the police with greater clarity regarding historic investigations, to enable the PSNI to more effectively undertake its function to resource OPONI investigations. CJI has therefore made a strategic recommendation that the two organisations revisit and revise the current MoU to take account of this and the wider issues raised in this Review.

The PSNI, at the time of fieldwork, had increased the staffing levels of the LO function, and had restructured the office as a lawyer-led Unit within its Legacy and Legal Department. These were positive steps but work was required to establish demand levels to better understand the corresponding resource needs. The PSNI had also invested significant work to develop a search guide which should increase consistency and quality in the information provided to the OPONI.

There had been an internal audit of PSNI IT systems and two of the archaic systems, which had been identified by the OPONI as most relevant to its requests, were in the process of transfer to a modern, stable searchable platform.

Hard-copy material was stored in various locations across the PSNI estate and some of the older material was in poor condition and deteriorating: the PSNI needed to audit the material to identify that which was at most risk.

The OPONI procedures for viewing and reporting the material disclosed by the PSNI should be reviewed to provide corporate assurance that all material relevant to the investigation was identified and captured.

In respect of 'Troubles'-related legacy issues, work remained to be done by both the PSNI and the OPONI to build trust in their respective systems and processes that satisfied each organisation's obligations and enabled a productive and professional working relationship. Building and sustaining an effective working relationship should be a key strategic priority for the Chief Constable of the PSNI and the Police Ombudsman.

Getting this right is vital for public confidence.

Recommendations

Strategic recommendations

1 The Police Service of Northern Ireland (PSNI) should urgently put in place an effective system to provide corporate assurance that:

- all material provided by the Liaison Office (LO) was that required in the original request from the Office of the Police Ombudsman for Northern Ireland (OPONI); and
- the disclosure and discovery regimes were effective and consistent across all Departments (*paragraph 3.71*).

2 Within one year of the publication of this Review, the PSNI and the OPONI should revisit and revise the Memorandum of Understanding (MoU) to:

- re-examine the MoU procedures for requesting and responding to requests for disclosure to allow the PSNI to effectively resource the OPONI historic investigations;
- take account of the issues raised in this Review, and the developments in the PSNI to introduce the standardised model; and
- ensure that the MoU satisfied each organisations' obligations and enabled productive, effective and professional working relationships *(paragraph 4.13)*.

Operational recommendations

1. The PSNI should immediately review its internal processes for appointing and training staff to perform the role of an OPONI Liaison Officer (LO) (*paragraph 3.48*).

2. The PSNI should review its PSNI liaison (OPONI LO) staffing levels against current, and potential future demand[2] within one year of the publication of this Review (*paragraph 3.76*).

3. The *Op Turnel*[3] work to complete the full inventory of all legacy systems and data sources, should include a full audit of the PSNI's historic records to establish what is available and where they are located. The audit should identify material at risk of deterioration (*paragraph 3.101*).

4. The OPONI should immediately review how its staff view material provided by the PSNI to quality assure and dip-sample the analytical products against the original disclosed material to assure the Senior Investigating Officer (SIO) and the OPONI that all material relevant to the investigation was identified and captured (*paragraph 3.120*).

2 See strategic recommendation 2

3 *Op Turnel* was the name of the work undertaken within the PSNI in response to the failure to disclose the information to the OPONI. It is referred to in more detail in Chapters 1 and 3 of this review.

Copyright© Criminal Justice Inspection Northern Ireland
All rights reserved

First published in Northern Ireland in April 2020 by
CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND
Block 1, Knockview Buildings
Belfast BT4 3SJ
www.cjini.org